

2006-0126139
Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

STATE OF GEORGIA
COUNTY OF ROCKDALE

RE: PLAT BOOK 291,
PAGES 9-15, FULTON
COUNTY, GA RECORDS.

DECLARATION OF PROTECTIVE COVENANTS
MAGNOLIA ESTATES SUBDIVISION

This Declaration of Protective Covenants, of Magnolia Estates Subdivision, made this 27 day of April, 2006, by Ross Mundy Custom Homes, Inc. (hereinafter referred to as "Declarant,").

WITNESSETH:

WHEREAS, the undersigned Declarant is developing that certain tract of land located in Land Lots 174 & 175 of the 9F District of Fulton County, Georgia, hereinafter described into single-family residential lots identified as Magnolia Estates Subdivision, as evidenced by that certain Plat of Survey prepared by Michael J. Barger, Georgia Registered Land Surveyor, dated November 3, 2005, and recorded at Plat Book 291, Pages 9-15 in the office of the Clerk of the Superior Court of Fulton County, Georgia, which plat is incorporated herein and made a part hereof by reference thereto; and

WHEREAS, it is to the benefit and advantage of the Declarant, its successors and/or assigns, and to each and every person who shall hereafter purchase any Lot in said subdivision, to provide for Protective Covenants governing and regulating the use and occupancy of the same; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the harmony and value in said subdivision, to create an "Architectural Control Committee" (hereinafter "ACC") to oversee the initial adherence to the Protective Covenants, as hereinafter defined and empowered; and

WHEREAS, the homeowners shall develop a Homeowners Association after 75% of the lots are sold to homeowners, for the purpose of performing certain functions or enabling certain functions to be preformed for the good and general welfare of other

owners of Lots in Magnolia Estates, to create a "Magnolia Estates Homeowner's Association" (hereinafter "Association"), as hereinafter defined and empowered.

NOW THEREFORE, for and in consideration of the premises and of the benefit to be derived by the Declarant, its successors and/or assigns, and each and every subsequent owner of any Lot in said subdivision, the Declarant does hereby set up, establish, promulgate and declare the following protective Covenants to apply to all of the Lots located in Magnolia Estates Subdivision, to all persons owning said Lots, or any of them, hereafter; these protective Covenants shall become effective immediately, and shall run with the land and shall be binding upon all persons, claiming under and through the Declarant, its successors and/or assigns, and shall remain effective perpetually to the extent permitted by Georgia Law.

ARTICLE – DEFINITIONS

The following words, when used in this Declaration of Protective Covenants shall have the following meaning:

1.0 Declarant: Shall mean Ross Mundy Custom Homes, Inc., its successors or assigns, which includes, but is not limited to any person, firm, corporation, partnership, association, trust or other legal entity, which acquires all or substantially all of the Development then owned by the Declarant (or subsequent successors in interest), together with its right hereunder by conveyance or assignment from Declarant, or judicial or non-judicial foreclosure, for the purpose of development and/or construction on the Property.

1.1 Builder: Shall mean any person, firm, corporation, partnership, or other entity, which has purchased a Lot from the Declarant for the purpose of erecting a structure thereon in their ordinary course of business.

1.2 Architectural Control Committee: Shall mean and refer to a committee, as described more fully in Article 2 herein, established for the general purpose of regulating the external design, appearance, use and maintenance of all Lots subject to its control, as such powers and duties are more fully set out in this declaration, in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures. The Officers of the Architectural Control Committee Shall be composed of one (1) officer of Ross Mundy Custom Homes, Inc., the Declarant, or their designee. The written approval of one (1) members of the "ACC" shall be sufficient for the approval by the ACC. All plans must be approved in writing by the ACC prior to the beginning of construction. Upon the sale of One Hundred Percent 100% of the Lots in Magnolia Estates Subdivision to homeowners, the "ACC" and its duties shall merge with the Magnolia Estates Homeowner's Association for the duration of these Protective Covenants.

1.3 Association: Shall mean and refer to the Magnolia Estates Homeowner's Association which shall be created pursuant to Section 5.2 hereinafter.

1.4 Declaration: Shall mean this Declaration of Protective Covenants, as they are recorded in the Superior Court Clerk's Office in Fulton County, Georgia, as amended.

1.5 Lot: Shall mean any numbered parcel of land shown on the plat of survey(s) for Magnolia Estates, or as similarly shown on any supplemental surveys of such tract.

1.6 Owner: Shall mean the record owner (including the Declarant), whether one or more persons or entities of a fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.7 Property: Shall mean that certain real property described hereinabove as owned by Ross Mundy Custom Homes, Inc., and any other property, which at Declarant's sole discretion, shall be added or included.

1.8 Restrictions: Shall mean all Covenants, restrictions, easements, charges, liens and other obligations created or imposed by this Declaration.

1.9 Structure: Shall mean:

- (a) Anything of which could be placed upon any Lot which may affect the appearance of said Lot, including, but not limited to, any building, or part thereof, a garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, paving, signage, or temporary or permanent improvements.
- (b) Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

ARTICLE 2 – ARCHITECTURAL CONTROL

2.0 Architectural Control Committee ("ACC")

- (a) Until all Lots in Magnolia Estates Subdivision, have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, no structure, other than the sales center,

shall be commenced, erected, placed, or moved onto or permitted to remain on any Lot, nor shall any existing structure upon any Lot be altered in any way which materially changes the exterior appearance of the structure or Lot, unless plans and specifications have been submitted to and approved in writing to the Architectural Control Committee. Such plans and specs shall be in such form to contain such information as may be reasonably required by the ACC.

- (b) All plans shall be submitted to the ACC for approval: (1) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and of general quality with the existing standards of the development, and (2) as to the locations of the structures with respect to topography, finished ground elevation and surrounding structures. After final approval of said plans and specifications, no changes may be made without the consent of the ACC. The signature of either member of the ACC shall be sufficient for this approval under this declaration. Approval of said plans shall be final as to that Lot or Structure and such approval may not be revoked thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any condition attached to any such approval. In the event a plan is disapproved by the ACC, the ACC will, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and re-submitted for approval.
- (c) The ACC will take action on any plans within fifteen (15) days after receipt. Approval, if granted, together with any conditions imposed, shall be placed in writing on the plans themselves, and returned to the applicant. Failure by the ACC to take action within fifteen (15) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.
- (d) If any structure shall be erected or altered upon any Lot, otherwise than in accordance with the plans and specifications as approved by the ACC, such erection or alteration shall be deemed to have been undertaken in violation of this Declaration and without the approval required herein. The ACC shall, in this case, provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific actions required to remedy the violation. If the Owner does not take reasonable steps within thirty (30) days after the mailing of the

notice by the ACC, the ACC shall have such rights and remedies as are available under Article 5 hereof.

ARTICLE 3 – GENERAL COVENANTS AND RESTRICTIONS

3.0 Application: The Covenants and Restrictions contained herein shall apply and pertain to all Lots and structures erected or placed thereon.

3.1 Restriction of Use – Single Family Dwellings – Lots may be used for single-family residential purposed only and for no other purpose; provided, however, that (a) Declarant or approved sales agents may operate a sales office and/or model home on a Lot or Lots designated by the Declarant, and (b) Declarant may utilize any one or more Lots, or portions thereof, for the development of easements for an Area of Common Responsibility, neighborhood entrance signage, and maintenance of same or for dedicated public roads, subject to applicable governmental regulations. No temporary house, shack, or tent shall be erected on said Lots or parcels to be used for residential or church purposes and no Lot may be used for schools or kindergartens. No structures of a temporary character shall be placed upon any Lot at any time except that this prohibition shall not apply to shelters used by contractors during the construction of a dwelling house so long as these temporary shelters are not used as residences and are removed after completion of construction. No mobile home, living trailer, modular home or prefabricated home shall be permitted on any of the Lots of said Subdivision.

3.2 Subdivision of Lots: No Lot shall be re-subdivided without written permission of the Declarant.

3.3 Land Use: The property shall be used for residential purposes. At no time shall any Lot be used for or converted to any business, commercial, or otherwise, or for any other non-residential use.

3.4 Completion of Structure: Before any house may be occupied, it must be completely finished on the exterior in accordance with plans approved by the Declarant, and a Certificate of Occupancy issued by the proper authorities in Fulton County, Georgia.

3.5 Completion of Driveways and Sidewalks: All driveways and driveway surfaces must be paved including any walkways. All driveways must have minimum width of 10 feet and be paved with concrete from street to garage entrance of dwelling.

3.6 No Exposed Block: Whenever any buildings are erected on any lot or parcel that are constructed in whole or in part of concrete, concrete blocks, cinder blocks, or other fabricated masonry units, such portion of construction shall be veneered with brick or natural stone or other approved material over the entire surface exposed above finished grade. Such approval must be obtained from the ACC.

3.7 No Refuse, Animals or Poultry: No Lot or parcel of land shall be used as a dumping ground for rubbish, trash, or garbage; nor shall any Lot or parcel be used for the keeping and breeding of Livestock, animals or poultry of any kind, except that household pets maybe kept, provided they are not kept for breeding or maintained for commercial purposes. No animal shall be allowed to become a nuisance. All homeowners and their guests shall abide by the Animal Control Laws in Fulton County, Georgia.

3.8 Mailboxes: Mailboxes shall be built according to the character of the subdivision and shall compliment the house and the neighborhood. Any mailboxes installed in replacement of those installed by builders shall conform in design and structure to the mailbox being replaced.

3.9 Parking of Vehicles, Recreational Vehicles and Trailers: No campers, motor homes, trailers, boats, equipment or other similar vehicles shall be parked on any portion of any lot that is not paved. No motor vehicles, including, but not limited to, automobiles, trucks, tractors or buses, which are not operational and/or not operated for more than a period of seven (7) calendar days cannot be stored on any lot. Any street parking must be limited to guests only, and only for operational vehicles.

NOTICE: Any type of vehicle that is left parked on any lot or on a public street and is not operational for more than seven (7) calendar days will be towed at the owner's expense, without any further notice.

No Major automobile repairs, excluding tune-ups and normal maintenance, shall be performed outside of an enclosed garage on any Lot of said Subdivision. No accumulation of vehicles, other than those used and operated by an Owner, his/her family or guest, shall be permitted on any Lot of said Subdivision or any street adjacent thereto. No commercial vehicles shall be parked or stored on any Lot, or in the street adjacent thereto. No house trailer, mobile home, motor home, recreational vehicle, camper, boat, or boat trailer or like equipment shall be permitted on any Lot or adjacent street; they must be placed in such a location so as not to deter from the appearance of the neighborhood, and said placement must be approved by the ACC or its successor, the Association.

3.10 Garbage and Refuse Disposal: Trash, garbage and other waste shall not be kept except in sanitary containers shall be kept in a location not visible from the street except on days designated for trash collection or pickup.

3.11 Additional Buildings or Structures: Any building or structure which is added to or constructed apart from the main residence must conform to the design and exterior of the main residence on said Lot. Plans of any such additional building or structure must be approved in writing by the ACC prior to its construction on any Lot. All additional buildings or structures must be constructed on a concrete slab foundation. There shall be no prefabricated structures installed on any lot.

3.12 Fencing: No fencing shall be permitted in the front yard of residence. Any fencing erected must start at the back corner of the dwelling and be of residential design. Any portion facing the street must be wooden, or wooden in appearance, and all other portions must be vinyl or vinyl-coated chain link, if also not wooden. Dog pens may be erected but cannot be visible from the front of the street. Prior to the completion and sale of 100% of the homes in Magnolia Estates, any such fencing installed must be approved in writing by the ACC.

3.13 Wiring: All wiring shall be underground from the point where each Lot or parcel of land meets the right-of-way.

3.14 Carport: No open carport shall be permitted. Each home shall have, at minimum, a double garage with doors.

3.15 Signs: No signs of any kind shall be displayed to public view, except these Covenants shall permit the display of one sign of not more than 5 feet square advertising property for sale or signs which are used by the Declarant, Builder, to advertise the property during the construction and sales period.

3.16 Clotheslines, Air Conditioners and Playground Equipment: No outside clothesline will be permitted. Window mounted air conditioning units may be used but cannot be visible from the street. Recreational and playground equipment shall be placed or installed only upon the rear portion of any Lot.

3.17 Building Lines: No building shall be located nearer to a street line than 30 feet, nor nearer to any side Lot line than 10 feet. For purposes of these covenants, eaves, steps or open porches not covered by roof structure shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of the building or construction of any Lot to encroach upon another Lot, nor shall any Lot or parcel be reduced or subdivided.

3.18 Dwelling Size: Dwelling buildings erected on any Lot shall contain a minimum of 1600 square feet of finished heated space for a dwelling.

3.19 Roof Pitch and Roofing Materials: All homes will have a roof pitch of 7/12. Roofing material shall be asphalt or fiberglass of a black color and must be specified when submitting plans and specifications to the ACC for approval.

3.20 Easements: Access to or the use of drainage and utility easements shall not be restricted in any way. Furthermore, natural drainage shall not be diverted or changed without the written consent of Ross Mundy Custom Homes, Inc..

3.21 Radio and Television Antennae-Satellite Dishes: All exterior radio, television aerials and satellite dishes must be approved in writing by the Declarant and/or ACC, prior to installation.

3.22 Landscaping and Property Maintenance: All landscaping designs must contain a lawn of tuft green Bermuda, Zoysia, or Centipede sod. The sod shall be installed to cover the entire front lawn. Side yard sod installation must extend to the rear corner of the dwelling. The grounds of each Lot, once a structure is completed, whether vacant or occupied shall be maintained in a neat, attractive condition, with the first 35 feet from the street being landscaped. Each owner shall keep and maintain each Lot and Structure owned by him/her/them, as well as landscaping located thereon, in good condition and repair, including but not limited to (a) the repair and painting (or other appropriate external care) of all structures; (b) the seeding, watering and mowing of all lawns; and (c) the pruning and trimming of all hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. If, in the opinion of the ACC, or its successor, the Association, any owner has failed to perform the duties imposed by this Section, the ACC or the Association shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner fails to take reasonable steps to remedy the within fifteen (15) days of the mailing of said written notice by Certified Mail, the ACC of the Association shall have the rights and remedies set forth in Article 5 hereof.

3.23 Exterior Construction Materials: All homes built in Magnolia Estates Subdivision shall have brick or stone accent with vinyl or cement board siding, as plan approved.

ARTICLE 4 – EASEMENTS, ZONING, AND OTHER RESTRICTIONS

4.0 Easements: The Declarant reserves to the Declarant, its successors and/or assigns forever, the right to create perpetual easements in, on and over any part of the property owned by the Declarant for any purpose which the Declarant deems necessary, including, but not limited to an easement to create an Area of Common Responsibility to offer a decorative and attractive entry way to the Subdivision. Any subsequent owner of any Lot which an easement created by the Declarant is appurtenant to, shall have title to all of the land they purchased in fee simple, but said title shall be subject to the easement created by the Declarant. Said Owner shall allow the Declarant, its employees, agents, successors and/or assigns access at all reasonable times to the easement area without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. The Declarant and its employees, agents, successors and/or assigns shall be responsible for leaving each Lot in good condition following any work or activity undertaken in an Easement Area pursuant to these provisions.

4.1 Zoning and Private Restrictions: None of these Covenants, restrictions, or easements created or imposed by the Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations and these Covenants, Restrictions, and Easements created or imposed by the Declaration, the most restrictive provision shall control.

ARTICLE 5 – ASSOCIATION MEMBERSHIP, FORMATION, VOTING RIGHTS AND DUTIES

5.0 Mandatory Membership: Every person who is the owner of a Lot shall be a member of the Association. No owner, whether one or more persons shall have more than one membership per Lot. All co-owners shall be jointly and severally obligated to perform the responsibility of the Owners. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

5.1 Voting Rights: Members shall be entitled to one vote for each Lot owned. When more than one person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person seeks to exercise it.

5.2 Formation of the Homeowner's Association and Election of Initial Board of Directors: Notwithstanding any other provisions hereof, the Declarant shall be solely responsible, at the Declarant's option, for the administration of the Association until such time as title to 75 % (seventy-five percent) of all Homes, exclusive of the Area of Common Responsibility within the Subdivision, have been conveyed to individual homeowners. Until such time, the duties and powers of the Association, including those of the Board of Directors of the Association, shall be performed by and vested in the Declarant or a person employed by the Declarant on behalf of the Association, unless sooner relinquished by amendment hereto executed by the Declarant and recorded in the Office of the Superior Court of Fulton County, Georgia. At such time that 75% (seventy-five percent) of the lots have been conveyed to homeowners in Magnolia Estates, the Declarant shall appoint a committee of not less than three (3) homeowners. These homeowners will then be responsible for the notification of all other Owners of a specially called meeting, which shall be in the initial meeting of Magnolia Estates Homeowner's Association. The purpose of this meeting will be to hold an election for Officers, who shall serve for the remainder of the calendar year in which said initial meeting was held. These meetings shall subsequently be held each year, on approximately the 1st day of October, to re-elect officers who shall serve for one year. The Declarant shall transfer all unexpended assessments held by the Declarant to the Association at the time of this initial meeting and election.

5.3 Authority of the Magnolia Estates Subdivision Homeowner's Association: The Declarant, and its' successor, the Association, shall have the authority to enforce the terms and conditions of the Protective Covenants of this Declaration. In addition, the individual property owners of Lots in said subdivision shall have the right to enforce these Covenants. In any event, the Declarant shall not be obligated to enforce the Covenants set forth herein after divesting itself of ownership in at least 75% (seventy-five percent) of the Lots in said Subdivision (exclusive of the Area of Common Responsibility).

5.4 Duties to Maintain Area of Common Responsibility: The Association's maintenance of the Area of Common Responsibility shall be performed consistent with the standards set out herein for the owners of all Lots and consistent with the deed restrictions of open space as required by the Open space Conservation Residential Overlay District. The Association shall maintain and keep in good repair all landscaping and signage situated on the Area of Common Responsibility. In the event that the Association determines that the need for Association maintenance, repair or replacement of any portion of the Area of Common Responsibility is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a Lien against the Lot of such owner.

ARTICLE 6 – ASSESSMENTS

Note: The liability of a Grantee for the unpaid assessments of its Grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu foreclosure. See Section 7.4 below.

6.0 Assessments, Generally: Assessments shall be used for promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and the maintenance of the Area of Common Responsibility established by the Declarant. Each Owner shall be jointly and severally liable for such portion thereof as may be due and payable. No assessments shall be levied against any Builder in the Subdivision, unless the Builder establishes a dwelling as a permanent resident.

6.1 Date of Commencement of Assessments: The assessments shall commence on each Lot on the date of the conveyance from a Builder to a homeowner. The initial assessment due shall not be pro-rated, and is payable at the time it becomes due.

6.2 Amount of Initial Assessments: Each Owner of a Lot, excluding Builders, shall be required to pay a Mandatory Initiation Fee and Mandatory Annual Dues to provide for the continued attractiveness of the Development and to provide for sufficient funding of the Homeowner's Association. Each Owner shall pay, at closing, an initiation fee of \$100.00, which fee shall not be pro-rated. This initiation fee shall not be transferable and shall be assessed at each successive closing of any Lot during the duration of this Declaration. This amount shall be made payable at the time of closing to either (a) the Declarant, until such time as a Homeowner's Association is formed, or (b) the Magnolia Estates Homeowner's Association, after its formation pursuant to Section 5.2 of the Declaration. Until the formation of the Homeowner's Association, the Annual Dues shall be \$200.00, due and payable on January 2nd, and shall be made

payable to the Declarant. Any dues not paid within 30 days of the due date shall be assessed a late fee of 5% and shall constitute an automatic continuing lien against the Lot assessed. The first Owner of each Lot, excluding a Builder, shall pay a prorated annual amount at closing based upon a calendar year.

✓ **6.3 Future Assessments:** Should an increase in the dues be necessary in the future, the Board of the Association shall prepare a budget covering the estimated costs of operating the Association for the coming year. The Board shall cause the budget to be levied equally against each lot. The board shall deliver to each member a copy of the budget and a notice of assessment for the following year at least 30 days prior to the end of the Association's fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. If the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. Future annual assessments shall be levied equally on all lots and shall be paid in such manner and on such dates as may be fixed by the Association. Dues not paid within 30 days of the due date fixed by the Association shall be deemed to be in default, and will accrue interest, late charges, and may include attorney's fees that are actually incurred in an attempt to collect the debt. These charges shall be a continuing lien upon the Lot against which each assessment was made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the Assessment fell due.

6.4 Superiority of Lien for Assessments: The lien specified shall be in favor of the Association and shall be superior to all other liens and encumbrances on such Lot, except for:

- (a) Lien for Property Taxes due, or
- (b) Any unpaid valid First Mortgage created by any Lot owner duly recorded in the records on Fulton County, Georgia, or
- (c) Any unpaid valid First Mortgage created by the Declarant duly recorded in the lad records of Fulton County, Georgia

All other persons or entities acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to have consented that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. Any delinquent assessments not paid within 30 additional days, a lien shall attach, which shall include late charges, interest computed at 18% per annum on the principal amount due, and reasonable attorney's fees incurred, and other amounts provided or permitted by law. In the event the assessment remains unpaid for 60 days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each owner, by acceptance of a deed or as a party to any

other type of a conveyance, vests in the Association or its agnates the right to bring all actions against each owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

ARTICLE 7 – ENFORCEMENT

7.0 Right of Enforcement: This Declaration and the Restrictions contained herein shall insure to the benefit of and shall be enforceable by (a) The Declarant, so long as it is an Owner; and (b) the Magnolia Estates Homeowners Association, and (c) The Architectural Control Committee, and (d) each Owner, his legal representative, heirs, successors, and assigns.

7.1 Specific Performance: Nothing contained in these Covenants shall be deemed to affect or limit the right of the Declarant or any Owner to enforce the restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the amount of damages which would accrue to a beneficiary hereof, its transferees, successors, or assigns, by reason of a violation of, or failure to perform any of the obligations provided by these Covenants. Therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available, at law or in equity, to enforce the provisions hereof.

7.2 No Waiver: The failure of the Declarant or the Owner of any Lot, his heirs, legal representatives, successors or assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation and breach, or as to any violation or breach occurring prior to subsequent thereto.

7.3 Violations: Any violation of any of the Covenants herein set forth by a person, firm or corporation obligated to comply with the same, in such event, any person entitled to protection under these Covenants may proceed at law or in equity or in any court, either civil or criminal, to prevent a reoccurrence of said violation or to recover damages for such violation.

7.4 Damages: Any Owner violating these Covenants or permitting the Covenant to be violated by a person occupying his or her premises, agrees to liquidated damages not to exceed \$50.00 a day for each violation, it is agreed that the damages shall be recoverable for each calendar day the violation continues. The recovery may be made by the aforesaid Homeowner's Association, Declarant or the ACC or any owner of a Lot or parcel subject to these damages to more than one person, plaintiff, or complainant.

ARTICLE 8 – DURATION AND AMENDMENT

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

8.1 Amendment by Declarant: These Covenants may be amended unilaterally at any time and from time to time by Declarant so long as it is still an owner of any lot, if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or (b) such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to these Covenants, or (c) Declarant desires to add additional property to be bound by these Covenants. Any amendment would be subject to the deed restriction in compliance with the Open Space Conservation Residential Overlay District.

8.2 Amendment by Owners: These Covenants may be amended at any time and from time to time by an Agreement signed by at least seventy-five (75) percent of the Lot Owners; provided, however, such amendment by the Owners shall not be effective unless also signed by the Declarant, if the Declarant is the owner of any land subject to these Covenants. No amendment to the provisions of these Covenants 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 amendment would be subject to the deed restriction in compliance with the Open Space Conservation Residential Overlay District.

8.3 Effective Date of Amendment: Any such amendment shall not be effective until the instrument evidencing such change has been filed for record in the Office of the Clerk or the Superior Court of Fulton County, Georgia.

ARTICLE 9 – MISCELLANEOUS

9.0 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. These Covenants shall likewise be considered severable with the respect to their imposition by the undersigned in deeds of conveyance as eliminate the applicability of one or more such Covenants by enumerating them in any such deed of conveyance.

9.1 No Waiver: The failure of Ross Mundy Custom Homes, Inc. to insist in any one or more cases upon the strict performance of any of the terms, Covenants, provisions or agreements herein contained shall not be construed as a waiver or a relinquishment in the future of the enforcement of any such terms, Covenants, conditions, provisions or agreements. The acceptance of performance of anything required to be performed with knowledge of a breach of the terms, Covenants, conditions, provisions or agreements shall not be deemed a waiver of such breach and no waiver by Ross Mundy Custom Homes, Inc. of any of the terms, Covenants, conditions, provisions or agreements shall be deemed to have been made unless expressed in writing and signed by an officer of Ross Mundy Custom Homes, Inc..

9.2 Zoning: Zoning regulations applicable to property subject to this declaration shall be observed. In the event of any conflict in any provision of such zoning regulations or restriction and the restriction of the declaration, the more restrictive provisions shall apply.

9.3 No Reverter: No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of a reverter.

9.4 Headings: The headings of the Articles and Sections hereof are for convenience only and shall not affect the validity of any other provision hereof.

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

9.6 Notices: All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures, or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if delivered in person to the recipient, or deposited in the U.S. Mail with adequate postage and sent to the following address:

To Declarant: Ross Mundy Custom Homes, Inc.
 3150 Hwy 278, Suite 349
 Covington, GA 30014

Clerk of Superior Court
Fulton County, Georgia

To Owners(s): Each Owner's address according to the system of naming streets and numbering houses then in effect.


Any written communication transmitted in accordance with Section 9.7 shall be deemed received on the third (3rd) business day following the day such written notice is deposited in the U.S. Mail.

9.7 No Liability: Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every owner shall have the right to the power to enforce the terms and provisions of this Declaration against every other owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by the Owner (or by any other person) in Court of law or otherwise, Declarant shall have no liability of any kind as a result of the non-enforceability of these Covenants, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no liability.

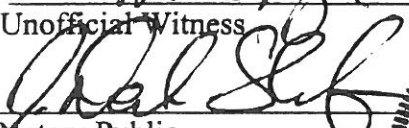
IN WITNESS WHEREOF, Ross Mundy Custom Homes, Inc. has caused this Declaration to be executed in its name and by its agent duly authorized on the day and year first above written.

Signed, sealed and delivered
in the presence of:

Ross Mundy Custom Homes, Inc.


Unofficial Witness

By:  (SEAL)


Notary Public

