

# **BERINGER POINTE**



## **DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

**THIS DECLARATION, made this 28 day of December 1998 by SIERRA DEVELOPMENT, INC. a Georgia corporation, hereinafter called “Developer” as required.**

### **WITNESSETH:**

WHEREAS, Developer desires to provide for the preservation of the values and amenities of the Property and to assure the best use and most appropriate development and improvement of the Property:

WHEREAS, the Developer as required is the owner of the following real property (hereafter sometimes called “the property”):

ALL THAT TRACT OR PARCEL OF LAND being in GMD 1744 of Barrow County, Georgia, and being unit one of Beringer Pointe as per plat prepared by W.T. Dunahoo & Associates dated 9-10-98 and recorded in Plat Book 46 Page 279 of the Barrow County records, Which recorded plat is Incorporated herein and by references made a part hereof for more complete description of the property hereby described.

WHEREAS, to this end, Developer and Owners desire to subject the property to the covenants, conditions, restrictions and easements hereinafter set forth (sometimes referred to herein collectively as “covenants and restrictions”), each and all of which is and are for the benefit of the Property and each owner thereof: and

WHEREAS, Developer and Owners have deemed it desirable for the efficient preservation of the values and amenities in Beringer Pointe to create covenants and restrictions for the overall benefit of the development;

NOW, THEREFORE, in consideration of said benefits to be derived by Developer and subsequent owners of said lots, the undersigned does hereby establish, publish and declare that the covenants and restrictions hereinafter set forth shall apply to all said Lots shown on the plat, and only to such Lots and to no other property of the Developer, except as hereinafter set forth, becoming effective immediately and running with the land, to be binding upon all persons claiming under the undersigned.

ARTICLE I  
Definitions

Section 1. “Lot” means any numbered plot of the land comprising a single dwelling site designated on any plat of survey recorded in the office of the clerk of the Superior Court of Barrow County, Georgia, now or hereafter made subject to this Declaration.

Section 2. “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any lot which is part of the Property, specifically including, but not by way of limitation, contract sellers, and excluding, however, those persons who shall have such interest merely as security for the performances of any obligation.

Section 3. “Person” means an individual, corporation, partnership, trust of any other legal entity.

Section 4. “Developer” means Sierra Corporation, or any successor-in-title to the said Beringer Pointe, to all or some portion of the property then subjected to this Declaration, provided in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the “Builder” hereunder by the grantor of such conveyance, which grantor shall be the “Builder” hereunder at the time of such conveyance.

Section 5. “Declaration” means this Declaration of Covenants, Conditions, Restrictions and Easements, as the same may be amended, renewed or extended from the time to time in the manner herein prescribed.

Section 6. “Development” means that certain residential community known as “Beringer Pointe” which is being developed on real property now owned by Developer in Barrow County, Georgia, together with such additions thereto as may from time to time be designated by Developer.

Section 7. “Mortgage” means chattel mortgage, bill of sale to secure debt, deed to secure debt, deed of trust and any and all other similar instruments given to secure the payment of an Indebtedness.

ARTICLE II  
RESTRICTIONS AND COVENANTS

1. Residential Use of Property. All lots shall be used for residential purposes and no business or business activity shall be carried on upon any Lot at any time, except with written approval of the Architectural Control Committee; provided, however, that nothing herein shall prevent Developer or any builder of homes in Beringer Pointe from using any Lot owned by Developer or such builder of homes for the purpose of carrying on business related to the development, improvements and sale of property in Beringer Pointe, further, private offices may be maintained in dwellings located on any of the Lots as such use is incidental to the primary residential use of the dwellings.

2. Architectural Control Committee. The “Architectural Control Committee” shall mean as follows: Until all the Lots in Beringer Pointe have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Control Committee shall mean the Developer. At such time that all the lots in Beringer Pointe have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Developer’s rights and obligations as the Architectural Committee shall forthwith terminate; and, thereafter the record owners of a majority of the Lots in Beringer Pointe shall have the right, power and authority, through a duly recorded written instrument, to establish a successor Architectural Control Committee and prescribe rules and regulations pursuant to which such Committee shall act.

3. Review and Approval of Plans. No building, fence, wall or other structure shall be commenced, erected or maintained on any Lot, nor shall any exterior addition to or alteration therein be made until the plans and specifications showing the nature, kind, shape, height,

materials and location of the same shall have been submitted to the Architectural Control Committee. This condition applies in each individual case even though a certain plan has been previously reviewed and approved by the Architectural Control Committee. In the event the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted in writing, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to completion thereof, approval by the Architectural Control Committee will not be required. 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 any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. Further, neither Builder, nor any member of the Architectural Control Committee shall be liable in damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications to the Architectural Control Committee for approval, agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Developer, or any member of the Architectural Control Committee, to recover any such damage.

4. Building Construction:

(a) Not more than one single-family dwelling, not to exceed two (2) stories in height, shall be erected on any Lot unless otherwise approved, in writing, by the Architectural Control Committee, basement or foundation excluded.

(b) Each lot sidewalk minimum 3' wide and 24" from back of curb and shall join and connect to each subsequent lot and sidewalk thereon, corner lots shall provide handicap ramps.

5. Setbacks and Building Lines:

(a) Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines shown on the recorded plat thereof. With the approval of the Architectural Control Committee, owner may change or reduce building setback lines provided it complies with the local Planning and Zoning Resolution. Any variance must be approved by the local authority.

(b) Walls and Fences: No fence or wall shall be erected, placed, or altered on any Lot nearer to any street than said minimum building setback lines or front of house unless the same be retaining walls of masonry construction which do not in any event rise more than 1' above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Control Committee under the architectural controls appearing above in Article II, Paragraph 2. The exposed part of retaining walls shall be made of clay brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone. No fence shall be erected using materials such as hog or chicken wire, barbed wire or other similar material. Chain link fences may be erected provided they are screened from street view by a wood privacy fence that is architecturally similar to the neighboring architect, and shall include planting as an integral component. \*Street view shall mean the view from the iron pins found at the front street side of said Lot from pin to pin only.

(c) Subdivision of Lots: One or more Lots or parts thereof may be subdivided or combined to form one single building Lot when approved, in writing, by the local governing authority and Architectural Control Committee, and, in such event, the building line requirements provided herein shall apply to such Lots as re-subdivided or combined.

(d) Terraces, Eaves and Detached Garages: For the purpose of determining compliance or non-compliance with the fore-going building line requirements, terraces, stoops, eaves, wingwalls, and steps extending beyond the outside wall of a structure, shall not be

considered as a part of the structure. A 5' side and/or rear yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the Architectural Control Committee; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon the property of an adjacent owner and comply with local zoning ordinances.

6. Building Requirements: The ground floor living areas of the main structures, exclusive of open porches, porte-cocheres, garages, carports and breezeways, shall not be less than 1600 square feet for a one-story dwelling; nor less than 1800 square feet overall enclosed, heated living space of two stories.

7. Obstruction to View at Intersections: The lower branches of trees or other vegetation shall not be permitted to obstruct the view at intersections.

8. Delivery Receptacles and Property Identification Markers: The Architectural Control Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as property identification markers.

9. Use of Outbuildings and Similar Structures: No structure of a temporary nature unless approved in writing by the Architectural Control Committee shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently; provided, this paragraph shall not be construed to prevent the Developer and those engaged in construction from using sheds or other temporary structures during construction.

10. Livestock: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions.

11. Offensive Activities: No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the owners of other Lots in the Subdivision.

12. Signs: No advertising signs or billboards shall be erected on any Lot or displayed to the public on any Lot except a professional sign one square foot in size and a sign of not more than five (5) square feet in area may be used to advertise the property for sale or rent. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling Lots and/or houses during the development and construction period, provided such signs are approved by the Architectural Control Committee. Also, the provisions of this Section shall not apply to anyone who becomes the owner of any Lot as purchaser at a judicial foreclosure sale conducted with respect to a first mortgage or as transferee pursuant to any proceedings in lieu thereof. Also, this restriction shall not apply to permanent subdivision sign to be erected on entrance Lots.

13. Aesthetics, Nature Growth, Screening, Underground Utility Service: Trees which have a diameter in excess of six (6") inches measured two (2') feet above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior approval in writing of the Architectural Control Committee. Clotheslines, garbage cans and equipment, shall be screened to conceal them from view of neighboring Lots and streets. All fuel tanks must be buried.

14. Antennae: No radio or television transmission or reception towers or antennae which may exceed ten (10') feet in height above roof-ridge line of any house. Any exceptions must be reviewed and approved in writing in advance by the Architectural Control Committee. In no event shall a television satellite dish, free standing transmission, or receiving tower be permitted, except with prior approval in writing of the ACC and shall be screened to conceal them from view of neighboring lots and streets. ACC will not approve any dish over 24" in diameter.

15. RVs, Trailers, Trucks, School Buses, Boats, Boat Trailers: No house trailers or mobile homes, or other habitable motor vehicles of any kind, school buses, trucks or commercial vehicles over one (1) ton capacity, shall be kept stored or parked overnight either on any street or on any Lot, except within enclosed garages. Pleasure boats or boat trailers and campers only up to 24 feet must be kept in the rear yard, but must not be lived in, and shall be screened to conceal them from view of neighboring Lots and streets.
16. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators, or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot owner of such Lot, at the Lot owner's expense, upon written request of the ACC.
17. Changing Elevations: No Lot owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the ACC.
18. Sewage Elevations: Sewage disposal shall be through municipal system or type approved by appropriate State agencies.
19. Utility Facilities: Developer and Builder reserve the right to approve the necessary construction, installation and maintenance of utility facilities, including, but not limited to water, telephone and sewerage systems, within this proposed area, which may be in variance with these restrictions.
20. Water System: Water shall be supplied through municipal system or type approved by appropriate State agencies.
21. Model Homes or Sales Office: Developer, as well as any builder of homes in Beringer Pointe, shall have the right to construct and maintain model homes on any of the Lots, all said model homes to be approved by the ACC.
22. Easements: Lots subjected to this Declaration shall be subject to those easements, if any, shown as set forth on any recorded plat thereof. Also, easements for installation and maintenance of utilities and drainage facilities are hereby reserved over six (6') feet of subjected to this Declaration. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot and all improvements in it shall be maintained continuously by owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
23. Driveways and Entrance to Garage: All driveways and entrances to garages shall be concrete or a substance approved in writing by the ACC and of a uniform quality.
24. Other Property: Without further assent or permit, Developer, for itself, its successors and assigns, hereby reserves the right, exercisable from time to time, to extend the scheme of this Declaration to other real property developed as a part of Beringer Pointe by filing for record of a supplemental declaration in respect to the property to be then subjected to this Declaration, or such other Declaration as Developer may desire.
25. Drainage: Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for the benefit of Declarant and the Association and their respective successors and assigns a perpetual easement across the Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

26. Garbage Cans, Woodpiles, Etc.: All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community.

27. Air-Conditioning Units: Except as may be permitted by the ACC, no window air-conditioning units may be installed.

28. Vehicles: The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. Unless and except to the extent that the Occupants of a Lot shall have more vehicles than the number of parking areas serving their Lot, all vehicles shall be parked within such parking areas. Where the Lot contains a garage, "parking areas" shall refer to the number of garage parking spaces. All single-family detached homes shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board

29. 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 owner of any land subject to the Declaration, their respective heirs, legal representatives, successors and/or assigns, for a term of twenty (20) years from the date this Declaration is filed for record in the office of the Clerk of Superior Court of Barrow County, Georgia, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then record owners of two-thirds of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

30. Amendment: This Declaration may be amended at any time and from time to time by an agreement signed by at least ninety (90) percent of the owners of record, of Lots within Beringer Pointe and also by Developer, if Developer then owns any Lots in Beringer Pointe during the initial 20-year period of Declaration or thereafter by at least the owners of at least seventy-five (75%) of the Lots in Beringer Pointe. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot affected thereby unless such holder shall consent in writing thereto. Any such amendment shall not become affective until the instrument evidencing such change has been filed for record in the Office of the Clerk of the Superior Court of Barrow County, Georgia. The written consent thereto of any mortgage holder affected thereby shall also be filed with such amendment. Every purchaser or grantee of any interest in any real property now or thereafter subjected 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.

31. Enforcement: Each Lot owner shall comply strictly with the covenants, conditions, restrictions and easements set forth in this Declaration. In the event of a violation or breach, or threatened violation or breach, of any of the same, the developer, the ACC or any aggrieved Lot owner, jointly and severally, shall have the right to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both.

32. All fees that are required by any utilities in Beringer Pointe because the home does not meet said utilities minimum standard requirements shall be the builder's responsibility and paid by said builder.

IN WITNESS WHEREOF, the Developer, and owners, have caused these covenants to be executed this 28<sup>th</sup> day of December, 1998.

Executed and declared  
in the presence of:

COPY

BY: \_\_\_\_\_ /S/

Ludger W. Lanthier, Jr.

Sierra Development, Inc.  
123 N. Broad St.  
Winder, Ga 30680

Witness  
\_\_\_\_\_/S/

Notary Public  
Lori B. Jackson, N.P.  
Barrow County, Georgia  
My Commission Expires March 24, 2002

**This document is a reproduction of the original,  
which is on file at the Office of the Clerk of Superior  
Court, Barrow County, Georgia.**

**A copy of the signed original is available from the  
Beringer Pointe Homeowners Association.**