

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR HIGHLAND POINTE SUBDIVISION, UNIT II

THIS DECLARATION, made this 17th day of November, 1986, by
CUMBERLAND SOUTHERN, INC., a Georgia corporation (hereinafter the
“Developer”).

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property lying and
being in Land Lots 101,102,115 and 116 of the 16th District, 2nd Section, Cobb
County, Georgia, which real property is more particularly described in Exhibit A
attached hereto and by reference made a part hereof; and

WHEREAS, Developer desires to provide for the preservation and
enhancement of the property values in Highland Pointe and for the maintenance of
the property and improvements thereon, and to this end desires to subject the real
property described in Exhibit A to the covenants, conditions, restrictions, easements,
charges and liens hereinafter set forth, each and all of which is and are for the benefit
of said property and each owner thereof;

NOW, THEREFORE, Developer declares that the real property
described in Exhibit A is and shall be held, transferred, sold, mortgaged, conveyed,
leased, occupied, and used subject to the covenants, conditions, restrictions,
easements, charges and liens hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1. “Architectural Control Committee” shall mean and refer to
the Developer, or such other individuals as Developer may appoint, or such entity to
which the Architectural Control Committee may assign its duties, until all Lots in
the Subdivision shall have been fully developed and permanent improvements
constructed thereon and sold to permanent residents. At such time as all of the Lots
in the Subdivision have been fully developed, permanent improvements constructed
thereon, and sold to permanent residents, the Developer shall notify the Owners of
Lots in the Subdivision to that effect, and, thereupon the Developer’s rights and
obligations as the Architectural Control Committee shall forthwith terminate.
Notice to the Owners by Developer under this provision shall be in writing and shall
be deemed given if delivered to the Owner’s residence constructed on each Lot.

After receipt of the said notice from the Developer, the Owners of a majority of the Lots in the Subdivision shall have the right, power, and authority, through a duly recorded written instrument, to establish and elect a successor Architectural Control Committee which shall consist of not less than three (3) Owners of Lots. Rules and regulations pursuant to which such Architectural Control Committee shall act shall be proposed by the initial successor Architectural Control Committee and shall be enacted upon the approval of a majority of the Owners of Lots in the Subdivision.

Section 2. “Declaration” shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 3. “Developer” shall mean and refer to Cumberland Southern, Inc., a Georgia corporation, or any successor-in-title or any successor-in-interest to Cumberland Southern, Inc. to all or any portion of the Property then subject to this Declaration, provided in the instrument of conveyance to any such successor-in-title or interest, such successor-in-title is expressly designated as the “Developer” hereunder by the grantor of such conveyance, which grantor shall be the Developer hereunder at the time of such conveyance.

Section 4. “Lot” or “Lots” shall mean and refer to Lots 1 through 136, inclusive, as shown on the Plat, individually or collectively, as the case may be, and shall mean and include any additional lots created or relocated on any amendment to or revision of the Plats which is recorded in the Records of the Clerk of the Superior Court of Cobb County, Georgia.

Section 5. “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. “Person” shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 7. “Plats” shall mean and refer to those certain final subdivision plats for the Subdivision prepared by Dixon’s Land Surveying, Inc., dated October 22, 1986, and recorded in Plat Book III, Page 62 in the Office of the Clerk of Superior Court of Cobb County, Georgia, as the same may be amended or revised from time to time.

Section 8. “Property” shall mean and refer to that certain real property described in Exhibit A attached hereto.

Section 9. “Structure” shall mean and refer to: (i) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot; (ii) any excavation, grading, fill ditch, diversion dam or other thing, object 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; and (iii) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (ii) of this Section 9 applies to such change.

Section 10. “Subdivision” shall mean and refer to Highland Pointe Subdivision, Unit II.

ARTICLE II ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Powers, and Duties of the Architectural Control Committee. The purpose of the Architectural Control Committee is to assure that the installation, construction and alteration of any Structure on any Lot is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the development of the Property and that the location of Structures on the Lots is compatible and harmonious with topography of the Property as developed by Developer and with the finished ground elevation of the Subdivision and surrounding Structures. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction, or alteration of any Structure on any Lot.

Section 2. Submission of Plans and Specifications.

No structure shall be commenced, erected, placed, 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 of Lot, unless plans and specifications therefore shall have been first submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Control Committee, including, without being limited to:

- (a) a site plan showing the locations of all proposed and existing Structures on the Lot, including building setbacks, open space, driveways, walkways and parking spaces including the number thereof;
- (b) foundation plans;
- (c) floor plans;
- (d) wall sections;
- (e) exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures will appear after all back-filling and landscaping are completed;
- (f) specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors of all proposed Structures and alterations to existing Structures, and also showing front, side and rear elevations thereof;
- (g) roof materials and color; and
- (h) plans for landscaping and grading.

Section 3. Approval and Disapproval of Plans and Specifications.

(a) The Architectural Control Committee shall have the right to approve or disapprove any plans and specifications submitted to it in its sole and untrammelled discretion, which approval or disapproval may be based upon any grounds, including purely aesthetic considerations which shall be deemed sufficient.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the

same. Approval of any plans and specifications for use in connection with any Lot or Structure shall not be deemed a waiver of the Architectural Control Committee's right, in its sole discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure, and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) Neither Developer nor any member of the Architectural Control Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, approval of plans and specifications by the Architectural Control Committee shall not be deemed to represent or warrant to any person the quality, function or operation of the Structure or of any construction, workmanship, engineering, materials or equipment. Neither Developer nor any member of the Architectural Control Committee shall be liable in damages or in any other respect to anyone submitting plans or specifications for approval under the Article, or to any Owner, or to any other Person having an interest in any of the Property be reason of mistake in judgment, negligence, misfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans and specifications. By submission of such plans and specifications to the Architectural Control Committee, every Owner of any Lot releases and agrees to hold harmless and to defend Developer and any member of the Architectural Control Committee from any such alleged liability, claim and/or damage.

Section 4. Obligation to Act. The Architectural Control Committee shall take action on any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof. Approval by the Architectural Control Committee, if granted, together with any conditions imposed by the Architectural Control Committee, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Failure by the Architectural Control Committee to take action within forty-five (45) days of the receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

Section 5. Right of Inspection. The Architectural Control Committee, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and the Architectural Control Committee shall not be deemed to have committed a trespass or wrongful act solely by reason of such entry or inspection.

Section 6. Violations. If any structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications, otherwise than in accordance with the plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Control Committee such violation shall have occurred, the Architectural Control Committee shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within fifteen (15) days after the mailing of the aforesaid notice of violation, then the Architectural Control Committee, its agents and representatives, shall be entitled and empowered to enjoin such construction or enter such Lot at reasonable times to remove such construction, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. Any costs and expenses incurred by the Architectural Control Committee in enjoining and/or removing any construction or improvements shall be assessed against the Owner of such Lot and shall be due and payable to the Architectural Control Committee on demand, it being understood, acknowledged and agreed that such Owner shall be personally liable to the Architectural Control Committee for such costs and expenses. The liability for such costs and expenses shall be a permanent charge and lien upon such Lot enforceable by the Architectural Control Committee in the same manner as other liens for the improvement of real property or by any other appropriate proceeding in law or in equity.

Section 7. Fees. The Architectural Control Committee may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 5 hereof. The fee shall be established from time to time by the Architectural Control Committee and shall be due and payable to the Architectural Control Committee by the Owner of the lot inspected, on demand.

ARTICLE III. MAINTENANCE

Each Owner of a Lot, whether vacant or occupied, shall keep and maintain his Lot and the exterior of any and all improvements located thereon in a neat, attractive and safe condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing, and care for roofs, gutters, downspouts, building surfaces, lighting, trees, shrubs, grass, walks, and other exterior improvements. Should any Owner of a Lot fail to maintain his Lot or the improvements thereon as set forth hereinabove, the Architectural Control Committee, its agents and representatives, may, after thirty (30) days written notice to the Owner of such Lot, enter upon his Lot for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, or other unsightly growth, for removing garbage or trash, or for performing such exterior maintenance as the Architectural Control Committee, in the exercise of its sole discretion, deems necessary or advisable, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. Such Owner shall be personally liable to the Architectural Control Committee for the direct and indirect cost of such maintenance. The liability for such costs and expenses shall be a permanent charge and lien upon such Lot enforceable by the Architectural Control Committee in the same manner as other liens for the improvement of real property or by any other appropriate proceeding in law or in equity. Although notice given as herein provided shall be sufficient to give the Architectural Control Committee, its agents and representatives, the right to enter upon such Lot and perform such maintenance, entry for such purpose shall be only between the hours of 9:00 a.m. and 5:00 p.m. on any day except Sunday. The provisions hereof shall not be construed, however, as an obligation on the part of the Architectural Control Committee to mow, clear, cut or prune any Lot, to provide garbage or trash removal service, or to perform such exterior maintenance.

ARTICLE IV. EASEMENTS

Section 1. Easements for Architectural Control Committee. There is hereby created in favor of the Architectural Control Committee, its members, agents, employees and representatives, an easement to enter in or to cross over the Lots to inspect and to perform the duties of maintenance and repair of the Lots, as provided for herein.

Section 2. Easements for Developer. Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Developer for so long as Developer owns any Lot primarily for the purpose of sale:

- (a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;
- (b) For the construction of improvements on the Lots;
- (c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;
- (d) For the use of any sales offices, model units designated by Developer to include a mobile office, and parking spaces in connection with its efforts to market Lots; and
- (e) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots.

Section 3. Lake Easement. There is hereby created in favor of all Owners and the owners of all lots in Highland Pointe Subdivision, Unit I, a perpetual, non-exclusive right and easement to use and enjoy the lake shown on the Plat, which lake comprises a portion of Lots 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 44, and 45. Access, ingress, and egress to, from and along the lake shall be solely across, over and through those certain pedestrian easements as shown on the Plat. Said right and easement shall include fishing and boating privileges; provided, however, no motorized boats shall be permitted on the lake. No swimming in the lake shall be permitted and the lake may be used only during daylight hours.

ARTICLE V. GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. No Lot, or any portion thereof, shall at any time be used for any commercial, business or professional purpose; provided, however, that nothing in this Declaration shall be construed to prohibit or prevent Developer from constructing or placing on any Lot or other portion of the Property a sales office (which may include a mobile or temporary structure), or a model home or residence for the purpose of marketing the Lots, or to prohibit or prevent Developer, its agents and designees, from using any Lot owned by Developer for the purpose of carrying on business related to the development, improvement and sale of Lots in the Subdivision.

Section 2. Nuisances. (a) No unlawful, noxious or offensive activities shall be carried on in any Lot, nor shall anything be done therein or thereon which constitutes a nuisance, causes unreasonable noise or disturbance to others or unreasonably interferes with other Owners' use of their Lots.

(b) No rubbish, debris or any other form of waste of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property or of a Lot. For rubbish, garbage or any other form of solid waste to be disposed of by being collected on a regular and recurring basis, containers may be placed on each Owner's Lot on any day that a pick-up is to be made. At all other times, such containers shall be screened or enclosed so as not to be visible from any street or any other Lot. No person shall burn rubbish, garbage, or any other form of waste on any Lot except during construction of a Structure, provided that such activity is in full compliance with all applicable laws and ordinances. Except for building materials employed during the course of construction of any Structure approved by the Architectural Control Committee, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot.

(c) No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sounds devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property or any portion thereof.

Section 3. Resubdivision of Property. No Lot may be split, divided or subdivided for sale, resale, gift, transfer or otherwise without the prior written

approval of the Architectural Control Committee of plans and specifications for such split, division or subdivision. Not more than one (1) single-family residence shall be constructed on any one Lot.

Section 4. Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Control Committee of plans and specifications for the landscaping to accompany such construction or alteration.

Section 5. Temporary Buildings. No temporary building, trailer, garage or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the Architectural Control Committee. No Owner shall erect or allow to be erected on any Lot any temporary building or shed for use in connection with construction on such Lot without the prior written consent of the Architectural Control Committee. Notwithstanding the above, this Section shall not be construed to prohibit or prevent Developer from using sheds or other temporary structures during development of the Property.

Section 6. Signs.

(a) No signs whatsoever (including but not limited to commercial and similar signs) shall, without the Architectural Control Committee's prior written approval of plans and specifications therefore and location thereof, be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

(i) such signs as may be required by legal proceedings;

(ii) not more than one "For Sale" or "For Rent" sign; provided, however, that in no such event shall any such sign be larger than four (4) square feet in area. Notwithstanding the foregoing, during construction of any Structure on a Lot, Developer, its agents and designees, may erect professionally prepared signs larger than four (4) square feet in area which are related to such construction and which are used primarily for identification of the builder or contractor constructing such Structure or of the institution or other entity providing financing for such construction, or both; and

(iii) directional signs for vehicular or pedestrian safety.

(b) Following the consummation of the sale of any Lot, the sign or signs located thereon shall be removed immediately.

Section 7. Fences. No fence, wall or barrier of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the Architectural Control Committee of plans and specifications for such fence, wall or barrier.

Section 8. Driveways. All driveways shall be constructed with a hard finished substance aesthetically compatible and in harmony with the architectural integrity of the Subdivision.

Section 9. Antennae. No antenna, satellite dish or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any Lot or the exterior of any Structure without the prior written approval of the Architectural Control Committee. In no event shall freestanding transmission or receiving towers be permitted.

Section 10. Clotheslines, etc. All clotheslines, related equipment, garbage cans and woodpiles shall be screened by adequate foliage or fencing from view by adjoining Lots and adjacent streets.

Section 11. Recreational Vehicles and Trailers. No house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or similar vehicle shall be permitted on any Lot in excess of seven (7) days if parked in a manner that is visible from any street.

Section 12. Recreational Equipment. All recreational and playground equipment shall be placed, installed, constructed and maintained only in the rear yard of a Lot, with the exception of basketball goals which may be placed in the side yard of a Lot or along the driveway located on a Lot. In the event that the rear yard of any Lot is adjacent to a street, the Owner of such Lot shall provide adequate screening of such equipment by foliage or fencing.

Section 13. Animals. No animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon and solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. Any

Structure for the care, housing or confinement of any animal shall be placed, installed, constructed and maintained only in the rear yard of a Lot.

Section 14. Water Supply. No individual water supply system shall be permitted on any Lot without the prior written approval of the Architectural Control Committee. If such approval is given, such system must be located, constructed and equipped in accordance with the requirements, standards, and recommendations of federal, state and local public health authorities, and all necessary approvals of such system as installed shall be obtained from such authorities at the sole cost and expense of the Owner of the Lot to be served by such system.

Section 15. Setback and Building Lines. Each residence which shall be constructed on a Lot shall be situated on such Lot in accordance with the building and setback lines shown on the Plats. In no event shall any residence be constructed and located on a Lot in a manner which violates or encroaches upon the building and setback lines shown on the Plat.

ARTICLE VI. GENERAL PROVISIONS

Section 1. Enforcement. The Architectural Control Committee, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, charges and liens now or hereafter imposed by the provisions of this Declaration. Failure by the Architectural Control Committee or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. If any provision of this Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles and sections.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date the Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the Office of the Clerk of the Superior Court of Cobb County, Georgia.

Section 5. Rights and Obligations. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, easements, liens and charges, and the jurisdiction, rights and powers created or reserved by the Declaration. All rights, benefits and privileges of every character hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Notices. Except as otherwise provided in this Declaration, notices shall be in writing and shall be addressed to an Owner at his Lot or at such other address as hereinafter provided. For so long as the Architectural Control Committee shall mean and refer to the Developer, notices to the Architectural Control Committee shall be in writing and shall be addressed to Larry B. Thompson, Post Office Box 1266, Marietta, Georgia 30061. Any Owner may designate a different address for notices to such Owner by giving written notice to the Architectural Control Committee. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail, return receipt requested, postage prepaid, or when delivered in person.

Section 7. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Developer (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal home Loan

Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (vi) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not make any substantial changes in any of the provisions of this Declaration. Further, this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the owner of any real property then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record in the Office of the Clerk of the Superior Court of Cobb County, Georgia. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that this Declaration may be amended as provided in this Section.

Section 8. No Liability. Developer has used its best efforts and acted with due diligence in connection with the preparation and recording of this Declaration to ensure that each Owner has the right and power to enforce the terms and provisions hereof against every other Owner. In the event this Declaration is unenforceable by an Owner or any other person for any reason whatsoever, Developer shall have no liability of any kind as a result of such unenforceability, and each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that Developer shall have no such liability.

IN WITNESS THEREOF, Cumberland Southern, Inc. has caused this Declaration to be executed in its name by its duly authorized officers and its seal affixed on the day and year first above written.

Signed, sealed and delivered
In the presence of:

CUMBERLAND SOUTHERN, INC., a
Georgia Corporation

Signed
Witness

By: Larry Thompson (signed)

Title: President (signed)

Signed

Attest: _____

Notary Public

Title: _____
[CORPORATE SEAL]

EXHIBIT A

ALL THAT TRACT or parcel of land dying and being in Land Lots 101, 102, 115 and 116 of the 16th District, 2nd Section of Cobb County, Georgia, being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135 and 136 of Highland Pointe Subdivision, Unit II, as more particularly shown on those certain plats of survey prepared by Dixon’s land Surveying, Inc., recorded in Plat Book III, page 62, Cobb County, Georgia records, which plats are incorporated herein by reference.

(5245T/OIS/tb)

