

# **DEVEREUX**

## **DECLARATION**

**OF**

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION** is made by **Metro Homesites, LLC**, a Georgia limited liability company, hereinafter referred to as "Declarant."

### **WITNESSETH:**

Declarant is the developer of certain real property located in Augusta, Richmond County, Georgia, known as **Devereux**, more particularly described on Exhibit A attached hereto. To protect the quality of life and property values in **Devereux**, Declarant hereby declares that all of said real property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions and easements which shall run with the title to the land in **Devereux**. This Declaration shall be binding upon and shall inure to the benefit of Declarant, its successors and assigns, and all persons who may hereafter acquire any right, title or interest in said real property, or any portion thereof.

## ARTICLE 1 DEFINITIONS

**Section 1. "Declarant"** means Metro Homesites, LLC; a Georgia limited liability company. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless they are specifically set forth in the instrument of succession or assignment or pass by operation of law.

**Section 2. "Devereux"** means that certain residential development comprised of the real property described on Exhibit A attached hereto, and all additional property hereafter submitted to this Declaration by annexation.

**Section 3. "Lot"** means any parcel of land developed for residential occupancy and shown as a numbered lot upon any recorded plat of Devereux. Unless the context requires otherwise, the term Lot includes all improvements on the Lot. **"Home"** means the improvements on a Lot intended for use and occupancy as a residence.

**Section 4. "Association"** means Devereux Association, Inc., a Georgia nonprofit corporation. **"Board"** means the board of directors of the Association which is the elected governing body having charge of the affairs of the Association.

**Section 5. "Owner"** means the owner, whether one or more persons, of a Lot in Devereux. **"Member"** means a member of the Association. An Owner shall be, by virtue of his ownership of a Lot in Devereux, a Member of the Association. **"Owner"** and **"Member"** are synonymous and may be used interchangeably. When a Lot is owned by more than one person, all such persons, collectively, are deemed to be one Owner and one Member. The owner of a life estate in a Lot is deemed to be the Owner and Member as long as the life estate exists. Declarant is an Owner and Member as long as Declarant owns one or more Lots in Devereux. The holder of a Mortgage is not an Owner or a Member. Unless the Association has satisfactory proof to the contrary, ownership of a Lot is deemed to be vested in accordance with the real estate records of the Clerk of Superior Court of Richmond County, Georgia.

**Section 6. "Declaration"** means this Devereux Declaration of Covenants, Conditions and Restrictions. **"Supplemental Declaration"** means any recorded document which subjects additional property to the provisions of this Declaration, or amends this Declaration in any respect.

**"Articles"** means the articles of incorporation of the Association. **"Bylaws"** means the bylaws of the Association.

**Section 7. "Board Rules"** means all rules and regulations adopted by the Board which govern the Association or the use and enjoyment of the properties in Devereux. **"ACC Standards"** means the architectural and environmental standards promulgated by the Architectural Control Committee (the "ACC").

**Section 8. "Development Period"** means that period commencing on the date of this Declaration and ending when Declarant is no longer actively engaged in the development or sale of Lots in Devereux, not to exceed 15 years from the date hereof.

**Section 9. "Common Area"** means all real property designated as Common Area on the recorded plats of Devereux, or designated as Common Area in this Declaration or a Supplemental Declaration.

**Section 10. "Yard Area"** means those portions of a Lot requiring landscaping and grounds maintenance for the preservation of the overall appearance and aesthetic quality of Devereux.

**Section 11. "Mortgage"** means a mortgage, deed to secure debt, deed of trust or other instrument conveying a lien upon or security title to property.

**Section 12. "Person"** means a natural person, corporation, partnership, limited liability company, association, trust or other entity, or any combination thereof.

## **ARTICLE II**

### **EASEMENTS**

**Section 1. Easement for Use of Common Area.** Each Owner shall have a nonexclusive right, privilege and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration, the right of the Association to reasonably limit access thereto and the use and enjoyment thereof, and all applicable laws.

**Section 2. Easements for Access and Utilities.** Easements for ingress and egress are reserved for the Association and the Owners as shown on the recorded plats of Devereux. Devereux is subject to the drainage easements, utility easements, minimum building lines, and other easements and matters shown on the recorded plats of Devereux. An easement is reserved for the Association for the installation and maintenance of utilities and drainage facilities upon all property (all Lots and the Common Area) in Devereux. The Association may grant easements for the installation and maintenance of utilities and drainage facilities in Devereux to utility companies and governmental authorities.

**Section 3. Easements for Construction and Encroachments.** Each Lot shall be subject to an easement to permit the construction, reconstruction and maintenance of Homes on adjoining Lots. In the construction, reconstruction and maintenance of each Home, certain eaves, roof overhangs, brick veneer, wooden siding or other building materials may be attached to the structural walls which will or may encroach over the air space or real estate of the adjoining Lot. There is hereby created on each Lot so affected an easement four feet in width for such encroachments or overhangs created by such construction, reconstruction and maintenance, together with the right to maintain and repair such encroachments or overhangs so long as the same shall exist.

**Section 4. Easement for Emergencies.** The Association shall have an easement to enter upon any Lot and the Home thereon for emergency, security, safety and other purposes reasonably necessary for the protection of persons and property in Devereux, which right may be exercised by

the officers, agents, employees and managers of the Association, and policemen, firemen, emergency medical technicians and similar emergency personnel in the performance of their duties. This right of entry shall only include the right of the Association to enter upon a Lot or the Home thereon to inspect or cure any condition which may increase the possibility of a fire or other hazard in the absence of the Owner or occupant thereof, or in the event such Owner or occupant fails or refuses to cure the hazardous condition. Except in an emergency situation, entry shall only be during business hours and after notice to the Owner or occupant.

### **ARTICLE III**

#### **COMMON AREA AND YARD AREAS**

**Section 1. The Common Area.** The Association shall be responsible for the exclusive management and maintenance of the Common Area. In addition to the areas designated as Common Area on the recorded plats of Devereux, the islands and unpaved areas in the rights-of-way of Devereux Drive, Culverton Way, Culverton Court and Carey Court are hereby designated as Common Area, and shall be maintained as Common Area, to the extent permitted by Augusta, Georgia. The Association shall maintain the Common Area and the entrance features, signs, amenities, landscaping, and other improvements thereon in a safe and attractive condition, and in good order and repair. The Association may provide lighting and sprinklers for the Common Area. No person shall alter the appearance of the Common Area without the prior written consent of the Board, nor shall any person damage or destroy the entrance features, signs, amenities, landscaping, and other improvements located thereon. The Board may adopt rules governing the use and enjoyment of the Common Area.

**Section 2. Yard Areas.** The Association shall maintain each Yard Area in a clean and attractive condition, and in good order and repair, including the seeding, fertilizing and mowing of grass, the planting, pruning and cutting of trees and shrubbery, and other general landscaping and grounds maintenance, but excluding watering. The Association shall not be required to maintain or repair driveways or walkways, but may remove leaves and debris therefrom. The Association may

remove leaves and debris from roofs, gutters and downspouts. The Association shall have an easement upon each Yard Area and the exterior of each Home for the maintenance and care required or permitted by this section. Except for Yard Area maintenance performed by the Association pursuant to this section, no grass, flowers, shrubs or trees shall be planted on or removed from Yard Areas without the approval of the ACC.

#### ARTICLE IV THE ASSOCIATION

**Section 1. Powers.** The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Georgia, subject only to the limitations expressly set forth in this Declaration, the Supplemental Declarations, the Articles and the Bylaws. The Association may acquire, hold and dispose of real and personal property of every nature. The Association shall accept the Common Area and any other real or personal property conveyed to it by Declarant. The Association shall perform all duties and obligations required by this Declaration, the Supplemental Declarations, the Articles and the Bylaws. The Association may exercise all rights, powers and privileges granted by this Declaration, the Supplemental Declarations, the Articles and the Bylaws, and every other right, power or privilege reasonably implied from or reasonably necessary to exercise any express right, power or privilege.

*Addendum*

**Section 2. Board of Directors.** The Board shall manage the affairs of the Association. Unless otherwise provided, any right, power or authority granted to the Association may be exercised by the Board, and any duty or obligation of the Association shall be performed by the Board. The Board shall have the authority to adopt and the power to enforce reasonable rules and regulations to govern the Association and the use and enjoyment of the properties in Devereux (the "Board Rules"). The Board Rules may impose standards not contained in or more strict than this Declaration, if consistent with the general intent hereof and not in conflict herewith. Any specific authority herein granted to the Board to adopt rules for specific purposes shall not limit its general authority hereunder to adopt rules. The Board Rules shall be observed by all Owners and their tenants, occupants and guests. The Board may waive a violation of the Board Rules, if Board determines such violation to be minor or insubstantial.

**Section 3. Election of Board:** Declarant shall have the right to elect and remove the Board during the Development Period, unless Declarant sooner waives this right. Thereafter, the Board shall be elected and removed by the Members in accordance with the Bylaws.

## **ARTICLE V**

### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Each Owner shall be a Member of the Association. Membership in the Association is appurtenant to the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner. Any other attempted transfer of membership shall be void. A new Owner shall notify the Association of the change of ownership, and shall furnish the Association with a copy of the new Owner's recorded deed or other instrument establishing title and the new Owner's address to which notices from the Association shall be sent.

**Section 2. Voting Rights.** With the exception of Declarant, Members shall be entitled to one vote in the Association for each Lot owned in Devereux. During the Development Period, Declarant shall be entitled to three votes for each Lot owned; unless Declarant sooner waives this right. Thereafter, Declarant shall be entitled to one vote for each Lot owned. When a Lot is owned by more than one person, all such persons shall, collectively, cast only one vote. Fractional votes shall not be allowed. If only one of such persons is present or represented by proxy at a meeting of the membership, such person is entitled to cast the vote relating to such Lot. If more than one of such persons are present or represented by proxy, the vote relating to such Lot shall be cast only in accordance with their unanimous agreement; otherwise, such persons shall lose their right to vote on the matter in question. Unanimous agreement is conclusively presumed if any one of such persons purports to cast the vote relating to such Lot without protest being made forthwith by any of the others to the person presiding over the meeting.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of Lien and Personal Obligations of Assessments.** Declarant and each Owner, for each Lot owned within Devereux, hereby covenant and agree to pay to the Association annual, special and individual assessments which shall be established and collected as herein provided. Each assessment, together with all other charges authorized pursuant to Article XII, Section 4, which are deemed a part of the assessment, shall be a charge and a continuing lien upon the Lot against which the assessment is made from the date the assessment became due, and shall be the personal obligation of the Owner of the Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them. The obligations of this article shall bind each Lot and each Owner regardless of whether ownership was acquired by deed or operation of law, and regardless of whether so expressed in the deed or other document of title. No Owner may avoid liability for the assessments provided for herein by abandonment, nonuse or waiver of the use or enjoyment of his Lot, or otherwise.

**Section 2. Purpose of Assessments.** Assessments shall be used exclusively for expenses of the Association reasonably incurred in the performance of its duties and responsibilities, including the maintenance of reasonable reserves, and to promote the health, safety and general welfare of the Owners and their tenants, occupants and guests.

**Section 3. Annual Assessments.** The Board shall levy an annual assessment for each calendar year. The amount of the annual assessment shall be established by the Board by December 1 of each year for the following calendar year, and written notice thereof shall be sent to every Owner. If the Board fail to establish an assessment for a calendar year, the most recent annual assessment shall be the assessment for such year. The Board shall determine when annual assessments shall be paid and may permit payment thereof in installments. During the Development Period, a Lot shall become subject to annual assessments when the Home constructed thereon is first occupied as a residence. Upon the expiration of the Development Period, all Lots shall be subject



to annual assessments. Annual assessments for Lots which become subject to annual assessments during a calendar year shall be prorated and paid based on the number of whole months remaining in the calendar year.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment applicable only to that year for any of the purposes set forth in Section 2 of this article, provided that any such assessment shall have the assent of two-thirds of the Members (excluding Declarant during the Development Period) voting at a meeting of the membership called for the purpose of considering the special assessment. During the Development Period, special assessments may be levied only against Lots which are then subject to annual assessments, unless Declarant consents to a special assessment against all Lots.

**Section 5. Uniform Rate of Assessment.** Both annual and special assessments shall be set at a uniform rate for all Lots.

**Section 6. Individual Assessments.** The Association may levy an individual assessment against a Lot and its Owner for costs incurred by the Association resulting from an Owner's failure to comply with this Declaration, the Supplemental Declarations, the Board Rules, the ACC Standards or the decisions of the ACC, or to reimburse the Association for any damage to property owned or maintained by the Association caused by an Owner or the Owner's tenants, occupants or guests, or for any other purpose permitted by this Declaration. An individual assessment shall be paid within 30 days after notice thereof is sent to the Owner.

**Section 7. Status Certificates.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an authorized representative of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to first and second Mortgages made in good faith and for value. Sale or transfer of a Lot shall not affect the assessment lien; provided, however, that the sale or transfer of a Lot by Mortgage foreclosure, or conveyance in lieu thereof, of a first or second Mortgage to which the assessment lien is subordinate shall extinguish the assessment lien as to payments which became due prior to such sale or transfer; provided, further, that such sale or transfer was made in good faith and not for the primary purpose of avoiding the assessment lien. After a sale or transfer of a Lot by Mortgage foreclosure, or conveyance in lieu thereof, the Lot and the new Owner shall be subject to the lien and personal obligation for all assessments thereafter becoming due.

## **ARTICLE VII.**

### **ARCHITECTURAL CONTROL**

**Section 1. In General.** Devereux is subject to architectural and environmental review by the Architectural Control Committee ("the ACC") in accordance with this article and the ACC Standards. Each Owner acknowledges that the decor, color scheme and design of his Home are consistent and harmonious with other Homes in Devereux and agrees to maintain his Lot and Home in such a manner as to maintain and perpetuate visual harmony within Devereux.

**Section 2. Procedure.** The ACC shall have exclusive jurisdiction over all original construction, improvements, fences and landscaping in Devereux, and all subsequent reconstruction, modifications, additions or alterations thereto. The ACC shall promulgate standards and procedures governing its area of responsibility and practice (the "ACC Standards"). The ACC Standards may impose standards not contained in or more strict than this Declaration, if consistent with the general intent thereof and not in conflict herewith. The burden shall be on the Owners and their builders and contractors to know and comply with the ACC Standards. Plans and specifications showing the nature, kind, shape, color, size, materials and location of all original construction, improvements, fences and landscaping, and all subsequent reconstruction, modifications, additions or alterations thereto shall be submitted to the ACC for approval of quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures,

topography and finish grade elevation. In the event the ACC fails to approve or disapprove such plans and specifications or to request additional information reasonably required for a proper determination within 60 days after submission, the plans and specifications shall be deemed approved. A majority of the ACC may appoint one member to act on behalf of the entire committee and the decisions of such appointee shall bind the committee. All construction shall adhere strictly to the plans submitted to and approved by the ACC. Nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of his Home or to paint the interior of his Home any color desired.

**Section 3. Membership of ACC.** The ACC shall consist of three members who shall serve without compensation. Members of the ACC are not required to be Owners or residents of Devereux. During the Development Period, Declarant shall have the right to elect and remove the members of the ACC, unless Declarant sooner waives this right. Thereafter, the Board shall elect and remove the members of the ACC. The terms of the members appointed by Declarant shall expire upon the taking of office of the members elected by the Board.

## **ARTICLE VIII**

### **DESTRUCTION OF HOMES**

**Section 1. Total Destruction.** In the event of the total destruction of a Home, the Owner thereof shall promptly eliminate any unsafe condition, clear the Lot of debris, and reconstruct his Home. Reconstruction shall commence within a reasonable time, and shall be diligently pursued until completed. The reconstruction shall be approved by the ACC, and shall be in conformity with the plans and specifications of the original structure, subject to any changes or modifications approved by the ACC. Notwithstanding the foregoing, no Owner shall be required to reconstruct his Home, if the Owner is relieved of the obligations of this section by the Board. In such event, the Owner shall promptly clear the Lot of debris and leave the same in a neat and orderly condition.

**Section 2. Partial Destruction.** In the event of partial destruction of a Home, the Owner thereof shall promptly eliminate any unsafe condition, clear the Lot of debris, and repair his Home.

Repairs shall commence within a reasonable time, and shall be diligently pursued until completed. The repairs shall be approved by the ACC, and shall be in conformity with the plans and specifications of the original structure, subject to any changes or modifications approved by the ACC.

**Section 3. Failure to Comply.** The Association may eliminate any unsafe condition and clear a Lot of debris as required by Section 1 or Section 2 of this article, if the Owner fails to do so, and charge the cost thereof to the Owner. Prior to any work by the Association, the Board shall determine that a Lot requires specific work to comply with this article. Except in an emergency, the Board shall notify the Owner that unless the specified work is commenced within the time stated in the notice and thereafter diligently pursued to completion, the Association may cause the same to be performed and charge the cost thereof to the Owner. If the Owner fails to act within such time or to thereafter diligently pursue the completion of the specified work, the Association may enter upon the Lot to cause the specified work to be performed during reasonable hours on any day except Sundays and holidays, except that in an emergency, entry may be made at any time on any day. The Association shall not be liable to the Owner or any other person for trespass or injury to person or property as a result of such actions, unless caused by gross negligence or intentional wrongdoing. The cost incurred by the Association for any work performed under this section shall constitute an individual assessment against the Lot and its Owner.

## **ARTICLE IX**

### **EXTERIOR MAINTENANCE**

**Section 1. Owners' Responsibility.** Subject only to the Association's obligation to maintain the Yard Areas pursuant to Article III, Section 2 hereof, each Owner shall maintain the exterior of his Home and other structures, and all driveways, walkways, utility lines, drainage facilities, fences, and other outdoor improvements, located aboveground or underground on his Lot, in a clean and attractive condition, and in good order and repair, consistent with the approved plans and specifications therefor. Each Owner shall water his Yard Area on a regular basis, as needed or as instructed by the Association.

**Section 2. Association's Rights.** The Association may provide the maintenance required by Section 1 of this article, if the Owner fails to do so, and charge the cost thereof to the Owner. The Association may water Yard Areas at any time. Prior to any other maintenance by the Association, the Board shall determine that a Lot is in need of specific maintenance. Except in an emergency, the Board shall notify the Owner that unless the specified maintenance is commenced within the time stated in the notice and thereafter diligently pursued to completion, the Association may cause the maintenance to be performed and charge the cost thereof to the Owner. If the Owner fails to act within such time or to thereafter diligently pursue the completion of the required maintenance, the Association may enter upon the Lot to cause such maintenance to be performed during reasonable hours on any day except Sundays and holidays; except that in an emergency, entry may be made at any time on any day. Without limiting the foregoing, the Association may paint, repair, replace and care for exterior building surfaces, roofs, gutters and downspouts; clean and resurface paved driveways, walkways, access ways and parking areas; repair drainage facilities; and provide general cleanup and removal of debris. The Association shall not be liable to the Owner or any other person for trespass or injury to person or property as a result of such actions, unless caused by gross negligence or intentional wrongdoing. The cost incurred by the Association for any maintenance performed under this section shall constitute an individual assessment against the Lot and its Owner.

## **ARTICLE X**

### **PARTY WALLS**

**Section 1. General Rules of Law Apply.** Each wall or fence which is built as a part of the original construction of a Home or other improvement located or intended to be located on the dividing line between adjoining, separately owned properties shall constitute a party wall. Unless otherwise provided in this article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**Section 2. Maintenance; Casualty.** The cost of the maintenance of a party wall shall be borne by the Owners who make use thereof in proportion to their use. If a party wall is destroyed or damaged by fire or other casualty, the Owners who have use thereof must restore it. They shall

contribute to the cost of such restoration in proportion to their use, provided, however, that an Owner may be required to contribute a larger amount under any applicable rule of law regarding liability for negligent or willful acts or omissions. An Owner who negligently or willfully causes a party wall to be exposed to the elements shall bear the whole cost of protecting the same against the elements. The right of any Owner to contribution under this article is appurtenant to the land and shall pass to such Owner's successors-in-title.

**Section 3. Arbitration.** Any dispute concerning a party wall or the provisions of this article shall be subject to binding arbitration in accordance with the arbitration law of the State of Georgia. Each affected Owner shall choose one arbitrator and such arbitrators shall choose one or two additional arbitrators to create an uneven number of arbitrators, and the decision shall be by a majority of the arbitrators. The decision of the arbitrators shall be binding and conclusive upon the parties, and no party to the arbitration shall thereafter institute any legal action or proceeding relating to such dispute, except to enforce the decision of the arbitrators.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

**Section 1. Use Restrictions.** Devereux shall be used exclusively for residential purposes, subject to the provisions of this Declaration. Only one Home may be erected on a Lot. All Homes shall be single-family dwellings which do not exceed three stories in height. No building shall be erected, altered, placed or permitted to remain on any Lot, unless approved by the ACC. No house trailer, mobile home or modular home shall be placed upon or permitted to remain in Devereux. No structure of a temporary character, trailer, motor home, tent, shack or out building shall be used as a residence on any Lot. Notwithstanding the foregoing, Declarant and builders, contractors, real estate brokers, lenders and utility companies approved by Declarant may maintain offices, signs, and promotional equipment and apparatus in Devereux during the Development Period, and the same shall not be subject to assessment.

**Section 2. Outdoor Storage, Equipment, Clotheslines, etc.** Outdoor storage buildings, storage receptacles, storage piles, woodpiles, equipment, tools, clotheslines, yard furniture, sports equipment, play structures, statues, figurines, birdbaths, birdhouses, flags, banners, streamers, and windsocks are prohibited on Lots in Devereux. Unsightly items and items which may interfere with the Association's obligation to maintain the Yard Areas are also prohibited. Notwithstanding the foregoing, the Board may adopt rules permitting, prohibiting and regulating the use and location of outdoor items in Devereux.

**Section 3. Vehicles and Parking.** All trucks in excess of three-fourths ton, commercial vehicles, campers, motor homes, watercraft, trailers and equipment shall be parked or stored in a fully enclosed garage; provided, however, that this requirement shall not apply to the temporary parking of trucks and commercial vehicles for pick-up, delivery and other commercial services, or to vehicles used in connection with approved construction. No inoperative automobiles, trucks, motorcycles or other vehicles shall be allowed to remain in Devereux for a continuous period in excess of 48 hours, unless kept in a fully enclosed garage. The Board may adopt rules which further regulate or prohibit the repair, parking and storage of vehicles, watercraft, trailers and equipment in Devereux, and the Board may designate certain areas for the parking of the same. The Board may regulate or prohibit the use of vehicles which produce excessive noise or pollution, vehicles intended for off-the-road use, and vehicles which, because of size or other characteristics, are unsafe, unsightly or inappropriate for use in a residential neighborhood.

**Section 4. Animals.** No animals, including reptiles and fowl, may be kept in Devereux unless approved by the Board, except dogs, cats, birds and fish commonly kept as household pets, as determined by the Board. Animals which cause excessive annoyance or disturb the tranquility or safety of Devereux are prohibited. Animals shall not be maintained or bred for any commercial purpose. No animal may be kept outdoors permanently or for excessive periods of time. Animals must be leashed and accompanied by a person when outdoors. The Board may adopt strict rules governing animals in Devereux, and may delegate its authority to approve pets to a committee appointed by the Board.

**Section 5. Nuisances.** No noxious or offensive activity shall be permitted in Devereux, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood, or which may endanger the health or unreasonably disturb the residents thereof. Surface water shall not be obstructed or diverted from drainage facilities. No business activities of any kind whatsoever shall be conducted on any Lot, except business activities of Declarant and builders, contractors, real estate brokers, lenders and utility companies approved by Declarant during the Development Period, and business activities of the Association required or permitted hereunder.

**Section 6. Signs.** No sign of any kind shall be displayed to the public view in Devereux, except one sign of not more than five square feet advertising a Lot for sale or rent, and signs used by Declarant and builders, contractors, real estate brokers, lenders and utility companies approved by Declarant to advertise during the Development Period. The Board may adopt rules governing the use of signs in Devereux, including their location, size, height, design, color and text. The Board may require the use of a uniform sign to advertise a Lot for sale or rent.

**Section 7. Subdivision of Lots.** No Lot shall be subdivided without the approval of the ACC; provided, however, that Declarant shall have the right to alter the dimensions of any Lot prior to the sale thereof by Declarant to an Owner.

**Section 8. Drilling and Mining Operations.** No drilling, excavation, quarrying or mining operations of any kind for oil, gas, minerals, stone, sand or other materials shall be permitted in Devereux. No derrick, structure or equipment designed for drilling, excavation, quarrying or mining shall be erected, maintained or permitted in Devereux.

**Section 9. Exterior Antennas.** Outdoor antennas, including television, radio, microwave or dish antennas, are not permitted in Devereux, unless the Board adopts rules permitting the use and display thereof, and unless such any antenna complies with such rules.

**Section 10. Heating and Air Conditioning Equipment.** The location, appearance and screening of all outdoor heating and air conditioning equipment shall be approved by the ACC.



The Board may adopt rules governing the location, appearance and screening of such equipment, and may prohibit window air conditioning units or impose strict rules relating thereto.

**Section 11. Mail and Newspaper Receptacles.** The ACC shall approve all mail and newspaper receptacles in Devereux. The Board may require the use of uniform mail and newspaper receptacles, or may require that all mail and newspaper receptacles in Devereux be of a uniform design and construction. In either event, only mail and newspaper receptacles which conform to the requirements of the Board may be used.

**Section 12. Garbage.** Each Owner shall promptly remove from Devereux all rubbish, trash and garbage resulting from the use and occupancy of his Lot. Garbage receptacles shall not be visible from any street or neighboring Home, except to permit the collection of garbage. The Board may adopt rules governing the design, number and location of garbage receptacles in Devereux. The Board may provide for the common removal of all rubbish, trash and garbage from Devereux, and include the cost thereof in the annual assessments.

**Section 13. Termite Control.** The Board may provide for periodic inspections and treatment of all Homes in Devereux for subterranean termites and other wood destroying organisms, and may include the cost thereof in the annual assessments, or the Board may require Owners to have their Homes so inspected and treated. The Board may require Owners to repair any damage revealed by such inspections.

**Section 14. Garages.** Garage doors shall remain closed at all times except to allow vehicles to enter and exit garages. No hazardous materials shall be maintained in any garage which shall constitute a safety hazard, or which would vitiate or impair the fire and extended coverage insurance on the Home of which the garage is a part.

**Section 15. Security.** The Board may adopt rules governing the security and protection of Devereux. The Association may provide security for Devereux and include the cost thereof in the annual assessments. Neither the Association nor the Board shall be liable for failing to provide adequate security in Devereux.

**Section 16. Dedication of Common Area.** The Association may dedicate or transfer all or any part of the Common Area to a governmental authority or utility company, provided that such dedication or transfer is approved in writing by two-thirds of the Members and accepted by such governmental authority or utility company. During the Development Period, any such dedication or transfer shall also require the written assent of Declarant. This section shall not limit the right of the Association to grant drainage and utility easements over the Common Area pursuant to Article II, Section 2 hereof.

## **ARTICLE XI ENFORCEMENT**

**Section 1. Violations.** This Declaration, the Supplemental Declarations, the Board Rules, and the ACC Standards (collectively, the "Governing Documents") shall be observed by the Owners and their tenants, occupants and guests. An Owner is responsible and liable for all violations and losses caused by the Owner's tenants, occupants and guests, notwithstanding the fact that such persons are also fully liable therefor. Declarant, the Association, any member of the ACC, or any Owner may enforce and prosecute violations of the covenants, conditions, restrictions, reservations, easements, liens, charges and other provisions now or hereafter imposed by the Governing Documents, including proceedings at law or in equity. The failure to enforce a particular provision or prosecute a particular violation shall not be deemed a waiver of the right to do so thereafter.

**Section 2. Architectural Requirements.** If an Owner fails to comply with any architectural or environmental requirement of this Declaration, the ACC Standards, or the decisions of the ACC, notice of the violation shall be sent to the Owner allowing the Owner to cure the violation within the time stated in the notice. If the Owner fails to cure the violation within such time, Declarant or the Association may enter upon the Owner's Lot, make such corrections or modifications as are necessary, remove anything in violation of such requirements, and charge the cost thereof to the Owner. Neither Declarant nor the Association shall be liable to the Owner or any other person for trespass or damages or injury to person or property in connection with such entry unless caused by gross negligence or intentional wrongdoing. This section is in addition to, and does not limit, the general enforcement provisions of Section 1 of this article.

**Section 3: Costs of Enforcement.** Any person who violates Section 1 or fails to timely cure a violation under Section 2 of this article shall be liable for all costs reasonably and actually incurred by any person authorized to prosecute a violation of the Governing Documents. Such costs include costs to cure under Section 2 of this article, writing delinquency and demand letters, court costs, and attorneys' fees, including appeals. Such costs may be recovered regardless of whether suit is filed. If approved by the Board, such costs shall constitute an individual assessment against the applicable Lot and Owner, and may be enforced in accordance with Section 4 of this article.

**Section 4. Nonpayment of Assessments.** An assessment levied against a Lot by the Association becomes delinquent if the assessment or any installment thereof is not paid on the date due. If the assessment is not paid within 30 days after the date due, it shall bear interest at the rate set by the Board, but not greater than the interest rate on judgments then in effect in the State of Georgia, and shall be subject to reasonable late charges established by the Board. The delinquent assessment, together with interest, late charges, and all costs of collection reasonably and actually incurred by the Association, all of which shall be deemed part of the assessment, shall be secured by a continuing lien on the Lot pursuant to Article VI, Section 1. Costs of collection include charges for filing a claim of lien, writing delinquency and demand letters, court costs, and attorneys' fees, including appeals. Such costs may be recovered regardless of whether suit is filed. The Association may institute legal action to foreclose the assessment lien against the Lot and to collect the amount of the lien from the Owner personally obligated to pay the assessment.

**Section 5: Sanctions.** For violations of the Governing Documents, the Board may impose sanctions, including reasonable monetary fines, suspension of an Owner's right to vote in the Association, and loss of use and enjoyment of any property owned or maintained by the Association; provided, however, that fines may not be imposed for delinquent assessments, but the Board shall suspend the voting rights in the Association of an Owner who is delinquent in the payment of assessments.

**Section 6: Remedies Cumulative.** The remedies provided by this article and elsewhere in this Declaration are not exclusive remedies, but are in addition to all other rights and remedies

available to Declarant, the Association, the ACC, and the Owners now or hereafter provided by the Governing Documents, by law, or otherwise.

**Section 7. Exemptions and Immunity.** When Declarant, the Association or the ACC is granted a right or an exemption by this Declaration, or immunity from liability for exercising a right, privilege or remedy granted therein, such right, exemption and immunity shall extend to all persons acting on its behalf, for its benefit, or at its direction, including its directors, officers, committees, members, managers, contractors, agents, employees, successors and assigns.

### **ARTICLE XIII**

#### **DURATION AND AMENDMENTS**

**Section 1. Term.** All covenants herein restricting land in Devereux to certain uses shall run with and bind Devereux for a period of 20 years from the date hereof, and shall be renewed automatically and perpetually for successive periods of 20 years each, unless terminated by at least 51% of the Owners in accordance with applicable law. All easements, affirmative obligations of the Owners (including the obligation to pay assessments), and other provisions of this Declaration, except covenants restricting land to certain uses, shall run with and bind Devereux, and shall be and remain in effect perpetually to the extent permitted by law.

**Section 2. Amendments.** This Declaration may be amended or terminated by an instrument signed by not less than two-thirds of the Owners. During the Development Period, any amendment or termination shall also require the written assent of Declarant. Any such instrument must be recorded. Notwithstanding the foregoing, Declarant shall have the right to annex additional property to Devereux and alter the dimensions of Lots, as herein provided, without the consent of the Owners.

**Section 3. Annexation.** Additional property may be annexed to Devereux by Declarant, within 15 years from the date hereof, by filing Supplemental Declarations with respect to the annexed property. A Supplemental Declaration may impose additional covenants, conditions,

restrictions and easements on the annexed property. Additional property may also be annexed to Devereux with consent of two-thirds of the Members. During the Development Period, annexation by the Members shall require the assent of Declarant.

**Section 4. Lot Dimensions.** Declarant shall have the right to alter the dimensions of Lots in Devereux by filing revised plats and Supplemental Declarations with respect to the revised Lots prior to the sale thereof by Declarant to an Owner.

**Section 5. Vested Rights.** No amendment or termination of this Declaration shall affect the validity of any easements or other vested rights established hereunder for the benefit of any Owner, governmental authority, public utility, person or entity without written consent therefrom.

**Section 6. Declarant's Protection.** Notwithstanding any other provision herein, during the Development Period, no provision of this Declaration, any Supplemental Declaration, the Articles or the Bylaws shall be amended, and no rule, restriction or requirement shall be adopted or imposed, without the written approval of Declarant, which directly or indirectly, by its provisions or in practical application, does any of the following: repeals or amends any provision specifically applicable to the Development Period; repeals or amends Declarant's right to annex additional property to Devereux; relates exclusively or primarily to Declarant, or relates to Declarant in a manner different from the manner in which it relates to other Owners; repeals or amends the rights of membership in the Association, or the rights of Declarant as a Member of the Association; repeals or amends the manner of assessment applicable to Declarant or any land owned by Declarant; or repeals or amends any other provision hereof in a manner which would alter Declarant's rights or status hereunder.

**Section 7: Severability.** Invalidity of any provision of this Declaration by judgment or court order shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**Section 8. Perpetuities.** If any of the provisions of this Declaration shall be unlawful, void or voidable because of a violation of the rule against perpetuities, then such provision shall continue only for a period of 90 years from the date hereof. The purpose of this section is to prevent a violation of the rule against perpetuities and shall be construed accordingly.

#### **ARTICLE XIV**

#### **MISCELLANEOUS PROVISIONS**

**Section 1. Management Agreements.** Any agreement for professional management of the affairs of the Association, or any agreement providing for services to the Association by Declarant, may not exceed one year, and must provide for termination by either party without cause, and without payment of a termination fee, upon 30 days' written notice to the other party.

**Section 2. Insurance.** The Association shall maintain public liability insurance covering the Common Area, the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members or agents. The Association may also maintain hazard insurance for insurable property owned or maintained by the Association, and liability insurance for its directors and officers. All insurance maintained by the Association shall be in such amounts and upon such terms and conditions deemed appropriate by the Board. All insurance proceeds payable to the Association shall be used or disbursed in a manner deemed appropriate by the Board.

**Section 3. Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the current Board) to which the officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistakes of judgment, negligent or otherwise, but shall be liable only for their own individual willful malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability (solely because they are officers or directors) with respect to any contract or other

commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.

**Section 4. Notices.** Any notice required or permitted herein shall be in writing and may be sent to an Owner at his address shown on the records of the Association, or to any other person at his current address, or his last known address, if his current address is not known. Notices may be sent by United States first class mail, postage prepaid. Any such notice shall be deemed adequate notice, and shall be effective when mailed. Other reliable methods of delivery are permitted. Proof of receipt of notice is not required. It is the duty of each Owner to furnish the Association with the Owner's address to which notices from the Association may be sent. In an emergency, any type or method of notice may be used which is reasonable under the circumstances.

**Section 5. Interpretation and Construction.** The provisions of this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development of Devereux. The provisions hereof shall be liberally interpreted, and, if necessary, they shall be extended or enlarged by implication to make them fully effective.

**Section 6. Document Conflicts.** In the event of a conflict between this Declaration or any Supplemental Declaration and the Articles, the Bylaws, the Board Rules or the ACC Standards, this Declaration or the Supplemental Declaration shall prevail. In the event of a conflict between the Board Rules and the ACC Standards during the Development Period, the ACC Standards shall prevail; thereafter, the Board Rules shall prevail.

**Section 7. Number and Gender.** Unless a contrary construction is required by the context, for all purposes under this Declaration, the singular shall include the plural, and one gender shall include all genders.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed  
and sealed by its General Manager, this 14<sup>th</sup> day of November, 2003.

METRO HOMESITES, LLC

By:  [Seal]  
OTIS L. CROWELL  
As Its General Manager

SIGNED, SEALED AND DELIVERED  
in the presence of:

  
Witness

  
Notary Public

Notary Public, Columbia County, GA  
My Commission Expires August 21, 2006



## **Exhibit A**

All that tract or parcel of land situate, lying and being in Augusta, Richmond County, Georgia, located on the north side of Belair Road, containing 19.89 acres, as shown on a plat of Devereux recorded in the Office of Clerk of Superior Court of Richmond County, Georgia in Plat Book \_\_\_\_\_, pages \_\_\_\_\_ to which plat reference is made for a more complete and accurate description and location of said property.