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 COUNTY OF SPARTANBURG )  
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SPARTANBURG, S.C.

**DECLARATION OF PROTECTIVE  
 COVENANTS, CONDITIONS,  
 RESTRICTIONS AND EASEMENTS  
 OF SUGAR RIDGE COMMONS  
 Being developed by Applewood, LLC**

THIS DECLARATION is made this 9<sup>th</sup> day of May, 2002, by Applewood, LLC  
 (hereinafter referred to as "Developer" and "Declarant".)

**WITNESSETH**

**WHEREAS**, Declarant is the owner of all of the lots of land in Spartanburg County, South Carolina, located off of Sugar Ridge Road in Spartanburg County, South Carolina, and more particularly shown and described upon a plat entitled Sugar Ridge Commons, Phase I prepared for Developer by Gramling Brothers Surveying, Inc., dated February 19, 2002 and recorded in Plat Book 152, Page 243, ROD Office of Spartanburg County, South Carolina; and

**WHEREAS**, Sugar Ridge Commons will be a residential community, and the Declarant desires to provide for the preservation of values and amenities of said community, to maintain the natural beauty of the real property and for the maintenance of common facilities and, to these ends, desires to subject all of the lots in Sugar Ridge Commons as shown on the above plat to the within Protective Covenants, Conditions, Restrictions, Easements, charges and liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner in Sugar Ridge Commons;

**NOW, THEREFORE**, Declarant hereby declares that all of the property included in the subdivision known as Sugar Ridge Commons shall be held, sold and conveyed subject to the following restrictive covenants and conditions, which are imposed against the property described for the purpose of protecting the value and desirability of the property and accomplishing the systematic and uniform development of the property into a subdivision; that the covenants, conditions, easements and restrictions set forth shall run with the real property described and shall be binding upon all parties having any right, title or interest in or to the subject property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof until December 31, 2033, at which time said Covenants, Conditions, Easements and Restrictions shall be automatically extended for successive periods of ten (10) years each, unless, by a vote of two thirds of the then owners of the lots into which the property shall have been developed, the within covenants, conditions, easements and restrictions are changed or amended, in whole or in part. In the event of such vote, the vote shall be cast by the legal title owner of each individual lot, provided further, that each lot shall have only one vote in the event that legal title thereto is held jointly or otherwise by more than one (1) person.

1. **DEFINITION.** The following words when used herein (unless the context shall require a different meaning) shall have the following meanings;

A. "Subdivision" shall mean and refer to all of the lots and property shown upon plat of "Sugar Ridge Commons" referred to above and upon any subsequent plat prepared for the Developer, recorded in the ROD Office of Spartanburg County and reference to any amendment or modification to this instrument.

B. "Common Properties" shall mean and be referred to as all lands not plated as lots now or in the future and or public rights of way to be maintained as a landscaped area within Sugar Ridge Commons, together with all street lights, sprinkler systems, street signs, entrance signs, landscaping, and water meters located within such area.

C. "Developer" shall mean and refer to Applewood, LLC.

D. "Lot" or "lot" shall mean and refer to any numbered parcel of land shown upon the above-referenced plat of Sugar Ridge Commons prepared for the Developer, recorded in the ROD Office of Spartanburg County and referenced in this instrument or any amendment or notification thereto.

E. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot situated within Sugar Ridge Commons, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

2. **SINGLE FAMILY RESIDENTIAL USE.** No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed 2 stories in height and a private attached garage.

3. **SUBDIVISION OF LOTS.** Developer or any subsequent owner of a lot, with the prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. Nothing herein, however, shall prevent two lot owners from making an equal exchange to alter a lot line with written consent of the Developer.

4. **MINIMUM HEATED AREA.** No dwelling shall be erected on any lot having less than two (2) bathrooms and no less than One Thousand Two Hundred Fifty (1250) square

feet of heated floor area, provided that the plans include a garage. If the dwelling has a second floor, the first floor must have no less than eight hundred (800) square feet of heated floor area and a second floor shall have a minimum of seven hundred (700) square feet of heated floor area. The floor area required by this article shall not include basements, porches, verandas, breezeways, terraces or garages. Nonetheless, Developer reserves the right and privilege, upon showing of special, unique or unusual circumstances to give a waiver to the minimum heated area requirements on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

5. **BUILDING SETBACK LINES.** No building or portion of a building, including stoops, verandas, steps and porches shall be located on a lot nearer the front property line or nearer the side street property line of the lot than the setback line(s) shown for such lot on the plat of Sugar Ridge Commons referred to in the deed to such lot from Developer, but in no case nearer than twenty (20) feet from the front or rear property line, and not nearer than five (5) feet to any side lot property line. Nonetheless, Developer reserves the right and privilege, upon showing of special, unique or unusual circumstances to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

No lot shall be further subdivided or otherwise have its boundaries altered without first obtaining the written permission of the Architectural Committee hereunder. Further, the use of more than one (1) lot as a single residential building site shall not be prohibited, but shall be subject to prior approval by the Architectural Committee. No building shall be erected on any lot nearer to the front lot line nor nearer to the side lot lines than the building setback lines shown on the recorded plat referenced above. In the absence of plat setbacks, front setbacks shall be 20 feet, sideline setbacks shall be 5 feet, except lots with adjacent streets in which case sideline setbacks shall be 10 feet, and rear setbacks shall be 20 feet. Any such building shall face toward the front line of the lot except buildings to be constructed on corner lots, which shall face in the direction designated by the Architectural Committee. No building shall be located nearer to any interior side lot line than the distance as determined and directed by applicable building/zoning codes and ordinances or as stated herein or on any recorded plat, whichever distance may be greatest.

6. **LANDSCAPING.** All lots shall be professionally landscaped and all landscape plans shall be approved by the developer, or Architectural Committee, including original and any changes in landscaping plans.

7. APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS.

A. No building or structure, whether it be the dwelling house or garage shall be erected, placed or altered on any lot until the building plans, elevations, location, specifications have been approved in writing by Developer or its nominee. If such shall not be approved or disapproved within two (2) weeks after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

B. The completion of improvements upon a lot shall include the professional landscaping of the yard, including the grassing or sodding of the yard and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling. The owner of any lot shall maintain the sidewalk placed upon the lots by the developer and shall prevent the same from being damaged during construction of the dwelling. All yards front, back and side, shall be sodded with Bermuda grass as approved by the developer.

C. The front elevation of the dwelling house foundation must be a minimum of six (6") inches above the finished grade of the front yard.

D. All garages shall be equipped with a door and automatic door openers.

E. In the event that substantial construction of a residence on a lot is not commenced by the Owner thereof, excluding the developer, within one (1) year from the date of purchase and closing of said lot from the Developer, the Developer reserves the first option to repurchase the lot at a purchase price equal to ninety (90%) percent of the original purchase price paid to the Developer for the lot. If the Developer exercises this option, title to the lot in the reconveyance shall be free and clear of liens and encumbrances. If Developer does not exercise this option by written notice to the owner within thirty (30) days after the expiration of the one year period, the owner may consider the lot free and clear of this option. If the Developer exercises this option, closing of title shall be within thirty (30) days of the date of notice to the owner. The option reserved herein to the Developer shall not render a bona fide mortgage lien invalid and is specifically subordinate to any bona fide mortgage lien.

F. No above ground swimming pools shall be permitted. In-ground swimming pools shall be constructed or placed on any lot only with the prior written approval of the Developer or Architectural Committee, which shall have the sole authority to set requirements as to size, location, fencing, screening and landscaping relative to the location of any in-ground swimming pool.

8. **PROHIBITED BUILDING MATERIALS.** Concrete Blocks, cement bricks or concrete walls shall not be used in the construction of any building or garage unless the exterior of same is faced with brick approved by Developer or Architectural Committee. All building materials including brick must be approved in advance by the Developer or Architectural Committee. All fireplace chimneys shall be of solid masonry or must incorporate brick veneered chases if prefabricated fireplace and metal flue pipe are used. Spark arresters shall be concealed behind black galvanized skirts. No modular or prefabricated homes shall be allowed.

9. **TRAILERS AND MOBILE HOMES PROHIBITED.** Trailers and mobile homes, including typical double-wide mobile homes, are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot.

10. **REQUIREMENTS FOR DRIVEWAYS.** All driveways shall be constructed of concrete and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the sidewalk, curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction or work is being done shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer.

11. **DEVELOPER'S DISCLAIMER.** DEVELOPER, AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPER, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH MATTER OR ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSIONS, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED. FURTHERMORE, DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL FUTURE OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION.

12. **GENERAL EASEMENTS.** Developer reserves an easement of five (5') feet inside each side and ten (10') feet on the front and rear of each lot for the installation, maintenance and repair of utilities, sewer lines, and/or storm drainage facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown

upon a duly recorded plat of Sugar Ridge Commons. All utility service lines, including cable television, telephone, gas, electric or other utility, from existing streets shall be installed underground to any dwelling or other structure upon a lot.

13. **SEWAGE.** All sewage shall be disposed of through the sanitary sewer collection lines located within the subdivision and owned by the Spartanburg Sanitary Sewer District, and all connections to such lines shall be made only with the written approval of the Spartanburg Sanitary Sewer District in accordance with its rules and regulations.

14. **FENCING.** No wire or metal fencing shall be erected on any lot other than fencing approved by the Developer or Architectural Committee. Metal or wooden fencing shall be permitted on any lot from the rear corner of the residence erected thereon to the rear of the lot, provided, however, that no such fence shall exceed five (5") feet in height. No fencing of any kind shall be installed or allowed to remain on any lot which shall interfere, damage or obstruct the installation or maintenance of any utility. On corner lots, no fence shall be erected beyond the side building setback line shown on the plat above referred to.

15. **BUSINESS ACTIVITIES PROHIBITED.** No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of this item shall not be construed to prohibit the making of handcrafted items for occasional off premises sale.

16. **NUISANCES AND OFFENSIVE ACTIVITIES.** No nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted or allowed to exist on any lot or the adjoining street or streets. No burning shall be allowed on any lot unless supervised by the Builder.

17. **PARKING OF BOATS AND RECREATIONAL VEHICLES.** No camping trailer, boat, boat trailer or other similar recreational vehicle, motor vehicle, or other device or equipment shall be permitted to stand on any lot. No inoperable motor vehicle, wrecked vehicle or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage. No street parking shall be allowed on a regular basis. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarter (3/4) ton in size, shall be parked on a lot or in the street right-of-way, except for loading and unloading. Further, no portion of a lot shall be used for the operation of any non-licensed motorized vehicles such as motorcycles, mini-bikes, go-carts, four wheelers or similar vehicles.

18. **PORTABLE OR METAL BUILDINGS PROHIBITED.** Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot. Plans for utility buildings or detached garages must be submitted to the Developer or Architectural Committee for approval as set out in Paragraph 7., (A) above.

The design and location of such building shall be in conformity with existing dwellings and approved by the Developer or Architectural Committee.

19. **SWING SETS.** Swing sets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located on the rear portion of a lot.

20. **NO TEMPORARY RESIDENCES.** No garage or hobby-type/storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

21. **ANIMALS.** No domestic fowl, cows, hogs, mules, horses, wild animals or any other farm-type animals shall be kept on any lot at any time, provided, however, household pets, such as cats and dogs, may be kept on a lot, provided such pets shall not exceed a total of two (2) in number and provided further that the owner thereof shall be responsible for the control and conduct of such household pets so that they are not an annoyance, hinderance or nuisance to their neighbors. Pets shall be supervised by owners so as not to disturb or be an annoyance to the neighbors. Outdoor pets may be kept in a building, the design, building materials, location and color of which shall be approved by the Developer and Architectural Committee and shall in no case be larger than three feet (3') by three feet (3') by three (3') feet.

22. **TRASH RECEPTACLES.** All receptacles for trash or garbage must be kept within a fenced or enclosed area and hidden from public view and the view from adjoining property.

23. **CLOTHESLINES.** All clotheslines are specifically prohibited.

24. **SCREENING OF YARD EQUIPMENT.** Lawn mowers or other lawn maintenance equipment shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property.

25. **TELEVISION ANTENNA, SATELLITE DISHES AND FLAG POLES.** No roof-mounted or chimney-mounted television antenna is permissible. No other type of antenna, satellite dish or similar devise for the transmission or reception of signals of any kind shall be erected or allowed to remain on any lot unless approved by the Developer or Architectural Committee. If available, the new Direct Broadcasting Satellite (DBS) television system or equivalent technology or system will be allowed, as long as the satellite receiving dish or apparatus does not exceed eighteen (18") inches in diameter and is affixed to the rear of the roof or any eave of the dwelling. No flag poles may be erected or placed on any lot without approval by the developer or Architectural Committee.

26. **COMPLETION OF IMPROVEMENTS.** All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other

natural calamity. Lots shall be maintained in a neat and attractive manner after lots are sold by the Developer and until improvements have been completed.

27. **COVENANT OF GOOD APPEARANCE AND REPAIR.** Each lot owner shall maintain his lot and the exterior of all improvements in neat appearance and good repair in order to assure that no condition exists which would diminish the appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or Sugar Ridge Commons Homeowners Association, Inc., or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 37.I. **THE DEVELOPER, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.**

28. **SIGNS.** No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign unless approved by the Developer or Architectural Committee. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall have the right to use additional signs for development of the property. The space designated as "Common Area" shall be exempt from this provision in that the subdivision identification sign will be located thereon.

29. **STREET LIGHTS.** If street lighting is installed by the Developer, the cost and expense of operation will be transferred to the Homeowners Association at any time after January 1, 2003.

30. **MAINTENANCE OF STREET RIGHT-OF-WAY.** The owner of a lot shall be responsible for the planting and maintaining of the area from the property line to the edge of the pavement or curb of the street or streets upon which said lot abuts.

31. **FUEL TANKS.** All fuel tanks or containers shall be buried underground, or enclosed in a structure, in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control, whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved by the Developer in accordance with its building approval procedure as above set forth.

32. **FIREWORKS.** Shooting of fireworks of any kind, and the storage thereof, are prohibited.

33. **MAIL RECEPTACLES.** All mailboxes or other mail receptacles and their supporting structure, including type, location and height thereof, shall conform to Developer's uniform requirements. After installation, each owner has the responsibility of keeping same in good repair and appearance.

34. **HOMEOWNERS ASSOCIATION AND VOTING RIGHTS.** A Homeowners Association shall be established by the developer for the purpose of enforcing the within covenants at the option of the developer. Assessments to support purpose of the Association may be imposed upon the lot owners by vote of its members. The Association shall have two (2) classes of voting membership as follows:

**Class A.** Class A members shall be all those Owners defined in Paragraph 1 (E) with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Paragraph 1. When more than one person holds such interest or interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

**Class B.** Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equals or exceeds the total votes outstanding in Class B membership; or

(b) January 1, 2010

Homeowner's Dues shall be waived for a period of six months after sale of lot by the Developer. Thereafter, monthly Homeowner's Association Dues shall be due and payable by the lot owner to pay for the periodic grass cutting and cost of other amenities as provided for herein.

35. **PROPERTY RIGHTS IN THE COMMON PROPERTIES.**

A. **Title to Common Properties.** The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the sole discretion of the Developer, the Association is able to maintain the same, but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey all of its rights, title and interest in the common properties to the Association not later than December 31, 2007.

B. **Restrictions on Common Areas.** The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas or for identification signs for Sugar Ridge Commons. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities, landscaping or maintenance.

C. **Right to Use Lake, Gazebo and Swimming Pool.** Notwithstanding the Covenants herein contained, the Homeowners of Sugar Ridge Commons shall have the right to use the lake, gazebo and swimming pool in the common area provided such use shall not result in an annoyance or nuisance to the neighborhood. Children must at all times be supervised by their parents or guardians. Such use shall be on a first come basis until the Homeowners Association assumes control. Thereafter, the Homeowners Association shall establish rules for its use. Failure to abide by the Association rules may result in suspension of privileges.

36. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

A. **Creation of Lien and Personal Obligation of Assessments.** The Developer for each lot owned by it within Sugar Ridge Commons hereby covenants and each owner of any lot by acceptance of a deed to a lot within Sugar Ridge Commons, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

(1) Annual or monthly assessments, charges or dues; and

(2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the lot owners in Sugar Ridge Commons and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

(1) Expenses for the maintenance, upkeep and improvements of the Common Properties.

(2) Payment for services in connection with the maintenance, upkeep and improvements to the Common Properties, including utilities, taxes, water usage and other

related reasonable and necessary expenses, including expenses for yard maintenance of each finished dwelling.

(3) Maintenance, upkeep, repair and/or replacement of the sprinkler systems within the Common Properties.

(4) For the payment of services for any street lighting undertaken and accepted by the Association.

(5) For the payment of expenses related to the upkeep, maintenance and replacement of signs within Sugar Ridge Commons identifying the subdivision, containing street names or other safety signs, if any.

(6) For any other purpose, costs or expense reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the By-Laws and these restrictions.

(7) Maintenance of yards within the subdivision including grass cutting as needed.

C. **Bases and Maximum of Annual Assessments.** There will be no annual assessments until the year beginning January 1, 2003. For the years following January 1, 2003, the developer shall establish the Homeowners Association dues until the Association assumes control and thereafter the annual assessment may be adjusted by vote of the homeowners as herein provided. Lots owned by the Developer and/or lots with dwellings under construction shall be exempt from annual assessments until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developer's voting rights in the Association.

D. **Change in Basis and Maximum of Annual Assessments.** Subject to the limitations in Paragraph 36.C above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Paragraph 36.C hereof prospectively for any such period provided that any such change shall have the assent of Fifty-Two percent (52%) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members as least thirty (30) days in advance and shall set forth the purpose of the meeting.

E. **Date of Commencement of Annual Assessments: Due Dates:** The annual assessments provided for herein shall commence on January 1 of each year. The annual assessments provided for herein shall begin and become due and payable January 1, 2003, and on January 1 of each year thereafter, provided, however, the Developer reserves the right to collect assessments on a monthly basis beginning January 1, 2003. Prior to January 1, 2003 the Developer agrees to maintain the Common Properties in a good state of repair and operation.

The due date of any special assessment under Paragraph 36 (A) hereof shall be fixed in the resolution authorizing such assessment.

F. **Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association.** If the assessments are not paid on the date when due (being the date specified in Paragraph 36.E. above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half percent (1.5%) per month (ANNUAL PERCENTAGE RATE - 18%) from the delinquency date. The Developer and/or Homeowners Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

G. **Lien of Assessments is Subordinate to Recorded Mortgage.** The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the assessment lien, provided, however, the sale or transfer of any Lot pursuant to the mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

37. **DELEGATION OF DEVELOPER'S RIGHTS.** All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or any part of such reserved rights to the Homeowners Association or an Architectural Committee.

38. **TERM OF ENFORCEMENT AND AMENDMENTS.** These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2033, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Sugar Ridge Commons agree in writing to terminate or change same. The terms and conditions of this instrument may be amended or

changed only upon written agreement of the then Owners owning at least two-thirds (2/3) of the Lots in Sugar Ridge Commons. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of the items hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver, modification or change shall substantially affect the overall plan of development.

39. **EFFECT OF COVENANTS AND ENFORCEMENT.**

A. **Effect of Provisions of These Covenants.** Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Sugar Ridge Commons do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot within Sugar Ridge Commons is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer and all other owners, their respective heirs, successors and assigns;

(3) shall be deemed a real covenant by the Developer for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot within Sugar Ridge Commons;

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot within Sugar Ridge Commons, which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

B. **Who May Enforce.** The benefits and burdens of these covenants run with the land at law and in equity, and the Developer, his respective successors, assigns, and any owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. **Against Whom May the Covenants be Enforced.** The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against the owner, his heirs, successors and assigns, or any other person whose activities bear a relation to the property, including guests and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent the terms hereof.

D. **Enforcement Remedies.** In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupance of any dwelling or land; (4) to prevent any act, conduct business or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall", be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

40. **MISCELLANEOUS.**

A. **No Waiver.** Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Association or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. **Captions.** The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. **Board Authorization.** All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in Accordance with its By-Laws, unless the terms of this instrument provide otherwise.

D. **Gender, Tense, Number and Applicability of Definitions.** When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

E. **Savings Clause.** If any provision or provisions of this instrument are found to be ineffective or unenforceable for any reason in the final judgment of any court having jurisdiction of the subject matter hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

F. **Areas Exempt.** The areas designated "Future Development" are specifically omitted from this Declaration of Protective Covenants, Conditions, Restrictions and Easements, however, Developer reserves the right to impose the same or different Covenants, Conditions, Restrictions and Easements as the Developer shall determine for those areas.

G. These Protective Covenants and Conditions and any by-laws approved by the Homeowners Association shall be binding upon all lot owners in this subdivision. The Homeowners Association shall have the right to assess maintenance fees and improvement charges against lots and to create liens for the collection thereof and each owner, by the acceptance of a deed therefor, whether expressly written in the deed, shall be bound to pay such assessments and charges to the association.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 9<sup>th</sup> day of May, 2002.

APPLEWOOD, LLC

Lucretia W. Payne  
[Signature]

BY: [Signature]  
ITS: Member

State of South Carolina )  
County of Spartanburg )

PROBATE

Personally appeared before me the undersigned witness and stated that (s)he saw the within named Applewood, LLC by ARNOLD J. RAASBY, its Member, sign, seal and execute the within Declarations of Protective Covenants, Conditions, Restrictions and Easements and (s)he with the other witness subscribed above witnessed the execution thereof.

Sworn to and subscribed before me this 9<sup>th</sup> day of May, 2002.

[Signature]  
Notary Public State of South Carolina  
My Commission Expires 2-24-07

Lucretia W. Payne