

DECLARATION OF COVENANTS AND RESTRICTIONS
PROVIDING FOR APPECROSS HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, made this 28th day of June, 1997, by Applecross, Ltd., a Georgia Corporation ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration and intends to develop thereon 32 Townhouses to be known as "Applecross";

WHEREAS, Declarant desires to provide for (i) the ownership and maintenance of certain common areas of Applecross, (ii) the preservation of values, (iii) the maintenance of the yards of the individual Townhouses built in Applecross, (iv) the rendering of community services and (v) a vehicle for the administration and enforcement of covenants and restrictions; and

WHEREAS, Declarant has caused or will cause to be incorporated under the laws of the State of Georgia a nonprofit corporation, Applecross Homeowners Association, Inc., for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth;

NOW, THEREFORE, Declarant declares that the real property described on Exhibit A, attached hereto and made a part hereof by this reference, be subjected to this declaration, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter referred to as the "Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to Applecross Homeowners Association, Inc., A Georgia nonprofit corporation, its successors and assigns.

(b) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded to the Association for the use and benefit of its Members. The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated a "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the Owners, Residents and their guests (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association, provided, however, that any lands which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such lease.

NOTWITHSTANDING THE ESTABLISHMENT OF TOWNHOUSES OF APPECROSS AND THE SUBMISSION OF THE PROPERTY TO THE TERMS AND CONDITIONS OF THIS DECLARATION OF COVENANTS AND RESTRICTIONS FOR APPECROSS, APPECROSS IS NOT A CONDOMINIUM AS DEFINED IN THE GEORGIA CONDOMINIUM ACT (O.C.G.A. Section 44-4-70, et seq.)

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GEORGIA, COLUMBIA COUNTY

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MARY W. REEVES, CLERK

(c) "Applecross" shall mean and refer to the Lots on the property in Columbia County, Georgia, described in Exhibit A hereof and the Common Properties.

(d) "Declarant" shall mean Applecross, Ltd., its successors and assigns.

(e) "Declaration" shall mean and refer to this Declaration of Covenants and Restrictions Providing for Applecross Homeowners Association, Inc.

(f) "Declaration of Rights, Restrictions, Etc." shall mean and refer to the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to Applecross which has been filed for record of even date herewith.

(g) "Lot" shall mean and refer to those portions of the Property upon which Declarant has constructed a Townhouse for sale, use and occupancy as a single-family residential dwelling in conformity with the terms of the Declarant as such Lots will be shown, with respect to the land on Exhibit A, on a plat which will be filed of record by Declarant prior to the conveyance of Lots on the Additional Property, on plats which will be filed of record by Declarant at the appropriate time.

(h) "Member" shall mean and refer to all those Owners who are members of the Association as defined in Section 1 of (i) "Owner" shall mean and refer to the Owner (including Declarant) as shown by the real estate records in the Office of the Clerk of Superior Court of Columbia County, Georgia, whether it be one or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Lot and Townhouse located within Applecross but, notwithstanding any applicable theory of a mortgage or deed to secure debt, shall not mean or refer to the mortgagee or holder of a deed to secure debt, its successors or assigns, unless and until such mortgagee or holder of a deed to secure debt has acquired title pursuant to foreclosure or by a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Clerk of the Superior Court of Columbia County, Georgia, a long-term contract of sale covering any Lot, the Owner of such Lot shall be deemed to be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one in which (i) the purchaser is required to make payments for the Lot for a period extending beyond nine (9) months from the date of the contract, (ii) the purchaser does not receive title to the property until such payments are made and (iii) the purchaser is given the use of said property.

(i) "Property", unless the context shall otherwise require, shall mean and refer to that tract or parcel of land described on Exhibit A, together with all improvements thereon.

(j) "Resident" shall mean and refer to the lessee under a written agreement for the rent and hire of a Lot and Townhouse in Applecross.

(k) "Townhouse" or "Family Dwelling Unit" shall mean and refer to the improvements constructed on each Lot.

ARTICLE II

PLAN OF DEVELOPMENT

1. Plan of Development of Property.

The Property shall contain 32 Lots and the Declarant shall construct 32 Townhouses on such Lots. The Property shall also include paved parking areas, drives, roads, utility systems, and other improvements or easements serving the Lots. A plat of the general area and location of the Townhouses and other improvements on the property and the dimensions of the Lots on Exhibit A will be filed of record prior to the conveyance of the first Townhouse to the purchaser thereof. The Lots shall be restricted exclusively to single-family residential use in accordance with the provisions of this Declaration. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot primarily for the purpose of sale, to make improvements and changes to all Common Areas and to all Lots owned by Declarant (other than changes to the location of the boundaries of the Lots), including, without limitation, (i) addition to and realignment of parking spaces, (ii) installation of any utility systems and facilities, (iii) installation of security and refuse facilities, and (iv) work related to the exteriors and roofs of Townhouses.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1. Membership.

Every person who is the record owner of a fee simple or undivided fee simple interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and ownership of a Lot shall be the sole qualification for such membership. The foregoing is not intended to include mortgagees or any other persons

who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, regardless of whether title to the Lot is vested in more than one Owner, shall have more than one membership or one vote per Lot.

2. Voting Rights.

Each Lot shall be entitled to one vote to be cast by the Owner thereof. When any Lot is owned by two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or any other manner of joint or common ownership, or, if two or more persons or entities have the same fiduciary relationship respecting the same property, or, if property is owned by a corporation, then such Owners shall file with the Secretary of the Association an instrument in writing signed by all such Owners designating one Owner (or in the case of a corporation, one of its officers) to cast the vote which is attributable to such Lot. The principles of this section shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

3. Governing Body.

The Association shall be governed by a Board of Directors consisting of three (3) Members. Subject to the provisions of Article III, Section 6, the election of the Board of Directors shall be by the Members as provided in the By-Laws.

4. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association.

The quorum required for any action which is subject to a vote of the members at a meeting of the Association shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association, the presence at the meeting of Members or proxies entitled to cast fifty percent (50%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not present at any such meeting, a second meeting may be called, subject to the giving of proper notice, and the presence of twenty five percent (25%) of the total vote of the membership shall constitute a quorum for such second meeting. Any such second meeting must be held within sixty (60) days of the first meeting when the required quorum was not present. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements for such "duly called meeting" which may be established by the By-Laws of the Association. For the purpose of this section, "proper notice" shall be deemed to be given to each Member not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered.

5. Proxies.

All members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing.

6. Control of Declarant.

NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any Member or Members of the Board of Directors of the Association and any officer or officers of the Association until such time as the first of the following events shall have occurred: (i) the expiration of seven (7) years from the date of the recording of this Declaration; (ii) the sale of the last Townhouse which Declarant elects to build, or (iii) the surrender of such right by Declarant evidenced by an express amendment hereto recorded in the public records of Columbia County, Georgia. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association, such right shall automatically pass to the Owners including Declarant if Declarant then owns one or more Lots and a special meeting of the Association shall be called at such time. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession. Any management contract or any other contract or lease executed by or on behalf of the Association during the period of Declarant's right to control the Association shall be subject to cancellation and termination at any time during the twelve (12) months next immediately following the expiration of such period of Declarant's control by the affirmative vote of the Owners to whom

a majority of the votes in the Association appertain, unless the Owners by a like majority shall have expressly ratified and approved the same.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

1. Owner's Easement of Enjoyment in Common Properties.

Subject to the provisions of these Covenants, the rules and regulations established from time to time by the Association, and any fees or charges established by the Association, every Owner, resident and tenant shall have an easement of ingress and egress over all paved portions of the Common Properties and of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot and Townhouse.

2. Title to Common Properties.

Declarant shall convey to the Association, at no cost to the Association, by limited warranty deed, the real property designated as Common Properties on the final, recorded plat of Applecross. Such conveyance shall be subject to all matters of record. Upon such conveyance, the Association shall immediately become responsible for all maintenance of such Common Property.

3. Extent of Owner's Easement.

The easements of ingress, egress, use and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to suspend the rights and easements of use of any Owner, resident or tenant of any Lot for any period during which the payment of any assessment made by the Association against such Lot remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Owner's obligation to pay the assessment.

(b) The right of the Association by action of its Board of Directors to dedicate or transfer to any public or private utility or municipality any part of the Common Properties.

(c) The rights and easements of the Association set forth in Section 4, below.

(d) The rights and easements of the Declarant set forth in Section 5, below.

(e) The right of the Association to grant easements and to dedicate or transfer fee simple title to all or any part of the Common Properties, including leasehold interests, to any public or private concern for such purposes and subject to such conditions as may be agreed to by the Association; provided that no such dedication or transfer to fee simple title shall be effective unless authorized by the affirmative vote of a simple majority of the votes cast at a duly called meeting of the Association and by Declarant so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every member of the Association at least 30 days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote taken thereon, shall be made by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association and such certificate together with a certificate, executed by the Declarant, if such consent is required, shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

4. Easement for Association.

There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including but not limited to, any manager employed by the Association, to enter upon the Property (but not inside a Townhouse) or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner or occupant of the Lot, Townhouse, garage, or other structure or improvement directly affected thereby. In that connection, the Board of Directors has the power to grant and accept easement upon, over, under, and across all of the Common Areas for ingress and egress, installing, replacing, repairing, and maintaining master television antenna systems, security and similar systems, and all utilities, telephone, water and sewer lines; provided, however, that for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements upon, over, under, and across all of the Common Areas as may be reasonably necessary or desirable for the improvement of any portion of the Property;

provided, however, that for as long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. By virtue of any such easement, it shall be expressly permissible for the providing utility company or other supplier or servicer to erect and maintain upon the Property the necessary poles and other necessary equipment.

5. Easement for Declarant.

(a) Construction. During the period that Declarant owns any Lot primarily for the purpose of sale or owns any interest in any portion of the Additional Property, whether or not a part of the Development, Declarant and its duly authorized representatives, agents, and employees shall have a transferable right and easement on, over, through, under and across the Common Areas for the purpose of constructing Townhouses on the Lots and making such other improvements to the Property as are contemplated by this Declaration and to the Additional Property as Declarant, in its sole discretion, desires, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of installing, replacing, and maintaining all Townhouses and other improvements within the Development, as well as utilities serving the Property or the Additional Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

(b) Sales Office. Notwithstanding any provisions or restrictions herein to the contrary, Declarant and its duly authorized agents, representatives, and employees, shall have an easement for the maintenance of signs, a sales office, a construction office, a business office, and model Townhouses on the Property, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion, improvement and sale of Lots or the Additional Property, for so long as Declarant owns any Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property or any portion thereof to the Development.

6. Parking for Visitors.

There shall be three (3) areas designated as "Parking for Visitors". This is for temporary parking only and no vehicle shall remain more than 72 consecutive hours in one space and will not be used for long-term parking by guests or residents of boats, jet boats, recreational vehicles, trailers or mobile homes.

ARTICLE V

COVENANTS FOR ASSESSMENTS

1. Creation of the Lien and Personal Obligations of Assessment.

Declarant covenants and each Owner of any Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) regular annual assessments or charges; and (2) special assessments or charges for the purposes set forth in this Article. Regular annual assessments and special assessments are to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessment and special collections therefore, as hereinafter provided, thereon against which each assessment is made. Each such assessment, together assessed interest thereon and all costs collection, as hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment first becomes due and payable. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. No Owner may waiver or otherwise escape liability of the assessments provided for herein by non-use of Common Properties or abandonment of his Lot and Townhouse.

2. Date of Commencement of Annual Assessments.

The annual assessments provided for herein shall commence on January 1, 1998. The initial annual assessment for each occupied townhouse shall be \$120.00 per year. The rate for an unoccupied townhouse or a vacant lot shall be \$60.00 per year. At such time as a townhouse is occupied, the higher rate shall become in effect the first day of the next full month following occupancy.

3. Purpose of Regular Annual Assessment.

The regular annual assessments shall be levied by the Board of Directors of the Association, shall be payable monthly and shall be used exclusively for the improvement, maintenance, repair and enhancement of the Common Properties, and, to provide the required services as set forth in Article VI, Section 2 hereof and to provide so many of the discretionary services set forth in Article VI, Section 3 as the Board of Directors may elect to provide.

4. Special Assessments.

In addition to the annual regular assessments authorized by Section 3 hereof, the Board of Directors of the Association may levy special assessments against Lots for the following purposes to the extent any regular annual assessment is insufficient:

- (a) Repair or replacement of any paved areas located on the Common Properties;
- (b) Repair, replacement and maintenance of the walls and landscaping on the Common Properties;
- (c) To provide for the necessary facilities and equipment to offer the services authorized

herein;

(d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Before any special assessment is levied by the Association, it must receive the assent of a simple majority of the votes cast at a duly held meeting of the Association. In mailing out the notice of such meeting, the Association shall include in the notice one statement from those Directors favoring the special assessment and one statement from the Directors opposing the special assessment (if any), containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed two (2) pages in length.

In the event any Owner shall fail to fulfill his/her/its obligations under Article V hereof, and the Association shall fulfill any of such obligations for such Owner, the Association shall be entitled to specially assess such Owner, without the requirement of a vote, for all costs incurred by the Association in performing such service.

5. Reserve Funds.

The Association may establish reserve funds from its regular annual assessments to be held in reserve in an interest-bearing account or investments as a reserve for (a) major rehabilitation, major repairs, or major maintenance; and (b) for emergency and other repairs required as a result of storm, flood, wind, natural disaster or other casualty loss.

6. Certificate of Payment.

The Association shall upon demand at any time furnish to any Owner liable for any regular or special assessment, a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

7. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.

If the regular annual assessment or any special assessment is not paid by an Owner on or before its past-due date, then such assessment shall become delinquent, shall bear interest from the past due date until paid at the rate of the lesser of (i) fifteen percent (15%) per annum, or (ii) the highest rate permitted by law, and shall automatically and immediately (together with interest thereon as provided herein and all costs of collection, including attorney's fees) become a charge and continuing lien on the Lot and Townhouse, against which each such delinquent assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, Tenant, Successors and assigns.

If the assessment is not paid within thirty (30) days after the past-due date, the Association may, at its election, bring an action to foreclose its lien on the property or bring an action at law against the Owner personally. If a delinquent assessment is put in the hands of an attorney-at-law for collection, there shall be added to the amount of such assessment all costs of collection, including, but not limited to, fifteen percent (15%) of the amount of the delinquent assessment and all interest thereon as reasonable attorney's fees. Additionally, the Association may discontinue water service to the Townhouse of the Owner (or any tenant of the Owner) by closing and securing the valve controlling the domestic water to the Townhouse. Opening the valve without the consent of the Association shall be considered a continuing trespass upon the property of the Association. Upon payment of all delinquent accounts by the Owner and payment of a reinstatement fee determined from time to time by the Association, the domestic water service will be re-established by the Association. The initial fee shall be \$25.00. The Owner agrees to hold the Association and its Board of Directors harmless for any damages, either direct or consequential, resulting from the discontinuation of domestic water by the Association.

8. Subordination of the Lien to Deeds to Secure Debt.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed to secure debt now or hereafter placed upon any Lot and Townhouse which, except for such lien for assessments, would constitute a first lien on the Lot and Townhouse. Sums collected by foreclosure of such mortgage or deed to secure debt shall be applied first to the indebtedness secured thereby and all costs of collection, and second to past due assessments, interest thereon and costs of collection.

9. Annual Statement.

The president, treasurer or such other office as may have custody of the funds of the Association shall annually, within ninety (90) days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$250.00. Such officer shall furnish to each Member of the Association who may request, in writing, a copy of such statement within thirty (30) days after receipt of such a request. Such copy may be furnished to the Member either in person or by mail.

10. Annual Budget.

The Board of Directors shall prepare and make available to all Members, at least sixty (60) days prior to the first day of each fiscal year, a budget outlining anticipated receipts and expenses for the upcoming fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

11. Uniform Assessment.

All assessments made under this Declaration shall be equal among Lots, except for the reduction permitted by Section 2 of Article V in the regular annual assessment for unoccupied Townhouses owned by the Developer.

12. Working Capital Fund.

In order to insure that the Association will have cash necessary to fund the operation of the Association, a reserve and working capital fund will be established. Funding will be supplied by Owners by payment at the closing of every Lot (and each successive closing thereafter) the sum of \$100.00 which will be for the use and benefit of the Association. Further, the Developer shall pay \$100.00 to the Association at the time the Developer conveys each Lot to the initial Owner. Amounts paid into the funds are not to be considered to be advance payment of regular assessments.

ARTICLE VI

FUNCTIONS OF ASSOCIATION

1. Ownership and Maintenance of Common Properties.

The Association shall be authorized to own and maintain the Common Properties. The Association shall pay any advalorem taxes on the Common Properties. Each Owner shall be responsible for the payment of all advalorem taxes on his Lot and Townhouse.

2. Required Services.

The Association shall be required to provide the following services:

(a) Repair, replacement and maintenance of the Common Properties and all improvements located thereon.

(b) Taking any and all actions necessary to enforce all covenants and restrictions affecting Applecross and to perform all of the functions and duties delegated to the Association in any covenants or restrictions applicable to Applecross.

(c) Providing administrative services, including, but not limited to, legal, accounting and financial, and communication services informing Owners of activities and giving required notices indicant to carrying out the functions of the Association.

(d) Review of and approval or disapproval of plans and specifications for (i) work to any Townhouse or (ii) landscaping on any Lot, all as provided for in the Declaration of Rights, Restrictions, Etc.

(e) Maintenance of liability insurance for the Association in such amounts as shall be determined by the Board of Directors to protect the Association against claims for which the Board of Directors determine should be covered, including without limitation, insurance for the officers and directors in connection with their management of the Association.

(f) Enforce the obligation of each Owner to maintain and keep in good repair the exterior of such Owner's Townhouse(s) and such Owner's Lot(s).

(g) Maintenance of the Common Properties.

3. Discretionary Services.

The Association shall be authorized, but not required, to provide the following services:

(a) Provide police protection and security to Applecross including the employment of police and security guards.

(b) The services necessary or desirable in the judgement of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document.

(c) Provide garbage and trash collection to each Townhouse within Applecross.

(d) To purchase hazard insurance covering the improvements located on the Common Properties and any items of personal property which are part of the Common Properties.

4. Obligation of the Association.

The Association shall be obligated to carry out those services specified in Section 2 of this Article, but shall not be obligated to carry out or offer any of the functions and services specified in Section 3 of this Article. The functions and services listed in Section 3 to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced or may be changed in nature (i.e., from required to discretionary or vice versa) at any time upon the affirmative vote of a simple majority of the voting rights of those voting at a duly held meeting of Members together with the consent of Declarant, so long as Declarant owns a Lot primarily for the purpose of sale or has the unexpired option to add the Additional Property, or any portion thereof, to the Development.

5. Pledge of Revenues.

The Board of Directors of the Association shall have the power and authority to borrow funds for the benefit of the Association in performing its authorized functions and to pledge the revenues of the Association as security of such loans.

**ARTICLE VII
MAINTENANCE**

1. Owner's Responsibility.

Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Townhouse, and other improvements thereon shall be the responsibility of the Owner of such Lot. The responsibility of each Owner shall include the maintenance, repair and replacement of the roof, all fixtures, equipment, and appliances (including, without limitation, the heating and air-conditioning system for his Townhouse) and all chutes, flues, ducts, conduits, wires, pipes, plumbing, or other apparatus which are deemed to be a part of his Lot. The responsibility of the Owner shall also include the maintenance, repair, and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and all screens or glass-enclosed porches, balconies, or decks which are part of the Townhouse. Each Owner shall maintain and keep the exterior and grounds of his Townhouse in good, neat, clean and sanitary condition and such responsibility shall include the maintenance and care of all lawns, trees, shrubs, hedges, grass, and other landscaping contained within such Lots. Each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any portion of the Lot or Townhouse which is the responsibility of the Owner, but which responsibility such Owner fails or refuses to discharge; the Association may specially assess the Owner for any amounts expended by the Association to discharge the responsibility of the Owner defined herein. In the event of any such assessment as herein provided and the non-payment by the Owner with 30 days after notice and demand from the Association, the Association shall have the rights set forth in Article V, Section 7, hereof.

**ARTICLE VIII
GENERAL PROVISIONS**

1. Duration.

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the date this Declaration is recorded. As to any covenants or portions thereof that are "restricting lands to certain uses"

shall be automatically renewed as provided under Code Section 44-5-60(d) O.C.G.A.. As to any covenants or portions thereof that provide for the payment of assessments for the maintenance of certain common facilities and are not covenants "restricting lands to certain uses" shall extend for as long as the common property exists as privately maintained facilities serving the subdivision.

2. Amendments.

Declarant specifically reserves the right to amend this Declaration, or any portion hereof, on its own motion without the consent of any other Owners, for so long as Declarant owns at least one (1) Lot in Applecross. In all other instances, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if two-thirds (2/3rds) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the members as set forth above, the president and secretary of the Association shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be prior to the date on which such addendum is recorded in the Office of the clerk of the Superior Court of Columbia County, Georgia), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the members, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, the total number of votes cast against the amendment. Such addendum shall be recorded in the Office of the Clerk of the Superior Court of Columbia County, Georgia. Notwithstanding any provisions herein to the contrary, this Declaration shall not be amended without the express written consent of Declarant until Declarant's rights under Section 6 of the Article III have expired.

3. Notices.

Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent and notice thereby given when personally delivered or when mailed, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one of two or more co-owners or co-tenants of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the secretary of the Association, in writing, of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed, shall be deemed to have been given notice if notice was given to his predecessor in title.

4. Enforcement.

Enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person, persons, or entity violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, against the land and to enforce any lien created by these covenants. Failure by the Association or any Member of the Declarant to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

5. Severability.

Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgement shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

6. Interpretation.

The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best accomplish the consummation of the general plan of this Declaration.

7. Authorized Action.

All actions which the Association is allowed or required to take under this instrument and all approvals or disapprovals which the Association is authorized to make shall be authorized actions of the Association only if approved by the majority of Members of the Board of Directors of the Association present at a duly held meeting of such Board of Directors, unless the terms of this Declaration provide otherwise.

8. Limited Liability.

In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Association contemplated under this Declaration or the Declaration of Rights, Restrictions Etc., neither Declarant nor the Association, nor any director or officer thereof, shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such review, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld or any act of Declarant.

9. Termination of Association.

In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all of the Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Superior Court of Columbia County, Georgia, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within Appecross as set forth below:

(a) Each Lot shall be subject to an annual assessment which shall be paid by the Owner of such Lot to the Trustee. The amount of such annual assessment and its due date shall be determined solely by the Trustee.

(b) Any past-due annual assessment together with interest thereon at the rate of fifteen percent (15%) per annum from the due date and all costs of collection including fifteen percent (15%) of the assessment and interest thereon as reasonable attorney's fees, shall be a personal obligation of the Owner at the time the annual assessments become past due, and it shall also constitute and become a charge and continuing lien on the Lot against which the assessment has been made in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

(c) The Trustee shall be required to use the funds collected as annual assessments for the maintenance, repair and upkeep of the Common Properties. The Trustee may charge as part of the cost of such functions the reasonable value of his services in carrying out the duties herein provided. The Trustee shall not have the obligation to provide for maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessments have been exhausted.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

MONICA S. SWEET
COLUMBIA COUNTY
NOTARY PUBLIC
DEC 27, 1999

APPECROSS, LTD.

By:

Ben J. Brush as its President

EXHIBIT "A"

ALL those lots or parcels of land, with improvements thereon, situate, lying and being in Columbia County, Georgia, off of Washington Road, to which it is connected by Applecross Drive, being described as being Parcels A, 0.15 acres, B, 0.21 acres, C, 0.29 acres, D, 0.29 acres, E, 0.22 acres, F, 0.18 acres, G, 0.07, H, 0.35 acres, I, 0.25 acres, J, 0.37 acres, all as shown on a record plat for Applecross Subdivision, prepared by H. Lawson Graham and Assoc., Inc., dated May 21, 1997, revised 6/15/97, revised 7/14/97, a copy of said plat recorded in the Office of the Clerk of Superior Court of Columbia County, Georgia, in Plat Cabinet C, Slide 126, # 6, incorporated herein by reference and made a part of this description.

Also included is what is designated on said plat as the "Common Area" and being further identified as that portion of Applecross Drive, Cullen Drive and Crail Drive.

ALSO,

ALL that lot or property, situate, lying and being in Columbia County, Georgia, fronting 25.90 feet on the Eastern right of way of Applecross Drive, just South of Washington Road, and being the rear portion of property formerly identified as being the Quaker Springs Apartment Complex and now known as Applecross Community and being further described as follows: To find the point of beginning, locate a point on the Southwestern right of way of Applecross Drive at a point where the Northern most boundary of property owned by Applecross, Ltd. adjoins property of the party of the first part and property owned by Ben J. Brush, Sr.; thence North 81 degrees 19 minutes 02 seconds East, a distance of 62.44 feet to find the point of beginning; thence North 81 degrees 19 minutes 02 seconds East, a distance of 636.69 feet; thence North 31 degrees 12 minutes 25 seconds West, a distance of 25.21 feet to a point; thence South 81 degrees 28 minutes 58 seconds West, a distance of 322.27 feet to a point; thence North 8 degrees 40 minutes 46 seconds West, a distance of 24.86 feet to a point; thence South 81 degrees 19 minutes 14 seconds West, a distance of 156.0 feet to a point; thence South 8 degrees 40 minutes 46 seconds East, a distance of 25.20 feet to a point; thence South 81 degrees 19 minutes 14 seconds West, a distance of 158.76 feet to a point on Applecross Road; thence South 31 degrees 18 minutes 31 seconds East, a distance of 25.90 feet to the point of beginning.

The property conveyed here is further shown and designed as the shaded area being composed of Cullen Drive and the parking area as shown on an Easement Plat prepared for Applecross, Ltd., in Columbia County, Georgia, and prepared by H. Lawson, Graham & Associates, dated 4/23/97, a copy of said plat being recorded contemporaneously herewith and by reference made a part of this description.

This conveyance is made subject to the rights of ingress and egress over and across Cullen Drive by the owners, agents and tenants of the Quaker Springs Apartment Complex, which is located immediately North of subject property so as to allow access to the parking areas and units served by Cullen Drive.