

THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR RIVERWALK

THIS THIRD AMENDMENT (hereinafter referred to as "Third Amendment") is made this _____ day of _____, 2006 by **RIVERWALK ENTERPRISES, LLC**, a Georgia limited liability company (hereinafter sometimes called "Developer") and **RIVERWALK HOMEOWNERS ASSOCIATION, INC.**, a Georgia nonprofit corporation (hereinafter referred to as the "Association").

WITNESSETH

WHEREAS, Highland Park Village Partnership, a Georgia general partnership ("Original Developer") executed that certain Declaration of Covenants, Conditions, Easements and Restrictions for Riverwalk which was recorded on June 16, 1989 in Deed Book 648, Page 299, *et seq.*, Douglas County, Georgia records, as amended by that certain First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Riverwalk which was recorded on March 28, 1990 in Deed Book 677, Page 415, *et seq.*, aforesaid records and that certain Second Amendment to Declaration of Covenants, Conditions, Easements and Restrictions for Riverwalk which was recorded on July 19, 1996 in Deed Book 1016, Page 798, *et seq.*, aforesaid records (hereinafter as supplemented and/or amended from time to time, the "Declaration"); and

WHEREAS, the Association is a non-profit corporation organized under the Georgia Nonprofit Code to be the Association named in the Declaration to have the power and authority set forth therein; and

WHEREAS, Richard M. Hull was appointed as Receiver of Original Developer (the "Receiver") by Order entered in the United States District Court for the Northern District of Texas in Case No. 3:00-MC-001; and

WHEREAS, the Receiver subsequently transferred all receivership assets, including without, limitation, the parcel of land described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Riverwalk PUD") which is adjacent to the Property (as defined in the Declaration), to Roberto Segova, Gabriel Zambrano, Julio Escamez, Alfonso Garcia and Alfonso Garza, Trustee of the Maiz Plaintiffs QSF Trust Created by Trust Agreement dated as of February 24, 2004 (the "Trustees") pursuant to an Order of the United States District Court for the Northern District of Texas, dated December 4, 2003 in Civil Action File No. 3:00-MC-1-H, such transfer of assets being evidenced by a Quitclaim Deed filed of record in Deed Book 1934, Page 949, in the aforesaid records; and

WHEREAS, Trustees entered into that certain Contract of Sale effective as of August 16, 2004, as amended by First Amendment to Contract of Sale and Second Amendment to Contract of Sale (as amended, the "Contract") with Goldtree Properties, Inc. ("Purchaser"), pursuant to which Trustees agreed to convey to Purchaser the Riverwalk PUD; and

WHEREAS, prior to the appointment of Receiver, Original Developer filed an application to allow the rezoning of the Riverwalk PUD from PUD to PUD Amendment which was approved by the Board of Commissioners of Douglas County, Georgia subject to certain conditions (the "Zoning Conditions") and entered into that certain Highland Park Village Partnership/ Riverwalk Homeowners Association, Inc. Agreement, Integration of Riverwalk Subdivision Phase I and Riverwalk PUD, dated March 3, 2003 between Original Developer and the Association (the "HOA Agreement"); and

WHEREAS, Purchaser assigned its rights under the Contract to Developer pursuant to an Assignment of Contract dated January 1, 2005; and

WHEREAS, Trustees conveyed the Riverwalk PUD, and all other property owned by Original Developer and subject to the Declaration, to Developer pursuant to that certain Limited Warranty Deed which was recorded on January 26, 2005 in Deed Book 2098, Page 730, *et seq.*, aforesaid records and that certain Quitclaim Deed which was recorded on January 26, 2005 in Deed Book 2098, Page 740, *et seq.*, aforesaid records; and

WHEREAS, Trustees assigned to Developer all rights of Original Developer under the Declaration pursuant to that certain Assignment of Declarant's Rights Under the Declaration of Protective Covenants, Conditions, Restrictions and Easements for Riverwalk which was recorded on January 24, 2006 in Deed Book 2298, Page 944-949, aforesaid records; and

WHEREAS, the Trustees assigned all of their right, title and interest in and to the HOA Agreement to Developer pursuant to an Assignment dated January 1, 2005; and

WHEREAS, the Zoning Conditions, among other things, require that the Declaration be amended in certain respects to reflect the Zoning Conditions; and

WHEREAS, under the HOA Agreement, the Riverwalk PUD must be subject to the Declaration and the Declaration must be amended in certain respects; and

WHEREAS, the Association, the Owners and the Developer desire to amend the Declaration to comply with the Zoning Conditions and the HOA Agreement; and

WHEREAS, pursuant to Article XI, Section 1 of the Declaration, the Declaration may be amended upon the approval of at least two-thirds (2/3) of the Owners other than Developer (as defined in the Declaration), by the Developer (as defined in the Declaration) should the Developer still be the owner of any Lot or Lots or should the Developer have an unexpired option to add additional property to the Development, and if such amendment materially affects the rights of mortgage holders, upon approval of two-thirds (2/3) of the first mortgagees of the individual Lots based upon one vote for each first mortgage owned; and

WHEREAS, attached hereto as Exhibit "B" and incorporated herein by reference is the sworn statement of the President of the Association, which sworn statement states unequivocally that this Third Amendment was approved by at least two-thirds (2/3) of the Owners other than Developer; and

WHEREAS, this Third Amendment does not materially affect the rights of mortgage holders;

NOW THEREFORE, the Developer and the Association hereby adopt this Third Amendment to the Declaration, hereby declaring that all the property now or hereafter subject to the Declaration, including, without limitation, the Riverwalk PUD, shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration, amended as set forth herein.

1.

The Declaration is hereby amended by annexing the Riverwalk PUD to the Property. In furtherance of the foregoing, Developer hereby declares that the Riverwalk PUD shall be held, conveyed, encumbered, used, occupied and improved subject to the Declaration. The parties hereto hereby acknowledge and agree that, from and after the date of this Third Amendment, all references in the Declaration to "the Property" or "Property" shall be deemed to include the Riverwalk PUD.

2.

The Declaration is hereby amended by adding the following sentence at the end of Article I, Section 3 of the Declaration:

Notwithstanding the foregoing, the Common Areas in the Riverwalk PUD shall be conveyed to the Association no later than the date upon which a subdivision plat depicting the final phase of development in the Riverwalk PUD is recorded in the Douglas County, Georgia records.

3.

The Declaration is hereby amended by deleting Article I, Section 9 of the Declaration in its entirety and inserting in lieu thereof the following new Article I, Section 9:

Section 9. "Plat" shall refer, collectively, to that certain Final Plat of River Walk, Unit One Phase One prepared by Vansant, Turner, Hughes & Associates bearing the seal of Robert G. Vansant, Georgia Registered Land Surveyor No. 1760, dated January 24, 1989, and recorded in Plat Book 17, Page 61, Douglas County, Georgia records and that certain Final Plat of River Walk, Unit Two Phase One prepared by Vansant, Turner, Hughes & Associates bearing the seal of Robert G. Vansant Georgia Registered Land Surveyor No. 1760 dated May 18, 1989 and recorded in Plat Book 17, Page 157, together with any other plat recorded in such records depicting all or any portion of the Property.

4.

The Declaration is hereby amended by deleting Article I, Section 4 of the Declaration in its entirety and inserting in lieu thereof the following new Article I, Section 4:

Section 4. "Developer" shall mean and refer to Riverwalk Enterprises, LLC. "Developer" shall also include (1) any lender who succeeds to the interest of Developer through foreclosure of any deed to secure debt or conveyance in lieu of foreclosure, (2) any successor, successor-in-title or assign of Developer if Developer delivers to such party or parties a written assignment of Developer's rights under this Declaration, and (3) for the limited purpose of executing an amendment to this Declaration for the purpose of adding any portion of the Additional Property as set forth in Article IX, Section 2, hereof, any successor, successor-in-title or assign of Developer who acquires any portion of the Additional Property from the Developer for the purpose of erecting improvements thereon or for the sale of such property to

third parties for the erection of improvements thereon, and who owns title to said property at the time said property is to be added to this Declaration pursuant to said Article IX.

5.

The Declaration is hereby amended by adding the following new Section 10 to the end of Article I of the Declaration:

Section 10. "Riverwalk PUD" shall mean all of that tract or parcel of land lying and being in Land Lots 42, 43, 75 and 76 of the 3rd District, 5th Section of Douglas County, Georgia, as more particularly described on Exhibit "A" to the Third Amendment to this Declaration.

6.

The Declaration is hereby amended by adding the following new sentences to the end of Article III, Section 9 of the Declaration:

The Architectural Control Committee may approve utility trailers to be stored on the Property in such a manner that they can not be seen from the street and that they are void from any cargo of any kind. Notwithstanding the foregoing, the Declarant, any builder approved by Declarant, and their respective agents, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Riverwalk PUD as needed in order facilitate the construction, development and build out of the Riverwalk PUD.

7.

The Declaration is hereby amended by adding the following new sentence to the end of Article III, Section 11 of the Declaration:

Fire pits, chimneys, etc. which are approved or listed by UL, Factory Mutual or any other recognized testing laboratory may be used. Other fire pits, chimneys, etc. not approved or listed by a recognized testing laboratory must be approved by the Douglas County Fire marshal and a letter of such approval must be given to the Association.

8.

The Declaration is hereby amended by adding the following new Section 12 to the end of Article III of the Declaration:

Section 12. Riverwalk PUD Restrictions. The provisions set forth in this Section shall be applicable only to the Lots within the Riverwalk PUD and shall be in addition to the other covenants, conditions, restrictions and easements set forth in this Declaration.

- a. Each Lot in the Riverwalk PUD located on the land between Highway 5 and West Phillips Mill Road shall be at least one (1) acre in size.
- b. Dwellings erected on any Lot in the Riverwalk PUD shall be subject to the following square foot floor requirements pertaining to the enclosed, heated inhabitable areas:
 - (i) Single story dwellings shall have a minimum of 2,600 square feet of floor area; and
 - (ii) Two story dwellings shall have a minimum of 2,800 square feet of floor area.
- c. There shall be an attached two car, side entry garage on each Lot in the Riverwalk PUD.
- d. Each residential structure in the Riverwalk PUD will have a minimum of three sides brick, stone, cedar shake shingles, masonry, or stucco with the remainder of the home to be constructed using cementitious siding (with the exception of Cape Cod style homes, where there shall be brick foundations and all cementitious siding).
- e. Each Lot in the Riverwalk PUD shall contain no more than one (1) single family home.
- f. The front and side yards of all Lots in the Riverwalk PUD shall be sod.
- g. No more than twenty-five percent (25%) of any Lot located in the Riverwalk PUD shall be covered by impervious surface.

9.

The Declaration is hereby amended by adding the following sentence to the end of Article IV, Section 2 of the Declaration:

The Riverwalk PUD shall contain the infrastructure necessary for on-site detention of stormwater and any such infrastructure shall be considered part of the Common Area which the Association shall maintain and repair in accordance with this Section.

10.

Article V, Section 1 of the Declaration is hereby amended by deleting all references to the Developer in such Section and inserting the following sentence at the end of such Section:

Notwithstanding the foregoing or any other provision in this Declaration to the contrary, neither Developer nor any builder acquiring lots from Developer shall be a member of or have any voting rights in the Association; provided however, upon the conveyance of each Lot in the Riverwalk PUD after improvements have been constructed thereon to an owner for residential purposes, such Owner shall automatically become a member of the Association with all of the voting rights, privileges and obligations thereof and the votes in the Association shall be reallocated, so that all Lots located on the Property, including any Lots located on the Riverwalk PUD, shall be allocated equal votes.

11.

The Declaration is hereby amended by adding the following new Sections 11, 12 and 13 to the end of Article VI of the Declaration:

Section 11. Riverwalk PUD Assessments. Notwithstanding any provision to the contrary in this Declaration, neither Developer nor any builder acquiring lots from Developer shall be required to pay any assessments pursuant to this Article VI with respect to any real property owned by Developer or such builder in the Riverwalk PUD. The assessments provided for herein shall commence as to a Lot in the Riverwalk PUD on the first to occur of the date that the Lot is first occupied for residential purposes or is conveyed by Declarant or a builder to an owner for residential purposes. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy. As each Lot in the Riverwalk PUD becomes subject to assessment in accordance with this Section, the liability for common expenses under the Declaration shall be reallocated, so that all Lots located on the Property, including any Lots located on the Riverwalk PUD which are subject to assessment, shall be allocated equal liabilities for the payment of common expenses. The Developer hereby agrees that, commencing on the date that all of the amenity area improvements (the "Amenity Areas") described in that certain Highland Park Village Partnership/ Riverwalk Homeowners Association, Inc. Agreement, Integration of Riverwalk Subdivision Phase I and Riverwalk PUD, dated March 3, 2003 between Highland Park Village Partnership and the Association, as assigned to Developer pursuant to an Assignment dated January 1, 2003 (the "HOA Agreement") are complete until such time as each Lot in the Riverwalk PUD is occupied for residential purposes or has been conveyed by Developer to an owner for residential purposes, Developer shall pay assessments to the Association each year in accordance with the formula outlined herein (the "Formula"). The Formula shall be as follows: The actual operating expenses for the fiscal year ending 2005 shall be the baseline (the "Baseline"). If the operating expenses for the current fiscal year are the same or less than the Baseline, Developer shall not be obligated to pay assessments. If the operating expenses for the current fiscal year are greater than the Baseline then Developer shall pay to the Association sixty-seven percent (67%) of the difference between the Baseline and the operating expenses for the current fiscal year, the remaining thirty-three (33%) shall be paid by the current Owners. As each new Lot in Riverwalk PUD is first occupied for residential purposes or is conveyed by Declarant or a builder to an owner for residential purposes, Developer's share of assessments shall be reduced by 0.585% per Lot added to the assessment role. The amount due to the Association from Developer pursuant to the foregoing Formula shall be set forth in an invoice delivered to the Developer by the Association (the "Bill") no later than thirty (30) days following the end of the previous fiscal year. Each Bill shall be accompanied by such reasonable detail as may be required by the Developer. The Developer shall tender payment of the amount set forth on each Bill no later than thirty (30) days following receipt of the Bill by the Association.

Section 12. Reserve Equalization Fee. Upon the first sale of each Lot in the Riverwalk PUD after it has been improved with a residence for which a certificate of occupancy has been issued, the Developer shall pay (or cause to be paid) to the Association a reserve equalization fee of \$500.00.

Section 13. Performance Warranty Bond. Prior to the demolition of the existing amenity area on the Property, in accordance with the HOA Agreement, Developer shall provide the Association with a Performance Warranty Bond for the Amenity Areas.

12.

The Declaration is hereby amended by adding the following new Section 3 to the end of Article VII of the Declaration:

Section 3. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Architectural Control Committee, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Architectural Control Committee and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the Architectural Control Committee from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws of the Association. In such event, neither the Developer, the Architectural Control Committee, the Association nor the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this Section. In addition to any other remedies available to the Architectural Control Committee, in the event of noncompliance with this Article, the Architectural Control Committee may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Architectural Control Committee shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

13.

The Declaration is hereby amended by deleting Article V, Section 2 in its entirety.

14.

The Declaration is hereby amended by deleting the second sentence of the first paragraph of Architectural Standards within Exhibit "C" of the Declaration and adding after said first paragraph the following new paragraphs to read as follows:

Approval Procedure for Initial Building Process. No grading, removal of trees or building shall proceed until plans have been submitted by Developer, Builder or Developer's Assigns (hereinafter collectively the "Applicant") to the Architectural Control Committee and is approved. Consideration for approval shall require the following:

A complete site plan;

Architectural Plans containing floor plans and elevations. Floor plans will be used specifically for determining square footage, not design;

Exterior Materials list, including brick or stone samples, paint samples for stucco, trim, and siding color.

Buildings within sight distance from each other may not contain repetitive elements such as front elevations, brick color, stucco color, paint color. No such restriction is made regarding floor plans. Plans submitted for the Initial Building Process as described above must be approved or disapproved no later than thirty (30) days after the Applicant has satisfied the last request for explanation or objection. All requests for explanation or objections to plans will be submitted to the Applicant in writing. In the event that approval or disapproval is not issued by the thirtieth (30th) day after all objections and explanations have been satisfied, approval is automatic.

Approval Procedure for Exterior Changes by a Lot Owner. No grading, removal of trees, building, or any exterior changes, awnings, walkways, parking pads or any other exterior changes may be made to a Lot without prior approval of the Architectural Control Committee. Consideration for approval shall require the following:

A complete description of the intended changes;

Architectural drawings if necessary;

Materials list including samples and colors;

An estimation of how long the project will take to complete;

If a contractor is used, proof of license and insurance.

Applications for approval of Exterior Changes by a Lot Owner, as described above, must be approved or disapproved no later than sixty (60) days after the Lot Owner has satisfied the last request for explanation or objection. All requests for explanation or objections to plans will be submitted to the Lot Owner in writing. In the event that approval or disapproval is not issued by the sixtieth (60th) day after all objections and explanations have been satisfied, approval is automatic.

Outbuildings may be permitted by the Architectural Control Committee provided that the following stipulations are met:

A site plan is submitted;

The foundation must be masonry and fully enclosed;

If the structure can be seen from the street or is in an open area on the property, it must be complimentary to the home using many of the same materials, colors and architectural features;

If the structure is in a wooded area, it must blend in with that environment;

Under no circumstances are structures to be steel, vinyl, aluminum or shingled. Roof shingles must be black or dark grey as prescribed elsewhere in these covenants;

All Douglas County building codes must be met;

No outbuildings are permitted in the buffer area;

Outbuildings must be maintained in the same manner that the main structure is maintained as prescribed by this Declaration.

15.

The Declaration is hereby amended by deleting the first sentence of the second paragraph of Architectural Standards within Exhibit "C" of the Declaration.

16.

The Declaration is hereby amended by deleting Section 4, Section B of Exhibit "C" of the Declaration in its entirety and inserting in lieu thereof the following new Section 4, Subsection B of Exhibit "C":

All plans and specifications required to be submitted to the Architectural Control Committee shall be delivered to: Riverwalk Homeowners Association, Inc., Attn: Architectural Control Committee, _____
Riverwalk Drive, Douglasville, Georgia 30135

17.

The Declaration is hereby amended by deleting Paragraph 6, Section (k) of Exhibit "C" of the Declaration in its entirety and inserting in lieu thereof the following new Paragraph 6, Subsection (k) of Exhibit "C":

Windows and Doors – Wood, vinyl clad or vinyl windows may be used and insulated steel type garage doors may be installed in any building constructed in the Riverwalk PUD. Aluminum sliding doors and storm windows may not be used on areas that are visible from the street, but may be used in other areas as approved by the Architectural Control Committee, the color of which shall be specified in the plans and specifications submitted for approval.

18.

The Declaration is hereby amended by deleting Paragraph 6, Section (n) of Exhibit "C" of the Declaration in its entirety and inserting in lieu thereof the following new Paragraph 6, Subsection (l) of Exhibit "C":

Antennas – No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the property, including any Lot, unless approved in accordance with the provisions of Article VII hereof; provided, however, no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless such installation (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

19.

The Association hereby acknowledges and agrees that all Alterations described in the HOA Agreement have been approved by the Architectural Control Committee.

20.

Unless otherwise defined herein, the words used in this Third Amendment shall have the same meaning as set forth in the Declaration.

21.

This Third Amendment shall be effective only upon being recorded in the records of the Clerk of the Superior Court of Douglas County, Georgia.

22.

Except as herein modified, the Declaration shall remain in full force and effect.