

BK53135 PG0297

FILED AND RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA

2014 SEP 17 PM 12: 53

RICHARD ALEXANDER, CLERK

307369

Ret. The Abram Law Group, LLC
Richard S. Abram, Esq.
1200 Ashwood Parkway, Suite 560
Atlanta, GA 30338

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE ENCLAVE AT NASH SPRINGS SUBDIVISION**

0072119

BK 53135 PG 0298

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ENCLAVE AT NASH SPRINGS SUBDIVISION

		<u>PAGE</u>
ARTICLE I	DEFINITIONS	1
ARTICLE II	COMMON PROPERTY.....	4
2.01	Conveyance of Common Property.....	4
2.02	Right of Enjoyment.....	5
2.03	Rights of the Association	5
2.04	Types of Common Property.....	6
2.05	Entrance Easements	6
2.06	Encroachment Easements	7
2.07	Structural Support	7
2.08	Delegation of Use	7
ARTICLE III	THE ASSOCIATION	7
3.01	Purposes, Powers and Duties.....	7
3.02	Membership	7
3.03	Voting Rights.....	7
3.04	Board of Directors and Officers	8
3.05	Suspension of Membership.....	8
3.06	Voting Procedures.....	9
3.07	Control by Declarant and Appointment of the Board.....	9
3.08	Implied Rights	10
3.09	Association Maintenance Responsibilities	10
ARTICLE IV	ASSESSMENTS AND MAINTENANCE CHARGES	11
4.01	Covenants for Assessments and Creation of Lien and Personal Obligations	11
4.02	Purpose of Assessments	12
4.03	Accumulation of Funds Permitted	12
4.04	Annual Assessment or Maintenance Charge	12
4.05	Special Assessments	13
4.06	Notice and Quorum.....	14
4.07	Effect of Nonpayment of Assessments.....	14
4.08	Certificate of Payment	14
ARTICLE V	ARCHITECTURAL CONTROL	15
5.01	Purpose, Powers and Duties of the ACC	15
5.02	Officers, Subcommittees and Compensation.....	15
5.03	Operations of the ACC.....	15
5.04	Design Standards	17
5.05	Submission of Plans and Specifications	17
5.06	Approval of Plans and Specifications	18

BK53135 PG0299

5.07	Disapproval of Plans and Specifications	18
5.08	Obligation to Act	18
5.09	Inspection Rights	19
5.10	Violations	19
5.11	Fees	19
5.12	Nondiscrimination by ACC	20
5.13	Disclaimer as to ACC Approval	20
5.14	Declarant.....	20
ARTICLE VI	GENERAL COVENANTS AND RESTRICTIONS	21
6.01	Application.....	21
6.02	Maintenance.....	21
6.03	Restriction of Use	21
6.04	Resubdivision of Property	22
6.05	Erosion Control.....	22
6.06	Landscaping.....	22
6.07	Temporary Buildings	22
6.08	Signs.....	22
6.09	Setbacks	23
6.10	Fences and Exterior Structures	23
6.11	Roads and Driveways	23
6.12	Antennae	23
6.13	Clotheslines, Garbage Cans, etc.	23
6.14	Parking and Related Restrictions.....	23
6.15	Recreational Equipment	25
6.16	Sale and Construction Activities.....	25
6.17	Animals.....	25
6.18	Solid Waste	25
6.19	Nuisances	26
6.20	Landscape and Monument Easements	26
6.21	Air-Conditioning Units.....	26
6.22	Lighting.....	26
6.23	Mailboxes.....	26
6.24	Exteriors.....	26
ARTICLE VII	EASEMENTS, ZONING AND OTHER RESTRICTIONS.....	26
7.01	Easements	26
7.02	Easement Area	28
7.03	Entry	29
7.04	Zoning and Private Restrictions	29
ARTICLE VIII	ENFORCEMENT	29
8.01	Right of Enforcement	29
8.02	Right of Abatement.....	29
8.03	Effect of Nonpayment.....	30
8.04	Specific Performance	30

BK 53135 PG 0300

8.05 No Waiver.....31

ARTICLE IX DURATION AND AMENDMENT31

9.01 Duration and Perpetuities.....31

9.02 Amendments by Declarant.....31

9.03 Amendments by Association32

ARTICLE X ANNEXATION33

10.01 Submission of Additional Property.....33

10.02 Conditions of Annexation33

10.03 Effect of Annexation.....34

10.04 Proposed or Future Development of Additional Property34

ARTICLE XI LEASES35

11.01 Application.....35

11.02 Notice and Regulation35

11.03 Required Lease Provisions.....35

11.04 Enforcement.....36

11.05 Expenses of Eviction36

11.06 Rights of Lessee.....36

11.07 Rights of First Mortgagees37

ARTICLE XII MISCELLANEOUS37

12.01 No Reverter.....37

12.02 Severability37

12.03 Headings37

12.04 Gender37

12.05 Notices37

12.06 No Liability38

12.07 Security38

12.08 Gwinnett County Board of Commissioners Approval.....38

12.09 Property Taxes.....38

ARTICLE XIII MORTGAGEE PROVISIONS38

13.01 Notices of Action38

13.02 Right to Records39

13.03 Insurance.....39

13.04 No Priority40

13.05 Professional Management.....40

13.06 Notice to Association.....40

13.07 Amendment by Board.....40

13.08 Applicability of Article XIII.....41

13.09 Failure of Mortgagee to Respond41

13.10 Special FHLMC Provision.....41

BK53135 PG0301

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE ENCLAVE AT NASH SPRINGS SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by the FD Communities, LLC, a Delaware limited liability company (hereinafter referred to as "Declarant") and Shade Tree Communities, LLC, a Georgia limited liability company ("Shade Tree").

WITNESSETH:

WHEREAS, Shade Tree is the owner of certain real property located in Land Lot 88, the 6th District, Gwinnett County, Georgia, which property is more particularly described in Exhibit "A" attached hereto and made a part of this Declaration (the "Property"); and

WHEREAS, the Property, as platted, is known as The Enclave at Nash Springs Subdivision (hereinafter referred to as the "Development"); and

WHEREAS, Declarant has caused the Association (as hereinafter defined) to be formed as a Georgia non-profit corporation to perform certain functions for the common good and general welfare of the Owners (as hereafter defined); and

NOW THEREFORE, FD Communities, LLC, as Declarant, and Shade Tree do hereby declare that all of the property described in Exhibit "A" shall be held, sold and conveyed subject to this Declaration of Covenants, Conditions and Restrictions, which is for the purpose of enhancing and protecting the desirability and attractiveness of the Property. The Declarant and Shade Tree further declare that this Declaration shall run with the title to the Property, and be binding on all parties having any right, title or interest in the Property or any part thereof, and shall, subject to all limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns, and to the benefit of the Association.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

1.01 Additional Property. "Additional Property" means the additional property which may be added to the Property and made subject to this Declaration pursuant to Article X hereof together with such other additional property and all improvements thereon as Declarant shall acquire from time to time and by amendment to Exhibit "B." A description of the Additional Property as of the date hereof is set forth on Exhibit "B" attached hereto and made a part hereof.

BK 53135 PG 0302

1.02 Architectural Control Committee (ACC). Shall mean and refer to Declarant or such other individual(s) as Declarant may appoint, or such entity to which the ACC may assign its duties, until all Lots in the Subdivision shall have been fully developed and permanent improvements constructed thereon and sold to permanent residents. At such time as all of the Lots on the Property have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Declarant shall notify the Board to that effect, at which time the Declarant's rights and obligations as the ACC shall terminate. Notice to the Board by Declarant under this provision shall be in writing. After receipt of said notice from the Declarant, the Board shall have the right, power and authority to elect a successor ACC which shall consist of not less than three (3) Owners of Lots. The rules and regulations pursuant to which such ACC shall act shall be prescribed by the Board. Notwithstanding the foregoing, the Declarant may, in its sole discretion, relinquish control over the ACC at any time prior to completion and sale of all Lots by so notifying the Board as set forth hereinabove.

1.03 Association. "Association" means The Enclave at Nash Springs Homeowners Association, Inc. (a non-profit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.

1.04 Board. "Board" means the Board of Directors of the Association.

1.05 Builder. "Builder" shall mean any person/entity engaged in the business of construction for sale to homeowners of single-family residential dwellings to whom the Declarant has sold one or more Lots for the purpose of constructing single-family residential dwellings.

1.06 Bylaws. "Bylaws" means the Bylaws of the Association.

1.07 Common Property. "Common Property" means all real property, including any portion of a Lot, (together with any and all improvements now or hereafter located thereon) and all personal property now or hereafter owned by the Association, or in certain instances over which the Association has been granted permanent easements, for the common use and enjoyment of the Owners and or maintenance.

1.08 Declarant. "Declarant" means FD Communities, LLC, a Delaware limited liability company, its successors and assigns. The term shall also be applied to any person, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof, which lawfully acquires the rights, privileges and options of Declarant in accordance with this Article I, Section 1.08. Should any of the Property or the Additional Property become subject to a first mortgage given by Declarant as security for the repayment of a loan to improve the Property and/or Additional Property, then all rights, privileges and options herein reserved to the Declarant shall, at said Mortgagee's option, inure to the benefit of the holder of such first mortgage upon its becoming the actual owner of the Property and/or Additional Property then subject to such first mortgage through judicial foreclosure or sale made pursuant to any power of sale contained in such first mortgage or by conveyance of a deed in lieu of foreclosure. The Declarant as hereinabove defined, may transfer

BK 53135 PG 0303

all of its rights, privileges and options as Declarant to a successor-in-title to all or some portion of the Property or the Additional Property, provided any such successor-in-title shall acquire for the purpose of development or sale all or some portion of such property, and provided further, that in a written instrument, such successor-in-title is expressly assigned all of Declarant's rights, privileges and options herein reserved to Declarant. Such an assignment may be included as a recital in any deed executed by Declarant which conveys any portion of the Property or the Additional Property.

1.09 Declaration. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for The Enclave at Nash Springs Subdivision.

1.10 Lot. "Lot" means any numbered parcel of land shown upon those plats of survey of The Enclave at Nash Springs Subdivision which are duly recorded in the real estate records of Gwinnett County Superior Court, or as similarly shown on supplemental surveys of such tract or such additional tracts as may be added to the Property from time to time, as provided herein; provided however, that no portion of the Common Property shall ever be a lot except as provided for in Article II, Section 2.04.

1.11 Member. "Member" means any member of the Association.

1.12 Owner. "Owner" means the record owner (including Declarant) whether one or more persons or entities, of a fee simple title to any Lot, provided, however, that where fee simple title has been transferred and is being held merely as security for repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

1.13 Property. "Property" means that certain real property hereinabove described together with such additional real property as the Declarant may acquire and subject to the provisions of this Declaration of Covenants, Conditions and Restrictions in accordance with the provisions of Article X hereof.

1.14 Restrictions. "Restrictions" means all covenants, restrictions, easements, liens and other obligations created or imposed by this Declaration.

1.15 Structure. "Structure" means:

(a) Any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, all landscaping, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, antennas and satellite dishes, fence, curbing, paving, wall, tree, shrub, sign, signboard, temporary or permanent living quarters (including any house trailer), recreational equipment and/or amenities to include, but not be limited to, basketball goals and playground sets or any other temporary or permanent improvement to such Lot;

(b) Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which

BK53135 PG0304

affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot;

ARTICLE II

COMMON PROPERTY

2.01 Conveyance of Common Property.

(a) The Declarant or Shade Tree may from time to time cause to be conveyed to the Association certain real property (which may include Lots or portions thereof or grants of easements, as well as personal property, for the common use and enjoyment of the Owners (such real and personal property being hereinafter collectively referred to as "Common Property"). In addition, the Declarant or Shade Tree may from time to time cause the conveyance of certain real property or grants of easements to the general public as may be required by governing authorities in accordance with this Declaration.

(b) It is contemplated by the Declarant that the Declarant or Shade Tree may convey to the Association Common Property for scenic and natural area preservation and for general recreational use. It is further contemplated that Declarant or Shade Tree will grant easements to the Association for maintenance of those portions of Common Property designated as "detention areas", "detention pond" or "retaining wall pond". The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Article II, Section 2.01 at any time prior to conveyance of such Common Property to the Association. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property conveyed to the Association, in accordance with this Subsection B of this Article II, Section 2.01, at any time subsequent to the conveyance of such Common Property to the Association provided that Declarant has not relinquished it's right to appoint and remove members of the Board. Subsequent to the Declarant's relinquishment of it's right to appoint and remove members of the Board, the Association may modify, alter, increase, reduce and otherwise change the Common Property which has been conveyed to the Association provided that there is an approval of two-thirds (2/3) of the Owners.

(c) In addition to the Property described in subsection (b) of this Article II, Section 2.01, the Declarant may convey to the Association in accordance with this Article II, Section 2.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.

(d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant or Shade Tree, as applicable, and designated as Common Property or Recreation Area (or which is designated by any words which similarly signify such property is for the use of the Owners in the Development) whether by recorded plat of survey or otherwise, or designated for public use, shall be reserved to the Declarant

BK 53135 PG 0305

or Shade Tree until such time as the same shall be conveyed by recorded deed or easement to the Association or to any municipality or other governmental body, agency or authority. Declarant shall likewise be under no obligation to improve any property for recreational or other use by the Owners.

(e) The Association hereby covenants and agrees to accept all such conveyances of Common Property. With respect to any improved Common Property, issuance of a Certificate of Occupancy (if required) by Gwinnett County, shall be conclusive evidence that said property complies with all building and construction standards of Gwinnett County. The Declarant, or any predecessor Declarant, shall not be responsible for compliance with any requirements called for by Gwinnett County which are adopted after the issuance of a Certificate of Occupancy.

2.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by any other Owner. The Association may permit persons who are not Owners to use and enjoy any part or all of the Common Property subject to such limitations, and upon such terms and conditions, as it may from time to time establish. The right and easement of enjoyment granted or permitted by this Article II, Section 2.02 is subject to those items set forth in Article II, Section 2.03, which includes suspension by the Association as provided in Article II, Section 2.03 (c) and Article III, Section 3.05.

2.03 Rights of the Association. The rights and privileges conferred in Article II, Section 2.02 hereof shall be subject to the right of the Association acting through the Board to:

(a) Promulgate rules and regulations relating to the use, operation and maintenance of the Common Property (which shall specifically include the right of the Association, acting through its Board of Directors, to allow residents of other developments outside of The Enclave at Nash Springs Subdivision to use the Common Property);

(b) Charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

(c) Suspend the voting rights of any member, pursuant to Article III, Section 3.05, and the right of enjoyment granted or permitted by Article II, Section 2.02;

(d) Grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, or to any quasi-public agency or to any utility company or cable television system;

(e) Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;

BK53135 PG0306

(f) Borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

(g) Dedicate or transfer all or any part of the Common Property or interest herein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority; and

(h) To sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of the Declarant for so long as the Declarant has the right to annex Additional Property pursuant to Article X. Upon the expiration of the Declarant's right to annex Additional Property pursuant to Article X, the Association shall be authorized to sell, lease or otherwise convey all or part of the Common Property and interest therein, provided that such sale, lease or conveyance is approved by two-thirds (2/3) of the Owners.

(i) To permanently close different amenities which may exist on the Common Property.

(j) To impose fines (the "Fines") against an Owner and/or a tenant of an Owner, in amounts determined by the Board within their sole discretion, for violation of any of the terms of this Declaration.

2.04 Types of Common Property. At the time of conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not be used for any different purpose or purposes without the prior written consent of the Declarant.

2.05 Entrance Easements. It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant and may be set forth on plats of survey of the Development recorded in the Gwinnett County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair, replace and re-erect any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to

BK 53135 PG 0307

generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. All Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

2.06 Encroachment Easements. If any buildings or other improvements initially constructed by Declarant, or by any Owner who constructed the original dwelling so long as said Owner has had the plans for the original dwelling approved by the ACC, on any of the Lots including without limitation any eaves, roof overhangs, balconies, siding, porches, or other structures which may be attached to the walls and roof of such buildings, encroach onto or over or extend into the air space of any portion of the Common Property, or, conversely, if any such improvements initially constructed on the Common Property encroach onto or over portions of any Lot, a valid easement for the encroachment and for the maintenance, repair and replacement thereof, shall exist so long as the encroachment exists.

2.07 Structural Support. Each Lot or improvement on a Lot which contributes to the structural support of another Lot or improvement on such Lot shall be burdened with an easement of structural support. Said easement for structural support shall be appurtenant to and shall pass with the title to every benefitted and burdened Lot.

2.08 Delegation of Use. Any Owner may delegate his right to use and enjoy the Common Property to the members of his family, his social invitees or his tenants who reside on a Lot. Tenants who reside on a Lot shall have the same rights of delegation as an Owner. Any delegation of rights must be made in accordance with the Bylaws and will be subject to reasonable regulation by the Board and in accordance with the procedures it may adopt.

ARTICLE III

THE ASSOCIATION

3.01 Purposes, Powers and Duties of the Association. The Association shall be formed as a non-profit civic organization for the primary purpose of performing certain functions for the common good and general welfare of the Development. To the extent necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code, and (b) shall have the power to exercise all of the rights, powers and privileges of the Association as set forth in this Declaration.

3.02 Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration.

3.03 Voting. Members shall be entitled to one equal vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the

BK 53135 PG 0308

Lot's vote shall be suspended in the event more than one Owner of a Lot attempts to cast it.

3.04 Board of Directors and Officers.

(a) **Board.** The affairs of the Association shall be managed by a Board of Directors. The Board may make and enforce reasonable rules and regulations governing the use of the Lots and the Common Property which rules and regulations shall be consistent with the rights and duties established by this Declaration. The number of directors and the method of election of directors shall be set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation code or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

(b) **Officers.** The number of officers and the method of election of officers shall be set forth in this Declaration and the Bylaws of the Association. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, officers of the Association shall be appointed by the Board until such time as Declarant no longer has the right to appoint members to the Board of Directors.

(c) **Phases.** The Development will be composed of Lots which may be developed in phases containing unequal numbers of Lots. Each such phase will be platted of record in the Office of the Clerk of the Superior Court in which the Property lies in accordance with Article X of this Declaration. The Declarant shall notify the Association when the final phase of the Development has been so platted or recorded. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development.

(d) **Casting of Votes.** The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

3.05 Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

(a) Shall be subject to the Right of Abatement, as defined in Article VIII, Section 8.02 by reason of having failed to take reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same pursuant to the provisions of Article V, Section 5.11, Article VI, Section 6.02 and Article VIII, Section 8.02 hereof;

(b) Shall be delinquent in the payment of any assessments, fine or penalty levied

BK53135 PG0309

by the Association pursuant to the provisions of this Declaration; or

(c) Shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of the Common Property.

Any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Article III, Section 3.05, the suspension may be for a period not to exceed 60 days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot nor limit or suspend an Owner's obligation to pay any assessment, fine or penalty.

3.06 Voting Procedures. The procedures for the election of Directors of the Association and the resolution of such other issues as may be brought before the membership of the Association shall be governed by this Declaration, the Georgia Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the Bylaws of the Association, as each shall from time to time be in force and effect.

3.07 Control by Declarant and Appointment of the Board. Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, the Declarant hereby retains the right to appoint all members to the Board. The rights of Declarant to appoint members of the Board also includes the rights to remove and replace appointees until such time as Declarant's rights to appoint members to the Board ceases.

Declarant shall retain the right to appoint and remove members of the Board until sixty (60) days after the first of the following events shall occur: (i) the date as of which the last Lot in the subdivision owned by Declarant shall have been conveyed by Declarant to an Owner other than a person or persons constituting Declarant or an affiliate of the Declarant; or (ii) the surrender by Declarant of the authority to appoint and replace directors by an express amendment to this Declaration executed by the Declarant and recorded in the Office of the Clerk of the Superior Court of the county in which the Property is located. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association a special meeting of the Association shall be called.

At such special meeting (the "Turnover Meeting") the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the 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 prior to the Turnover Meeting, which Declarant has in its possession. Notwithstanding any other language contained herein, or in the Bylaws to the contrary, the Board of Directors appointed by the Declarant may, by written notice to the Owners, retain the power and authority to act on behalf of the Association, and to exercise all rights available to Board members until such time as a new Board of Directors has been elected. Alternatively, at the Turnover Meeting, appointees of the Declarant may resign their positions as Members of the Board of Directors and/or Officers of the Association.

BK53135 PG0310

Upon such resignation, the Declarant and all affiliated individuals, entities and appointees' positions of the Association shall have no responsibility or obligations for the management of the Association subsequent to the date of resignation. It shall be the Owners' responsibility, through election of a Board of Directors comprised of Owners at the Turnover Meeting, to manage the Association subsequent to such resignation. By acceptance of a deed, each Owner agrees to save harmless each Officer and Board Member appointed by the Declarant, as well as the Declarant, from and against any and all matters which in any way relate to the management of the Association subsequent to resignation of the Declarant's appointees at the Turnover Meeting. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.

3.08 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

3.09 Association Maintenance Responsibilities. Except as may be herein otherwise specifically provided, the Association shall maintain, landscape and keep in good repair as the case may be: (i) all portions of the Common Property, improvements thereon, if any, as such areas are designated on the final plat or plats of the Subdivision as recorded in Gwinnett County Superior Court whether such Common Property is within the boundaries of a Lot or owned by the Association; (ii) the entry way entrance signs and monuments, landscaping, entrance wall or fence, if any; (iii) the privacy wall and/or fence, if any, serving the subdivision; (iv) all detention areas whether designated as Common Property or whether or not such areas are included within a Lot boundary or partially owned by the Association; (v) all lighting and irrigation facilities and equipment, if any, located within the Common Property or within any landscape easement as shown on the final plat or plats recorded in Gwinnett County Superior Court; (vi) path systems, if any, providing access to the recreation facility, if any; (vii) all utility lines, facilities and equipment located within the Common Property or any landscape easement as shown on the plat or plats recorded in Gwinnett County Superior Court if such utility lines, facilities or equipment are not maintained by a public authority, public service district, public or private utility or other person; (viii) lawn maintenance and landscaping all Common Property; (ix) all retaining walls within the Property which have been constructed prior to the recording of a final plat for the Property, or a portion thereof (a phase); (x) if applicable, the central mailbox system; and (xi) all internal private roads located within the Property, together with attendant storm drains and curbs. The obligations and duties set forth here and above shall be the sole responsibility of the Association and all costs and expenses incurred in performing such work shall be deemed to be Common Expenses. The Association shall not be liable for injury or damage to any person or property caused by the elements or by any Owner or any other person. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibilities of the Association, or from any action taken by the Association to comply with any law, ordinance or with any other directive of any municipal or any governmental authority, the

BK53135 PG0311

obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

ARTICLE IV

ASSESSMENTS AND MAINTENANCE CHARGES

4.01 Covenant for Assessments and Creation of Lien and Personal Obligations. The Declarant, to the extent that Declarant is required herein, hereby covenants and agrees, and each Owner, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

(a) To pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(b) To pay to the Association any special assessments for capital improvements and any fines, penalties or other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him;

(c) That there is hereby created a continuing charge and lien upon all Lots owned by him against which all assessments, fines, penalties and other charges are made to secure payment of such items and any interest thereon as provided in Article IV, Section 4.07 hereof and costs of collection including reasonable attorneys' fees;

(d) That such continuing charge and lien on such Lots binds such Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all first mortgage deeds to secure debt given to secure loans;

(e) That no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed:

(f) That all annual and special assessments (together with interest thereon as provided in Article IV, Section 4.07 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Lot or Lots owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in section 4.01(c) of this Declaration) a personal obligation which will survive any sale or transfer of the Lots or Lots owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

BK53135 PG0312

4.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the community of the Development, including, but not limited to, and in addition to other purposes set forth in this Declaration, security, the acquisition, construction, improvement, maintenance and equipping of the Common Property, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment or Maintenance Charge.

(a) Subject to the terms of this Article, each Lot in the Property is hereby subjected to an annual assessment or maintenance charge for the purpose of creating a fund to be known as the "maintenance fund," which maintenance charge and assessments will be paid by the Owner or Owners of each Lot within the Property (and any area annexed under the jurisdiction of the Association). Payment of such assessments will be made in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board of Directors.

(b) The annual maintenance charge and assessments will commence as to each Lot on the first day of the month following the earliest to occur of the following events; (i) upon the occupancy of the Lot as a residence; or (ii) upon the conveyance of the Lot by a builder, who purchased the land from Declarant for the purpose of erecting a dwelling thereon, to an Owner or tenant for residential occupancy.

(c) The common assessments to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total level of expenses. The Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. Until one hundred percent (100%) of the Property has been developed and conveyed to Owners in the normal course of development and sale, on an annual basis, the Declarant may elect, but shall not be obligated, to reduce the assessment for any fiscal year by paying a subsidy on such terms and under such circumstances as the Declarant in its sole discretion may decide. The payment of a subsidy shall under no circumstances obligate the Declarant to continue payment of a subsidy in the future. The Declarant's option to subsidize the assessment may be satisfied in the form of cash, or by "in

BK 53135 PG 0313

kind" contributions of services or materials, or by way of a Loan from Declarant to the Association, or a combination of these.

(d) Assessments may be used by the Association to provide for, by way of clarification, and not limitation, any and all of the following: normal, recurring maintenance of the Common Property (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking and otherwise caring for the existing landscaping and maintaining and repairing recreational facilities) and the acquisition and installation of capital improvements to such areas; provided that the Association shall have no obligation (except as expressly provided in this Declaration) to make capital improvements to the Common Property; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the Property to which said assessments apply; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employment of security guards or watchmen, if determined necessary; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board or membership of the Association to keep the Common Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that when and if presented to the Members, the judgment of the majority of the Members of the Association in the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association may also establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Property.

(e) Unless required as a matter of law, neither the Declarant or Declarant's predecessors, shall at any time be subject to any assessments. This subsection 4.04(e) may only be amended with the prior written consent of the Declarant and/or any predecessor to the Declarant if such predecessor still owns at least one (1) Lot for sale.

4.05 Special Assessments for Working Capital Fund, Nonrecurring Maintenance, and Capital Improvements. In addition to the annual assessments authorized by this Article IV, the Association may levy:

(a) Upon the first sale of each and every Lot to an Owner who will individually or through tenants or assigns occupy a Lot with a completed home, and upon each re-sale of a home, a special assessment payable by said Owner in an amount to be determined by the Board shall be collected at the closing of such sale for the benefit of the Association. The aggregate fund established by such special assessments shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Prior to the Turnover Meeting, as defined hereinabove, the Declarant may establish a separate account for special assessments which have been collected.

(b) In any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part any Association expenses not covered by the annual budget, including, but not limited to, the cost of nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common

BK 53135 PG 0314

Property, including fixtures and personal property related thereto, provided that any such assessment shall have been approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting duly called for such purpose. Notwithstanding the foregoing, no special assessment shall be deemed approved unless approved in writing by the Declarant for so long as the Declarant retains its right to appoint and remove members of the Board.

4.06 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action requiring vote under Article IV, Section 4.04 and Article IV, Section 4.05 shall be sent to all Members, or delivered to their residence, not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.07 Effect of Nonpayment of Assessments. If any assessment or installment is not paid within fifteen (15) days after the Due Date, there shall be imposed a late or delinquency charge in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due. Any assessment or installment, and any late charge connected therewith, which is not paid within thirty (30) days after the Due Date of the assessment shall bear interest (from the Due Date with respect to the assessment or installment, and the date such charge was imposed with respect to the late charge), at the rate of ten percent (10%) per annum or at such rate as the Board may from time to time establish; provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. If any one or more installment of any assessment is not paid within thirty (30) days after the Due Date the Board may declare any unpaid balance of the assessment at once due and payable.

In the event an Owner shall fail to pay fully any portion of any assessment, installment or Fine (imposed pursuant to Section 2.03(j)) on or before the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with any delinquency charges, interest, and costs of collection, including court costs, the expenses of sale, any expense required for the protection and preservation of the Lot, and reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lot enforceable in accordance with the provisions of this Declaration. In addition to the above, if any Owner has not paid any assessment or installment, or any late charges or expenses related thereto, within sixty (60) days after the Due Date of the assessment or installment, the Association shall have the right to notify any or all mortgagees having a security interest in such Owner's Lot or Lots that such Owner is in default in the performance of his obligations under this Declaration, and of those actions taken or proposed to be taken by the Association as a result of the default.

4.08 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any

BK 53135 PG 0315

Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

ARTICLE V

ARCHITECTURAL CONTROL

5.01 **Purpose, Powers and Duties of the ACC.** The purpose of the ACC is to review and approve any proposed installation, construction or alteration of any Structure on any Lot in order to preserve a harmonious and aesthetically pleasing design to the Development. All plans shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standard of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot. Every grantee of any interest in the Property, by acceptance of a deed or other conveyance document, agrees to be bound by the provisions of this Article V.

5.02 **Officers, Subcommittees and Compensation.** The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ACC as they shall from time to time determine necessary. At such time as three (3) Owners (other than Declarant or builder acquiring a Lot from Declarant) are willing to serve on a sub-committee within the ACC, the ACC may form a sub-committee composed exclusively of said owners (the "Modifications Committee"). The Modifications Committee shall have jurisdiction over proposed modifications to structures and/or Lots owned by Owners other than the Declarant or a builder who acquires a Lot from Declarant. The Modifications Committee shall conduct themselves and be governed by this Article V under the same rules and procedures established for the ACC. The members of the ACC may, with the approval of the Board, be reimbursed by the Association for reasonable traveling expenses and other out-of-pocket costs incurred in the performance of their duties as members of the ACC.

5.03 **Operations of the ACC.**

(a) **Meetings.** The ACC may hold regular meetings as may be established by the ACC; provided, however, that during such time as Declarant has the right to appoint and replace members of the Board of Directors the frequency of regular meetings will be established by the Board. Special meetings may be called by the Chairman and shall be called by the Chairman upon the written request of a majority of the members of the ACC then in office. Regular and special

BK 53135 PG 0316

meetings of the ACC shall be held at such time and at such place as the ACC shall specify. Written or verbal notice of each regular or special meeting of the ACC shall be given to each member of the ACC at least two (2) days before the day the meeting is to be held. Notice of a meeting need not be given to any member of the ACC who signs a waiver of notice either before or after the meeting. Attendance of a member of the ACC at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business. At each meeting of the ACC, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ACC present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ACC. In the absence of a quorum, any member of the ACC present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. The ACC shall maintain both a record of voters and minutes for each of its meetings. The ACC shall make such records and minutes available at reasonable places and times for inspection by Members of the Association and by the Secretary. Any action required to be taken at a meeting of the ACC, or any action which may be taken at a meeting of the ACC, may be taken without a meeting if written consent, setting forth the action so taken, shall be signed by all the members of the ACC and be filed within the minutes of the proceedings of the ACC. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ACC.

(b) (i) The ACC may adopt and promulgate Design Standards, and when appropriate shall make findings, determinations rulings, and orders with respect to the conformity and harmony with the external design and the general quality of the Development and any Design Standards adopted by the ACC, of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations, or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

(ii) Any two (2) or more members of the ACC may be authorized by the ACC to exercise the full authority of the ACC with respect to all matters over which the ACC has authority as may be specified by resolution of the ACC, except with respect to the adoption or promulgation of Design Standards. The unanimous action of the two (2) or more members with respect to the matters specified shall be final and binding upon the ACC and upon any applicant for an approval, permit or authorization; subject, however, to review and modification by the ACC on its own motion or appeal by the applicant to the ACC as provided in this paragraph (ii). Written notice of the decision of such two (2) or more members shall, within five (5) working days thereof, be given to any applicant for an approval, permit or authorization. The applicant may, within ten (10) days after receipt of notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the ACC. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to, and reviewed promptly by, the ACC, but in no event later than thirty (30) days after the filing of such request. The decision

BK 53135 PG 0317

of a majority of the members of the ACC with respect to such matter shall be final and binding.

5.04 Design Standards.

(a) The ACC may from time to time (but shall not be required to) adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purposes of:

(i) Governing the form and content of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;

(ii) Governing the procedure for such submission of plans and specifications;

(iii) Establishing guidelines with respect to the approval and disapproval of landscaping, design features, architectural styles, exterior colors and materials, details of construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

(iv) Assuring the conformity and harmony of external design and the general quality of the Development.

(b) The ACC may publish copies of any current Design Standards adopted by it, in which case they shall be made readily available to Members and prospective Members of the Association and to all applicants seeking the ACC's approval.

5.05 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless plans and specifications therefore shall have been submitted to and approved in writing by the ACC. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ACC, including where applicable, and without being limited to:

(a) Two copies of the site plan showing the location of all proposed and existing Structures on the Lot including building setbacks, open space, driveways, walkways and parking spaces including the number thereof and all siltation and erosion control measures;

(b) A foundation plan;

(c) A flood plan;

(d) Exterior elevations of all proposed Structures and alterations to existing Structures, as such Structures shall appear after all back-filling and landscaping are completed;

(e) Two copies of specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed Structures and alterations to existing

BK 53135 P0318

Structures; and

- (f) Two sets of plans for landscaping and grading.

Unless modified by the ACC within its sole discretion, any request for the alteration of an existing Structure shall require the foregoing information to be submitted together with an Application for Modification and incorporated herein by reference (the "Application"), as such Application may be required by the ACC from time to time.

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

5.07 Disapproval of Plans and Specifications. The ACC shall have the right to disapprove any plans and specifications submitted pursuant to this Declaration for any of the following reasons:

- (a) The failure to include information in such plans and specifications as may have been reasonably requested;

- (b) The failure of such plans or specifications to comply with this Declaration or the Design Standards;

- (c) Any other matter which, in the judgment of the ACC and/or its authorized agent to include, but not be limited to, any licensed landscape architect employed by the ACC to make a determination as to the acceptability of the submitted plans and specifications would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards of the Development, or (ii) as to location, to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC, or its authorized agent shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any case, the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

5.08 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within sixty (60) days after receipt thereof. Approval by the ACC, if granted, together with any conditions imposed by the ACC, shall be placed in writing on the plans and specifications and/or the Application and shall be returned to the applicant. Failure by ACC to

BK 53135 PG 0319

take action within sixty (60) days of receipt of plans and specifications properly submitted for approval shall be deemed approval of such plans and specifications. Upon the approval of the plans and specifications, no further approval under this Article V shall be required unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications or unless such plans and specifications are materially altered or changed or have been improperly submitted.

5.09 Inspection Rights. Any employee or agent of the Association or the ACC may, after reasonable notice, at any reasonable time or times enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Association, nor the ACC, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

5.10 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the Approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the violation, then the Board shall provide written notice to the Owner, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps, as determined by the Board within their sole discretion, toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have the Right of Abatement as provided in Article VIII, Section 8.02 hereof. Any costs and expenses incurred by the Association in enjoining or abating any construction or improvements shall be assessed against the Owner of said Lot and shall be due and payable to the Association on demand, it being understood and agreed that the Owner shall be personally liable to the Association for any such costs and expenses. In addition the costs and expenses shall be a permanent charge and lien upon such Lot enforceable by the Association in the same manner as other liens for the improvement of the real property.

Notwithstanding the foregoing contained in this Section 5.10, if any structure shall be erected, placed, maintained or altered upon any Lot otherwise than in accordance with the provisions of this Article, and no action is taken by the ACC and/or the Board of Directors of the Association for a time period commencing with the completion of said structure and ending six (6) months thereafter, then such erection, placement, maintenance or alteration shall be deemed to be approved and the ACC, and the Board of Directors and the Association shall be estopped from enforcing any of their rights under this Article V of the Declaration.

5.11 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the costs of: (i) inspections performed pursuant to Article V, Section 5.10; and (ii) the review of the plans and specifications set forth in Section 5.05 of this Declaration to include, but not be limited to,

BK 53135 PG 0320

the fees of a licensed landscape architect employed by the ACC to approve or disapprove submitted plans and specifications. The fee shall be established from time to time by the ACC and published in the Design Standards.

5.12 Nondiscrimination by ACC. The ACC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, age or national origin. Further, the ACC in the exercise of its powers granted pursuant to this Declaration shall not take any action the intent or effect of which is to discriminate against persons of a particular race, color, sex, religion, age or national origin.

5.13 Disclaimer as to ACC Approval. Plans and specifications are not reviewed for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ACC, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from plans and specifications nor compliance with any local, state or federal law including local building codes and zoning ordinances. Neither Declarant, the Association, the ACC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

5.14 Declarant. The provisions contained in this Article, as well as all other architectural control provisions, including but not limited to building setbacks, contained in the Development documents, shall not apply to Declarant or to any predecessor of Declarant. In addition, said provisions shall not apply to any builder who acquires a Lot from Declarant or any predecessor of Declarant or through other builders who had acquired the Lot from said parties for the purpose of constructing a dwelling thereon; provided, however, any such builder must submit (in a format satisfactory to Declarant within Declarant's sole discretion) to and have its plans and specifications approved by Declarant, unless title to the Lot passed through a predecessor of Declarant and said predecessor still owns at least one (1) Lot for sale in the Development, in which case such plans and specifications must only be approved by said predecessor to Declarant. This Article V, Section 5.14 may only be amended with the prior written consent of the Declarant and/or any predecessor to Declarant if such predecessor still owns at least one (1) Lot for sale.

ARTICLE VI

BK 53135 PG 0321

GENERAL COVENANTS AND RESTRICTIONS

6.01 **Application.** The covenants and restrictions contained in this Article VI shall pertain and apply to all Lots and to all Structures erected or placed thereon.

6.02 **Maintenance.** Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good conditions and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are kept in a neat and good condition and are not obstructive of a view by motorists or pedestrians of street traffic and (iv) any and all fencing located within his Lot boundaries. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall notify the Association. If the Board shall agree with the determination of the ACC with respect to the failure of said Owner to perform the duties imposed by this Section, then the Board shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice, then the Association shall have the ability to impose a Fine in accordance with Article II, Section 2.01(j), the Right of Abatement as provided in Article VIII, Section 8.02 hereof, as well as any and all other remedies available in law or in equity. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

6.03 **Restriction of Use.** Lots may be used for single-family residence purposes only and for no other purpose. The use of a portion of the residence as an office by an Owner or his tenant shall not be a violation of this covenant if such use does not create regular customer, client or employee traffic or otherwise create a nuisance. Declarant may operate a Sales Office and/or Model Home on a Lot or Lots designated by Declarant. No business may be conducted within a Lot which would require increased subdivision traffic by the regular attendance of non-residents of the Development within and to such Lot. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the house so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or ByLaws; (b) is not apparent or detectable by sight, sound or smell outside of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Subdivision; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Subdivision; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Subdivision, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the

BK 53135 PG 0322

provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

6.04 Resubdivision of Property. Except for split, division or subdivision of a Lot which is authorized by Declarant, no Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the ACC

6.05 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for the prevention and control of such erosion or siltation. The ACC may, as a condition or approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices of controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and require landscaping as provided for in Article VI, Section 6.06.

6.06 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the ACC of plans and specifications for the landscaping to accompany such construction or alteration.

6.07 Temporary Buildings. No temporary building, trailer, or building under construction shall be used, temporarily or permanently, as a residence on any Lot except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the ACC.

6.08 Signs.

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

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

(ii) Not more than one "For Sale" or "For Rent" sign, such sign having a maximum face area of four (4) square feet; provided, however, that if, at the time of any desired use of such sign, the Association is making "For Sale" or "For Rent" signs available for the use of Owners, the signs made available by the Association must be used;

(iii) Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.

(b) In no event during approved construction of any Structure shall more than two

BK 53135 PG 0323

job identification signs be approved by the ACC.

(c) Notwithstanding any other provision in this Declaration, the Declarant may erect and place as many such signs on any portions of the Property owned by the Declarant or on any Common Property, which Declarant in its sole discretion deems appropriate. This Article VI, Section 6.08(c) may only be amended with the written approval of the Declarant.

6.09 Setbacks.

(a) Each dwelling which is erected on a Lot shall be situated on such Lot in accordance with the building and setback line shown on the recorded plat, unless otherwise approved by the ACC. For purposes of this requirement all porches, patios, decks, shutters, awnings, eaves, gutters and other such overhangs will not be considered in violation thereof, even though such structure shall extend beyond said building and setback lines, unless the ACC has established such a requirement as part of its approval of a structure or has otherwise established setback requirements.

(b) In approving plans and specifications for any proposed Structure, the ACC may establish setback requirements for the location of such Structure, but the ACC shall be empowered to grant variance with respect to such setback requirements in its sole discretion.

6.10 Fences and Exterior Structures. No fence or wall of any kind shall be erected, maintained, or altered on any Lot without the prior written approval of the ACC of plans and specifications for such fences and walls. No artificial vegetation, exterior sculptures, fountains or similar items shall be constructed, placed or maintained on any Lot without the prior written approval of the ACC.

6.11 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways.

6.12 Antennae. No transmission antenna, of any kind, may be erected on a Lot unless approved in writing by the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter may be placed, allowed or maintained upon a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and rules and regulations of the Association authorized by the FCC, both, as may be amended from time to time.

6.13 Clotheslines, Garbage Cans, etc. No clotheslines shall be permitted. All equipment, garbage cans, and woodpiles shall be kept in garage or screened by adequate planting or approved fencing so as to conceal them from view by neighboring residences and streets.

6.14 Parking and Related Restrictions.

BK 53135 PG 0324

(a) No vehicles of any type whatsoever shall be permitted to park on the streets of the Development on a permanent basis, but shall be allowed on a temporary basis, not to exceed 48 consecutive hours. Notwithstanding the above, all automobiles owned or used by Owners (other than temporary guest(s)) shall be parked in garages to the extent that garage space is available, and garages shall not be used for storage or otherwise so that they become unavailable for parking cars therein. No owners or occupants of any portion of the Property shall repair or restore any vehicle of any kind within any Lot except (i) within enclosed garages or approved workshops, or (ii) for emergency repairs and then only to the extent necessary to enable the movement thereof to a proper repair facility.

(b) No school bus, truck or "commercial vehicle", house trailer, mobile home, motor home, recreational vehicle, camper, habitable motor vehicle of any kind, boat or boat trailer, trailers of any kind, or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis as set forth hereinbelow. As used herein "commercial vehicle" shall include but not be limited to any vehicle exceeding three-quarter (3/4) tons in weight and any vehicle displaying any words, numbers or a combination thereof on its exterior relating to or associated with a trade or business.

(c) Vehicles and equipment described in Article VI, Section 6.14(b) above, shall be permitted on a temporary basis only, not to exceed 48 consecutive hours; unless stored within the garage with garage door closed and no portion of the vehicle or equipment protruding beyond the closed door, unless otherwise approved by the ACC.

Notwithstanding anything provided herein to the contrary, no towed vehicle, boat, boat trailer, recreational vehicle, motor home, mobile home, bus, truck with camper top, commercial vehicle, truck (except pick-up trucks, vans, SUV's or hybrids thereof used for personal transportation), trailer, motorcycle, minibike, scooter, go-cart or similar recreational vehicle shall be permitted on any Lot, except if kept in an enclosed garage, for periods longer than 48 consecutive hours (the intent of this provision is that the aforementioned vehicles may not be stored on a Lot except if in a garage and the temporary removal of such vehicle from a Lot to break the continuity of the 48 consecutive hours shall not be sufficient to establish compliance with this restriction). Any such vehicle shall be considered a nuisance and may be removed from the Property. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be subject to the restrictions contained in this paragraph provided such vehicles are used on a regular basis for transportation and the camper is stored out of public view upon removal from the vehicle.

(d) Any trash, firewood, wood scraps, building materials, or other such materials contained in any vehicle or trailer shall be neatly covered from view unless otherwise approved by the ACC.

(e) The purpose of this Section is to help maintain the neat and attractive appearance of the Development by requiring the streets of the Development to remain cleared, and for larger vehicles and equipment to be either hidden from view or eliminated altogether if intended

BK 53135 PG 0325

to be stored on more than a temporary basis. In effectuating the purpose of this Section, the ACC may adopt guidelines, rules and regulations which shall give greater substance to its provisions, as for example, by defining what shall be considered temporary or permanent in the case of each subsection above.

(f) The provisions of this Section shall not apply to Declarant or to any builder in the process of construction of any approved Structure on any Lot.

6.15 Recreational Equipment. No recreational and playground equipment, including basketball goals, shall be placed or installed upon a Lot unless approved by the ACC. No above ground pools shall be allowed on any Lot.

6.16 Sale and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant, any Builder and their respective agents and successors and assigns to maintain and carry on within the Property such activities as may be reasonably required or convenient to the completion, improvement and sale of Lots including, but not limited to, construction trailers or model residences.

6.17 Animals. No animals, including birds, insects, and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans, specifications and location for said structure have been approved by the ACC. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, except that dogs, cats or other usual and common household pets in reasonable number, as determined by the Board, may be kept on a Lot; provided, however, those pets which are permitted to roam free or, in the sole discretion of the Board, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners or Occupants of other Lots or the owner of any property located adjacent to the community may be removed by the Board. Dogs which are household pets shall at all times whenever they are outside a Lot be confined on a leash. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Property.

6.18 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property.

(b) Except for building materials employed during the course of construction of any Structure approved by the ACC, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner approved by the ACC.

(c) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day

BK 53135 PG 0326

that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed.

6.19 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community. This paragraph shall not apply to any legal use of tobacco products.

6.20 Landscape and Monument Easements. On Lots subject to a Landscape and Monument Easement as set forth on any recorded plat or survey of the Development, such Lots are subject to those easement rights set forth in Article II, Section 2.05.

6.21 Air-Conditioning Units. Except as may be permitted by the ACC, no window air conditioning units may be installed on any portion of a structure within a Lot.

6.22 Lighting. Except as may be permitted by the ACC, exterior lighting visible from the street shall not be permitted except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the community; (d) seasonable decorative lights; or (e) front house illumination of model homes.

6.23 Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the Architectural Control Committee and shall be installed initially by the original homebuilder. Replacement mailboxes may be installed after the type has been approved in writing by the ACC. If a central mailbox system is provided, then individual mailboxes may not be installed.

6.24 Exteriors. Any change to the exterior color of any structure or improvement located on a Lot, including, without limitation, the dwelling or any fence located on a Lot, must be approved by the ACC.

ARTICLE VII

EASEMENTS, ZONING AND OTHER RESTRICTIONS

7.01 Easements.

(a) Declarant hereby expressly reserves to the Declarant, its successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

(i) The erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, natural gas, cable television and other utilities and similar facilities;

BK53135 PG0327

(ii) The erection, installation, construction and maintenance of storm-water drains, land drains, detention ponds, public and private sewers, irrigation systems, pipelines for supplying gas, water and heat and for any other public or quasi-public facility, service or function;

(iii) Slope control purposes, including the right to grade and plant slopes and to prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;

(iv) The planting or re-planting of hedges, shrubberies, bushes, trees, flowers and plants of any nature;

(v) The erection, installation, construction and maintenance of fences, walls, monuments, signs, etc. along streets in, around and along, and at entrances to, the Development, and the right to landscape such areas, plant, re-plant and prune hedges, shrubbery, bushes, trees, flowers, grass and plants of any nature; and

(vi) There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and street signage for the Property, over and upon each Lot which is located at the corner of a street intersection within the Property. The easement and rights herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and signage and the right to grade the land under and around the entry features and signage.

(b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been assigned by the Declarant to the Association.

(c) The Declarant hereby expressly reserves to the Declarant, its successors, assigns and successors-in-title across the initial phase of the Property, and across each portion of any Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, perpetual easements appurtenant to all or any portion of the Additional Property not subject to this Declaration for the following uses and purposes:

(i) An easement for ingress and egress by vehicular and pedestrian traffic over (1) such drives, roadways, walkways and paths as are shown on the plat or plats recorded in connection with the initial phase of the Property and such portions of the Additional Property as are submitted to this Declaration, and (2) such drives, roadways, walkways and paths as may be constructed in the future;

(ii) An easement for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, sewage, storm drainage, electricity, street lights, telephone, and other utilities and services, including the right to use in common with the Owners in the initial phase of the Property and

8K53135 PG0328

portions of the Additional Property subsequently submitted to this Declaration, the wires, pipes, conduits, and other structures and facilities furnishing such utilities and services to such Owners; and

(iii) An easement for the purpose of creating and maintaining satisfactory drainage across Lots in the Development, being three (3) feet wide along each side line and ten (10) feet wide along the rear line of each Lot; however, said easement shall not include any portion of a Lot upon which the foundation of any dwelling is located.

(d) In addition to the above, the Declarant and Shade Tree hereby grant a general easement in favor of utility, cable television and other such service companies across the initial phase of the Property, and across each portion of any Additional Property subsequently submitted to this Declaration by Annexation as provided in Article X hereof, to maintain, repair, replace and service wires, pipes, conduits, street lights and other structures and facilities provided for the benefit of the Owners. This paragraph shall not be construed to expand any specific easement granted to any such utility provider.

(e) The Declarant expressly reserves for the benefit of Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement on, over and across all Lots and all unimproved portions of the Property for the purpose of taking any action necessary to effect compliance with environmental rules and regulations from time to time promulgated or instituted by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

(f) An easement within the front portion of each Lot up to the front building setback for the purpose of installing, operating, maintaining and replacing wires, pipes, conduits and other structures and facilities necessary to the furnishing of gas, water, storm drainage, electricity, street lights, telephone and other utilities and services including but not limited to cable television.

(g) An easement for the benefit of the Declarant and the Association for the all portions of each Lot (except for portions where a home and appurtenances are. Or will be, located) for the purpose of providing uniform landscape maintenance within the Property.

(h) The Declarant expressly establishes for itself, its successors, assigns and successors-in-title, a perpetual nonexclusive drainage easement to allow for surface water runoff and flow, over through and across all portions of each Lot (except for those portions of a Lot upon which a Builder constructs a home together with appurtenances thereto, to be limited to patios, decks and air conditioner units), for the benefit of all Lots whether adjoining or otherwise.

(i) The easements created in this Article VII are in addition to any easements or rights created elsewhere in this Declaration or in other easements of record. The provisions of this Article VII may not be amended without the written consent of the Declarant, its successors and assigns.

BK53135 P60329

7.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot with respect to which easements are shown on a recorded deed or grant of easement, or on any filed or recorded map or plat relating thereto, or as otherwise set forth in Article VII, Section 7.01.

7.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken by the same in an Easement Area pursuant to the provisions of Article VII, Section 7.01.

7.04 Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by this Declaration shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by this Declaration, the most restrictive provision shall govern and control.

ARTICLE VIII

ENFORCEMENT

8.01 Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Declarant so long as it is an Owner, (ii) the Association, and (iii) each Owner, his legal representatives, heirs, successors and assigns.

8.02 Right of Abatement.

(a) Except where different notice provisions are provided in Article V, Section 5.10 and Article VI, Section 6.02, in the event of a violation or breach of any restriction contained in this Declaration the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of such written notice, then the Association shall have the Right of Abatement. If any assessment, interest, cost or charge required by this Declaration is not paid within sixty (60) days after such assessment is due or such charge is imposed, the Association shall have the right to notify any or all mortgagees having a security interest in the Owner's Lot or Lots that such Owner is in default in the performance of his obligations under these restrictions, and of those actions taken or proposed to be taken by the Association as a result of the default.

(b) The Right of Abatement, as used in this Section and Article V, Section 5.10

BK 53135 PG 0330

and Article VI, Section 6.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other conditions to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection and reasonable attorneys' fees, together with interest thereon at the rate of twelve percent per annum (12%) to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of Article VIII, Section 8.03 hereof. Notwithstanding the above, unless an emergency situation exists, the Association shall give the violating Owner fifteen (15) days written notice of its intent to exercise its Right of Abatement. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Article IV, Section 4.01 hereof, and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

8.03 Effect of Nonpayment; Remedies of the Association. Any assessments or fines which are not paid when due shall be delinquent. Any assessment or fines delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of twelve percent (12%) per annum. A lien and equitable charge as herein provided for each assessment or fine shall attach simultaneously as the same shall become due and payable, and if an assessment or fine has not been paid within thirty (30) days, the entire unpaid balance of the assessment or fine may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment or fine shall include the late charge established by the Board, interest on the principal amount due at the rate of twelve percent (12%) per annum, all costs of collection (including reasonable attorney's fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment or fine remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments or fines as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments or fines provided for herein, including by way of illustration but not limitation, abandonment of his Lot or by renunciation of membership in the Association, and an Owner shall remain personally liable for assessments, fines, interest and late

BK 53135 PG 0331

charges which accrue prior to a sale, transfer or other conveyance of his Lot.

8.04 Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant, the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, any beneficiary hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

8.05 No Waiver. The failure of the Declarant, the Association, or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

ARTICLE IX

DURATION AND AMENDMENT

9.01 Duration and Perpetuities.

(a) The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect for a period of twenty (20) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. This Declaration may be renewed for an unlimited number of successive twenty (20) year periods in accordance with the terms and provisions of O.C.G.A. Section 44-5-60(d). Every purchaser or grantee of any interest in the Property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby, including any extension and renewal of this Declaration in accordance with the terms and provisions of O.C.G.A. Section 44-5-60(d).

(b) If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of U.S. President Barack H. Obama II.

9.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Superior Court of the county in which the Property is located, without the approval of any Member or mortgagee; provided, however, that (i) in the event that such amendment materially alters or changes any Owner's right to

BK53135 P60332

the use and enjoyment of such Owner's Lot or of the Common Property as set forth in this Declaration or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Members affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgagee, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Article IX, Section 9.02 shall be certified by Declarant as having been duly approved by Declarant, and such Members and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. In addition, so long as Declarant owns at least one (1) Lot held primarily for sale, or has an unexpired option to add Additional Property to the Development, this Declaration may be amended unilaterally at any time and from time to time by Declarant, for those purposes set forth in items (i) through (v) below, and each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Article IX, Section 9.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

9.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Article IX, Section 9.02 hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant is the owner of any real property subject to this Declaration, or has an unexpired option to add additional property to the Development, any such amendment must be approved by Declarant.

BK 53135 PG 0333

(c) The agreement of the required percentage of the Owners and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

ARTICLE X

ANNEXATION

10.01 Submission of Additional Property.

(a) Declarant shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Article X, Section 10.02 of this Article, to submit all or portions of the Additional Property to this Declaration and thereby to cause the Additional Property, or such portions thereof as may be submitted, to become part of the Property. This option may be exercised by the Declarant in accordance with the conditions and limitations set out in Article X, Section 10.02 of this Article, which are the only conditions and limitations on such right.

(b) Shade Tree shall have the option and right from time to time, without the necessity of consent by the Association, the Board or the Owners, but subject to Article X, Section 10.02 of this Article, to submit the following properties to this Declaration and thereby cause such properties to become part of the Property: (i) 3520 Five Forks Trickum Road (Tax Parcel 6-088-006); (ii) 3490 Five Forks Trickum Road (Tax Parcel 6-088-005); and (iii) 3460 Five Forks Trickum Road (Tax Parcel 6-088-157) all located in Lilburn, Georgia. This option may be exercised by Shade Tree in accordance with the conditions and limitations set out in Article X, Section 10.02 of this Article, which are the only conditions and limitations on such right.

10.02 Conditions of Annexation. Any Annexation as permitted in Article X, Section 10.01 of this Article shall be in accordance with the following terms and conditions:

(a) The option to submit portions of the Additional Property may be exercised at any time and from time to time, during a period of twenty (20) years from the date this Declaration is recorded. Notwithstanding the above, Declarant reserves the right to terminate Declarant's option at any time prior to the expiration of the twenty (20) year period.

(b) The legal description of the Additional Property as of the date hereof is set forth in Exhibit "B". The description of the Additional Property may be amended by the Declarant within its sole discretion. Portions of the Additional Property (together with additions thereto made in accordance herewith) may be added at different times, and there are no limitations fixing the

BK53135 PG0334

boundaries of those portions or regulating the order in which any such portions may become part of the Property.

(c) All Lots created on portions of the Additional Property which are added to the Property will be restricted exclusively to residential purposes, in accordance with Article VI of this Declaration, unless otherwise used as Common Property.

(d) The option reserved by Article X, Section 10.01 of this Article may be exercised by the Declarant or Shade Tree alone, as applicable (without the consent of the Association or any Owner), by the execution by the Declarant or Shade Tree of an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of that county in which the Property is located. Any such amendment shall expressly submit that portion of the Additional Property which is to become part of the Property, and upon the exercise, if any, of such option, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become a part of the Property by annexation.

(e) In addition to the procedure outlined in subparagraph (d) above, the option reserved by Article X, Section 10.01 of this Article may be exercised with respect to any portions of the Additional Property, notwithstanding that such Additional Property may be owned by persons, including any individual, individuals, corporations, partnerships or any other type of entity, other than Declarant. Declarant shall exercise this option by an amendment to this Declaration which shall be filed for record in the Office of the Clerk of the Superior Court of the county in which the property lies, together with a plat of that portion of the Additional Property which is to become part of the Property by reason of such amendment. Such plat shall indicate the boundaries of that portion of the Additional Property which is to become part of the Property, the boundaries of all Lots to be located thereon, and an identifying number for each such Lot. Any such amendment shall contain a statement consenting to the annexation of any such Additional Property, together with a reference to a Declaration, (citing the specific Deed Book and Page in which such Declaration is recorded) executed by the owner or owners thereof submitting such Additional Property to this Declaration. Upon the exercise of the foregoing procedure, the provisions of this Declaration shall be understood and construed as embracing all of the Property, including the initial phase and such portions of the Additional Property as have become part of the Property by annexation in this manner.

(f) Any provision of this Declaration to the contrary notwithstanding the provisions of this Article may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the prior written consent of Declarant and Shade Tree.

10.03 Effect of Annexation.

(a) From and after the date of annexation of any portion of the Additional Property, each Lot so added to the Property and the Owners thereof, shall have the same vote, shall share the same obligations and responsibilities, and shall have the same rights and privileges accorded every other Lot previously comprising part of the Property. Upon annexation of each

BK 53135 PG 0335

portion of the Property, as herein provided, the Association shall be deemed to have assumed, automatically, and without the necessity of consent by the Association, the Board or any individual Owners, the covenants to maintain the common Property and the other obligations imposed by this Declaration, as amended from time to time, with respect to that portion of the Additional Property which is then the subject of annexation.

(b) Each Owner by acceptance of a deed to a Lot in the Property, and the Association, shall be deemed to have approved annexation in the manner provided in this Article X.

10.04 Proposed or Future Development of Additional Property. Notwithstanding any other provision contained in this Declaration, or any language contained upon any plat of survey of the Development, Declarant and/or Shade Tree is under no obligation to submit any portion of the Additional Property to the Declaration, or to develop any portion of the Additional Property, regardless of whether it has been annexed in accordance with this Article. Any references to "proposed" or "future" development are for the Declarant's and Shade Tree's reference only, and any portion of the Additional Property may be developed by Declarant and/or Shade Tree as Declarant and/or Shade Tree in their sole discretion sees fit.

ARTICLE XI

LEASES

11.01 Application. In order to assure a community of congenial Owners and thus protect the value of Lots within the Development, the leasing of a Lot, or any portion thereof, by any Owner (other than as provided herein for certain mortgagees and Declarant) shall be subject to the provisions contained in this Article so long as the Property is subject to the Restrictions.

11.02 Notice and Regulation. Any Owner intending to lease his Lot, or any portion thereof, shall give written notice of such intention to the Board of Directors, stating the name and address of the intended lessee, the terms of the proposed lease, a copy of the lease and such other information as the Board may reasonably require. The Board of Directors shall have the authority to make and enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Lot being leased.

11.03 Required Lease Provisions. The Board of Directors may set the minimum lease term; however, said minimum term shall not be set for greater than twelve months (12). All leases and lessees are subject to the provisions of the Declaration and Bylaws. The Owner must make available to the tenant a copy of this Declaration. Any leases of a Lot, or a portion thereof, shall be deemed to contain the provisions of Article XI, Sections 11.03(a), (b), (c) and (d), whether or not said provisions are expressly stated therein, and each Owner covenants and agrees that any lease of his Lot shall contain the language of said provisions, and further, that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant of the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and its incorporation as part of the lease along with the following provisions:

BK53135 PG0336

(a) Lessee acknowledges that promises made to Lessor, as contained in Article XI, Sections 11.03 (a), (b), (c) and (d) of the Declaration of Covenants, Conditions and Restrictions for The Enclave at Nash Springs Subdivision which govern the leased Premises, and which provisions are incorporated within this lease agreement, are made for the benefit of the Association for the purpose of discharging Lessor's duties to the Association through Lessee's performance. In order to enforce those provisions made for the benefit of the Association, the Association may bring an action against Lessee for recovery of damages or for injunctive relief, or may impose any other sanctions authorized by the Declaration and Bylaws, as they may be amended from time to time, or which may be available at law or equity, including but not limited to, all remedies available to a landlord upon breach or default of a lease agreement by a lessee. Failure by the Association to enforce any of its rights shall in no event be deemed a waiver of the right to do so thereafter.

(b) Lessee shall comply strictly with all provisions of the Declaration, Bylaws, and with the administrative rules and regulations adopted pursuant thereto, as any of the foregoing may be lawfully amended from time to time. Lessee shall control the conduct of his or her family and guests in order to assure compliance with the foregoing and shall indemnify and hold Lessor and the Association harmless for any such person's failure to comply. Lessee acknowledges that the violation by Lessee or any occupant or person living with Lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Lessee further acknowledges that the Association has the right to act on its own behalf, or where necessary on behalf of Lessor, as Lessor's attorney-in-fact, to seek any remedies which are available to a landlord upon breach or default of a lease agreement of Lessee.

(c) Upon request by the Association, Lessee shall pay to the Association all unpaid annual assessments and special assessments, as lawfully determined and made payable during and prior to the terms of this lease agreement and any other period of occupancy by Lessee; provided, however, that Lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Association's request. All payments made to the Association shall reduce by the same amount Lessee's obligation to make monthly rental payments to Lessor under the Lease. If Lessee fails to comply with the Association's request to pay assessments, Lessee shall pay to the Association all late or delinquent charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the Premises during the term of this lease agreement and any other period of occupancy by Lessee.

(d) Lessee's rights shall be subject to all rights of the Association and any bona fide mortgage or deed to secure debt which is now or may hereafter be placed upon the Premises by Lessor.

11.04 Enforcement. For the purpose of enforcing the provisions of Article XI, Section 11.03, which shall be incorporated in the provisions of any lease of a Lot, each Owner, by acceptance of a deed or other conveyance of a Lot, hereby irrevocably appoints the Association,

BK53135 PG0337

which may act by any one of its authorized officers, as his attorney-in-fact, to enforce said provisions and to take any action, at law or equity, which could be taken by said Owner against the Lessee should Lessee default in performance under the lease agreement. Each Owner hereby further acknowledges that this power of attorney shall only apply in the event of noncompliance by a Lessee with the provisions of Article XI, Section 11.03, and that the Association, its Board of Directors, employees and agents shall be held harmless by each Owner in exercising the power of attorney herein granted to the Association.

11.05 Expenses of Eviction. In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot, becoming a lien thereon subject to enforcement in accordance with Article VIII, Sections 8.02 and 8.03 of this Declaration, and shall become the personal obligation of the Owner thereof, such being deemed hereby as an expense which benefits the Lot and the Owner thereof.

11.06 Rights of Lessee. Any Lessee charged with a violation of the Declaration, Bylaws, or rules and regulations is entitled to the same rights to which the Owner is entitled as provided in the Association's Bylaws.

11.07 Rights of First Mortgagees. Notwithstanding anything to the contrary herein contained, the provisions of this Article shall not impair the right of any first mortgagee to:

- (a) foreclose or take title to the Lot pursuant to remedies contained in any mortgage;
- (b) take a deed or assignment in lieu of foreclosure; or
- (c) sell, lease, or otherwise dispose of a Lot acquired by the mortgagee.

ARTICLE XII

MISCELLANEOUS

12.01 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

12.02 Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provisions hereof.

12.03 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

12.04 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa.

BK53135 PG0338

12.05 Notices. All notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether by the Declarant, the Association, the ACC, the Owner, or any other person, shall be in writing. All such writings shall be delivered, as may be appropriate, to the following addresses:

- (a) **Declarant:** Overlook 1
2849 Paces Ferry Road, SE, Suite 590
Atlanta, GA 30339
- (b) **Owners:** Each Owner's address as registered with the Association in accordance with the By-Laws

Any written communication transmitted by the United States Mail, with sufficient postage affixed, shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

12.06 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

12.07 Security. Notwithstanding any privacy wall and/or fence serving the subdivision, Declarant makes no representations or warranties with regard to the efficacy of such structures from a safety or security standpoint. Each Owner, occupant, guest or invitee, as applicable, acknowledges and understands that the Declarant is not an insurer and that each owner, occupant, guest and invitee assumes all risks of personal injury and property damage.

12.08 Gwinnett County Board of Commissioners Approval. In addition to the requirements of the Georgia Non Profit Corporation Code, the Articles of Incorporation of the Association and the Bylaws of the Association, the Association may not be dissolved without the prior written consent of the Gwinnett County Board of Commissioners.

12.09 Property Taxes. The Association shall pay all real estate ad valorem taxes for all property which is owned by the Association

ARTICLE XIII

MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on Lots in the

BK53135 PG0339

Development. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

13.01 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, which such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible mortgagees.

13.02 Right to Records. Upon written request in accordance with Article XIII, Section 13.01, all eligible holders shall:

(a) be entitled to attend and observe all meetings of Owners, but not meetings of the Board;

(b) be furnished with copies of annual financial reports made to the Owners; and

(c) be entitled to inspect the financial books and records of the Association during reasonable business hours.

13.03 Insurance.

(a) At all times during the term of this Declaration, the Association, its successors and assigns, shall be required to keep any and all recreational facilities and any other improvements located on the Common Property fully insured by a reputable insurance company authorized to transact business in the State of Georgia with (i) fire, vandalism, malicious mischief and extended coverage insurance in an amount adequate to cover the cost or replacement of such improvements in the event of loss of any and/or all of such improvements, fixtures and contents thereof; and (ii)

BK 53135 PG 0340

public liability insurance in such amounts as shall be determined by the Board of Directors as appropriate for the type of recreational activities which shall be allowed on the Common Property. Any such policies of insurance shall require that the certificate holders and insured by given thirty (30) days prior written notice of any cancellation of such policies.

(b) Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the costs of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the total Association vote entitled to vote thereon, and, (so long as the Declarant has the right to appoint and remove directors) the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited for the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the community in a neat and attractive condition.

(c) The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder for maintenance of the damaged or destroyed property.

13.04 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the cases of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

BK53135 PG0341

13.05 Professional Management. Any agreement for professional management of the Association, or any other contract providing services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee of ninety (90) days written notice.

13.06 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Residence.

13.07 Amendment by Board. Should the Veterans' Administration, the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which may have necessitated the provisions of this Article or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

13.08 Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

13.09 Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

13.10 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

(a) By act or omission, directly or indirectly, seek to abandon, partition, subdivide, encumber, sell, or transfer any real property owned by the Association (other than personal property). The granting of easements for public utilities or other similar purposes consistent with the intended use of the real property, if any, owned by the Association shall not be deemed a transfer within the meaning of this subsection;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of any real property owned by the Association (the issuance and amendment or architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this subsection);

BK 53135 PG 0342

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds received in connection with losses to any real property owned by the Association (other than personal property) for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the real property owned by the Association and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.

[Execution on Following Page]

BK53135 PG0343

IN WITNESS WHEREOF, the Declarant and Shade Tree have caused this Declaration to be duly executed and sealed this 17 day of September, 2014.

Signed, sealed and delivered
in the presence of:

DECLARANT:
FD Communities, LLC,
a Delaware limited liability company

[Signature]
Witness

By: [Signature] (SEAL)
Name: Eric White
Title: VP - Atlanta Division

[Signature]
Notary Public
My commission expires: August 2018
[Notary Seal]



BK53135 PG0344

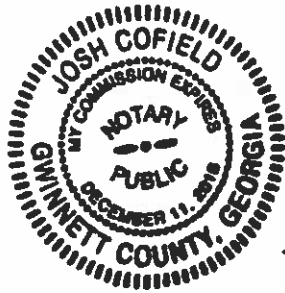
Signed, sealed and delivered
in the presence of:

SHADE TREE:
Shade Tree Communities, LLC,
a Georgia limited liability company

E. Daniel Vance
Witness

By: Daniel J. Nash (SEAL)
Name: Daniel J. Nash
Title: MSR

[Signature]
Notary Public
My commission expires: Dec. 11, 2016
[Notary Seal]



BK 53135 PG 0345

EXHIBIT "A"

ALL THAT TRACT or parcel of land lying and being in Land Lot 88 of the 6th District, Gwinnett County, Georgia, and being all of the property within The Enclave at Nash Springs Subdivision, as per plat recorded in Plat Book 132, Pages ~~83-84~~ seq., Gwinnett County Records, said plat by this reference being incorporated herein and made a part hereof for a complete legal description.

BK53135 PG0346

EXHIBIT "B"

Any real property within a five (5) mile radius of the Property.

BK 53135 PG 0346

EXHIBIT "B"

Any real property within a five (5) mile radius of the Property.