

Varian



2790 - 2849 ASHWOOD PLACE
870 - 882 ASHWOOD WALK
2823, 2828 - 2887 ROYAL BLUFF

Decatur, Georgia

Established 1992

Ashwood Homeowners Association

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

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(‘Declaration’), made this 20th day of October, 1992. by Shawn Development & Investment Corp. , a Georgia corporation (the ‘Company’).

WITNESSETH:

WHEREAS, the Company has subdivided and developed and is developing certain real estate known as Ashwood and desires to create on said real estate a residential community; to provide for the maintenance thereof; to ensure the best use and the most appropriate development and improvement of each of the lots which are subjected to this Declaration by Article I hereof; to protect the owners of said lots and properties against improper use thereof as will depreciate the value of any of said lots and properties; to preserve, as far as practical, the natural beauty of said lots and properties; in general, to ensure that improvements on said lots and properties will be of a high quality; and, by establishing and providing for the enforcement of this Declaration, to enhance the value of the investments of purchasers in said lots and properties; and

WHEREAS, to this end, the Company desires to subject the lots described in Article I hereof to the covenants, restrictions, easements, agreements, charges and liens hereinafter set forth, each of which is for the protection and benefit of said lots and properties and for the benefit of all subsequent owners of said lots and properties, and each of which shall inure to the benefit of and run with each of said lots; and

WHEREAS, the Company has caused to be incorporated under the laws of the State of Georgia a nonprofit corporation called Ashwood Homeowners Association, Inc. (hereinafter the “Owners”), which shall have the power and responsibility to maintain all areas and features such as entrance landscaping “landscape areas” (including entrance walls and entrance landscaping, open areas, community fencing (fencing and landscaping designated by the association as fencing and landscaping for the benefit of the community as a whole), and retention facilities as defined on the final recorded subdivision plat, which features are intended as a benefit to the community as a whole. As a beneficiary of this Declaration and as agent of the owners of lots in Ashwood (hereinafter referred to singularly as “Owner” and collectively as “Owners”, as further defined in paragraph (a) of Article IV, Section 1 below), shall have the power and responsibility to administer and enforce the provisions of this Declaration and to collect and disburse the assessments and charges hereinafter created, and shall have the other powers and responsibilities set forth in the Association’s Articles of

Incorporation and Bylaws as amended from time to time;

NOW, THEREFORE, the Company hereby declares that all of the property described in ~~Exhibit “A”~~ and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) and the lots described in Article I hereof are hereby subjected to this Declaration and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration and to the covenants, conditions, restrictions, easements, agreements, charges and liens (sometimes referred to as the “covenants, restrictions and easements”) hereinafter set forth. Every grantee of any interest in any lot made subject to this Declaration, by acceptance of a deed or other conveyance of such interest, whether or not it shall be so expressed in any such deed or

other conveyance, whether or not such deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to all the terms and conditions hereof and shall be deemed to have assented to all of said terms and conditions.

ARTICLE I PROPERTY HEREBY SUBJECTED TO THIS DECLARATION

The lots which are, by the recording of this Declaration, subjected to the covenants, restrictions and easements hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration, are all those certain lots shown on that certain plat of subdivision recorded in Plat Book 95, Page 1, DEKALB County, Georgia Records and incorporated and made a part hereof by this reference. Said plat is hereinafter referred to as the "Plat", said lots as shown on the Plat and as defined in Article VII, Section 8, paragraph (b) hereof are hereinafter referred to singularly as the "Lot" and collectively as the "Lots", and the Lots together with all of the other real property shown on the Plat are hereinafter referred to as the "Property".

ARTICLE II HOMEOWNERS ASSOCIATION

Section 1. Name of Homeowners Association. The name of the homeowners association shall be Ashwood Homeowners Association, Inc.

Section 2. Membership of Association. The Association shall have two (2) classes of voting membership which shall be known as Class A and Class B:

- (a) With the exception of the Company, every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who is a record owner of a fee interest in any lot which is a part of the property subject to the Declaration, or which otherwise becomes subject, by the terms of this Declaration as amended, to assessment by the Association, shall be a Class A member of the Association; provided, however, that any such person, group of persons, corporation, partnership, trust or other legal entity who holds such interest solely as security for the performance of a debt or obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote for each lot in which such member holds the interest required for Class A membership. The Class B member shall be the Company or its nominee or nominees, and shall include every person, group of persons, corporation, partnership, trust or other legal entity, or any combination thereof, who shall obtain any Class B membership by assignment from the Company which specifically assigns the rights of Class B membership.

- (b) The Class B member or members shall have one (1) Class B membership for each Lot in which such member holds the interest otherwise required for Class A membership. Each Class B member shall be entitled to four (4) votes for each Class B membership which it holds. Each Class B membership shall lapse and become a nullity on the first to happen of the following events:
- (i.) Thirty (30) days following the date on which the total authorized issued and outstanding Class A memberships equal the total authorized issued and outstanding Class B memberships multiplied by four (4); or
 - (ii.) On December 31, 1999; or
 - (iii.) Upon the surrender of said class B memberships by the then holder thereof for cancellation on the books of the Association. Upon lapse or surrender of any of the Class B Memberships as provided for in this paragraph, the Company or its successor in interest shall thereafter remain a Class A member of the Association as to each and every Lot in which the Company then holds the interest otherwise required for such Class A membership. The members of the Association shall have no preemptive rights, as such members, to acquire any memberships of this Association that may at any time be issued by the Association except as may be specifically provided in this paragraph.

Both Class A and Class B members and hereinafter referred to singularly as 'Member' and collectively as 'Members'.

(c) Duties of Association.

- (i) The Association shall have the power and responsibility to maintain those portions of which are so designated herein and, as a beneficiary of the Declaration and as agent of the Owners, the Association shall have the power and responsibility, together with the Owners, to administer and enforce the provisions of this Declaration and to collect and disburse the assessments and charges hereinafter authorized. The association shall have the other powers and responsibilities which shall be set forth in the Association's Articles of Incorporation and Bylaws as amended from time to time.

ARTICLE III EASEMENTS

Section 1. Retention Area and Landscaped Frontage. Subject to the provisions of these covenants, restrictions and easements, the rules and regulations of the Association, and any fees or charges established by the Association, the Association itself, every Member and every tenant and guest of each such Member shall have an easement over lot areas designated on the Plat “The Landscape Areas”), and such easement shall be appurtenant to and shall pass with the title of every Lot subject to this Declaration and shall not be subordinated to the lien of any mortgage or Deed to Secure Debt encumbering any portion of the Property.

The rights and easement of use and enjoyment in and through the “Landscape Areas” created hereby shall be limited to the right of the Association to maintain the Landscape Areas in a functional and slightly manner, which right shall include the right of the Association to ingress and egress over lots where “Landscape Areas” are located as necessary to enforce such right.

Section 2. Maintenance, Repair and Replace. The Association is hereby granted a perpetual easement, as a beneficiary of this Declaration, as agent of the Owners and all of the Property within Ashwood and pursuant to its power and responsibility, subject to the terms and conditions of this Declaration, to maintain, repair and replace the “Landscape Areas and Improvements located thereon along the frontage of Katie Kerr Road” on the Lots within Ashwood (where the landscaping has been established for the benefit of the community as a whole) over, through and across each Lot; this easement refers to the area between the wall and the right-of-way of Katie Kerr Road, and the title of each Lot shall pass subject to the easement granted in this Section 2 and such easement shall not be subordinated to the lien of any mortgage or deed to secure debt encumbering any portion of any Lot or the Property.” As used herein, Landscape Area shall mean and refer to the landscape areas along the frontage of Katie Kerr Road on Lots within Ashwood.

Section 3. Limit of Association’s Liability. In consideration of the Association’s undertaking to maintain, repair and replace the Retention Areas, community fencing, and landscape areas and to maintain, repair, replace and Improve, each Owner agrees that the Association, its officers, directors agents and employees shall not be liable for any act or omission during the performance of such maintenance, repair, replacement or improvement services unless gross negligence or an intentional act or failure is the proximate cause of such liability.”

ARTICLE IV ASSESSMENTS

Section 1. Creation of Lien for Personal Obligations of Assessment. Each Owner of a Lot, by acceptance of a deed therefore, whether it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments which may or shall be levied by the Association; (2) special assessments, such assessments to be established and collected as hereinafter provided; and (3) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. The annual, special and specific assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, including reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. The recording of this Amendment shall constitute record notice of existence of the lien, and no further recordation of any claim of lien for assessments shall be required. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the Association as provided in Section 9 of Article IX hereof such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement.

In the event that the holder of a first priority mortgage or second purchase money mortgage of record, provided that neither the grantee or any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments under the Georgia Property Owners Association Act or under the Declaration, on account of any period prior to the acquisition of title; provided, however, that the unpaid share of the assessment or assessments shall be deemed to be a common expense collectable from all of the Lots and the Owners thereof, including such holder or other person and his or her successors, successors-in-title, and assigns. A foreclosure shall not relieve the mortgagee in possession or the purchaser at any foreclosure sale from any liability from any assessments becoming due after such foreclosure.

No Owner may waive or otherwise exempt himself or itself from liability for the assessments provided herein, including, but not limited to, non-use of the Common Areas or abandonment of a Lot. No diminution or abatement of any assessment or setoff shall be claimed or allowed by reason of any failure of the Association or the Board to take some action or perform some function required to be taken or performed by the Association or the Board hereunder, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any governmental authority, it being acknowledged that the obligation to pay assessments is a separate and independent covenant on the part of each Owner.

Section 2. Computation of Annual General Assessment. It shall be the duty of the Board to prepare a budget covering the estimated cost of operating the Association during the coming year. The budget may include a capital reserve contribution in accordance with a capital budget that may be separately prepared by the Board. The Board shall cause a copy of the budget and the general assessment to be levied therefrom and the due date of the annual assessment to be mailed to each Member at least thirty (30) days prior to the date on which the budget will become effective. The budget and general assessment established therefrom shall be and become effective if approved by Members representing at least a Majority of the total Association vote. Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, the budget and assessments in effect for the current year shall continue for the succeeding year.

Section 3. Special Assessment. In addition to other assessments authorized herein, the Association may in its discretion levy special assessments in any year for the purpose of paying the costs of unexpected maintenance, repairs or replacement of the Common Area or the cost of other unanticipated expenses, needs or obligations of the Association incurred or projected to be incurred in the performance of its obligations in this Declaration; provided that any such assessment shall have the approval of at a majority of the Members who are eligible to vote on such proposed assessment who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Date of Commencement of Assessments; Due Dates. The annual assessments provided for in this Article IV shall commence as to each Lot on the date of the recording of this proposed Amendment of the Declaration and continue for each year thereafter. Any assessment not paid within ten (10) days shall become delinquent and shall bear interest at the rate of one and one-half (1 ½ %) percent per month. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

The Association shall, within seven (7) days after written request therefor, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment had been paid. A reasonable charge, as determined by the Association's Board of Directors, may be made for the issuance of such certificates. Such certificates shall be conclusive evidence, against all by the Owner, of payment of any assessment therein stated to have been paid.

Section 5. Purpose of Assessment. The annual and special assessments levied by the Association may be spent or use in furtherance of any corporate purpose including the maintenance and repair of the Retention Area and the Landscape Area.

Section 6. Specific Assessment. The Board shall have the power to specifically assess pursuant to this Section, as it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future. The Board may specifically assess Lots for the following Association expenses, except for expenses incurred for the maintenance and repair of items which are the maintenance responsibility of the Association as provided herein,:

- (a) any Common Expense benefiting less than all of the Lots shall be specifically assessed equitably among the Lots so benefited, as determined by the Board of Directors;
- (b) any Common Expenses occasioned by the conduct of less than all of the Owners or their family, guests, tenants, licensees, or invitees shall be specially assessed against the Owner of such Lots whose conduct, or the conduct of such Owners' family, guests, tenants, licensees, or invitees, occasioned any such Common Expenses; or
- (c) any Common Expenses significantly disproportionately benefiting all of the Lots shall be assessed equitably among all of the Lots in the Community as determined by the Board of Directors.
- (d) other than for limited Common Properties which may be expressly designated as such in this Declaration and assigned to fewer than all Lots, nothing contained in subparagraphs (a) or (c) above, shall permit the Association to specifically or disproportionately allocate common expenses for period maintenance, repair and replacement of any portion of the Common Properties or Lots which the Association has the obligation to maintain, repair or replace.

A specific assessment assessed hereunder shall be and become a lien against such Lot(s) and the personal obligation of the Owner(s) thereof. A specific assessment may be collected in the same manner as the annual assessment assessed hereunder.

Section 7. Subordination of the lien. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest in the maximum amount allowed by law, costs of collection including court costs, the expenses required for the protection and preservation of the Lot, and reasonable attorneys' fees actually incurred, all as further provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be prior and superior to all other liens whatsoever except:

- (a) liens for ad valorem taxes on the Lot; or
- (b) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Amendment; or
- (c) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee or any successor grantee on the mortgage is the seller of the Lot; or
- (d) the lien of any mortgage to Grantor duly recorded in the land records of the county where the Property is located and all amounts evidenced pursuant to such mortgage and secured thereby in accordance with the terms of such instrument.

Section 8. Remedies of Association for Non-Payment of Assessment. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid when due shall also include:

A late or delinquency charge not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment thereof not paid when due;

Interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto at the rate of ten percent (10%) per annum from the date the same was first due and payable;

The costs of collection, including court costs, the expenses required for the protection and preservation of the Lot and reasonable attorneys fees actually incurred; and

The fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure, or until judgment rendered in the action is otherwise satisfied.

If any delinquent assessment or portion thereof is not paid within ten (10) days after written notice is sent to the Lot Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board and declared due and payable in full, and legal proceedings may be instituted to enforce such lien and personal obligation. Such notice shall be sent by certified mail, return receipt requested to the Lot Owner, both at the address of the Lot and at any other address or addresses as the Lot Owner may have designated to the Association, in writing, specifying the amount of the assessments then due and payable, together with authorized late charges and interest accrued thereon. The lien for such assessments may be foreclosed by the Association, suit, judgment or foreclosure in the same manner as other liens for the improvement of real property. The Board of Directors, acting on behalf of the Association, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. The Association shall, in addition to and not in lieu of the foregoing remedy, have the right to bring an action against the Lot Owner to recover all assessments, interest, late fees, costs of collection (including court costs and reasonable attorneys fees actually incurred), fines and other charges for which such Lot Owner is personally obligated pursuant to the terms hereof. The lien for assessments shall lapse, and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, which first became due and payable more than three (3) years prior to the date upon which the notice contemplated in this Section is given or more than three (3) years prior to the institution of an action therefore if an action is not instituted within ninety (90) days after the giving of the notice.

Section 9. Statement from Association. Any Owner, mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or a lender considering the loan of funds to be secured by a Lot, shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that Lot. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association, within five (5) business days from receipt from such request, to mail or otherwise furnish a statement regarding amounts due and payable at the expiration of such five (5) day period with respect the Lot involved to such address as may be specified in the written request therefore shall cause the lien for assessments created hereunder to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be,

and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and upon every Owner. Payment of a Ten Dollar (\$10.00) fee is required as a prerequisite to the issuance of each such statement, and the payment of the fee shall accompany any such request.

ARTICLE V PROTECTIVE COVENANTS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than a single family dwelling and garage.

Section 2. Architectural Control.

No fence or wall shall be erected, placed or altered on any lot nearer to any street than the point on the front facade of the structure that is furthest from the street. No type of chain link fencing will be allowed except in accordance with Section 20. No clothesline will be allowed in any yard. No window air conditioning units will be permissible without the prior approval of all members of the architectural Control committee. Any changes to the front or side exterior elevation of any structure, including but not limited to permanent changes in color or appearance or the enclosure of any garage or patio for living space, must be approved by all members of the Architectural Control Committee. All Architectural Control Committee approvals shall be as provided in Article VI, Section 1, paragraph (b) below.

Section 3. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance in the neighborhood.

Section 4. Temporary Structures. No accessory structure, including but not limited any trailer, shack, shed, detached garage, barn or other out building, shall be used on any Lot.

Section 5. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

Section 6. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. A maximum of four (4) pets per household.

Section 7. Sewage Disposal. No Individual sewage disposal system shall be permitted on any Lot.

Section 8. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot.

Section 9. Antennas. The Board may issue rules and regulations regarding the erection of exterior antennas, including, without limitation, satellite dishes; provided such rules and regulations do not prevent reception of acceptable quality signals or cause an unreasonable delay or cost to the Owner erecting such antenna. In no event shall any such antenna in excess of twelve (12) feet in height above the roof line or any satellite dish in excess of one meter in size be permitted in the Community except if installed by the Board. The Board shall have the right (but not the obligation) to erect a master antenna, satellite dish or other similar master system for the benefit of the entire Community. Each Owner acknowledges that this provision benefits all Owners and each Owner agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost effective way to transmit or receive the signals sought to be transmitted or received.

Section 10. Playground Equipment. All playground equipment should be placed in the rear of the property.

Section 11. Above ground pools. Above ground pools shall not be permitted on any Lot. No pool may be situated any closer than twenty (20) feet from the subdivision's exterior boundary line without the approval of all members of the Architectural Control Committee.

Section 12. Use of Concrete Blocks, etc. Whenever buildings erected on any Lot or parcel are constructed in whole or in part of concrete blocks, cinder blocks or other fabricated masonry block units, such blocks shall be veneered with brick, natural stone, or other material approved by the Architectural Control Committee, over the entire surface exposed above finish grade.

Section 13. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers and shall be removed on a regular but not less than weekly basis. Garbage and trash containers shall be located abutting the rear or sides of houses, screened from view and kept in a clean, sanitary condition.

Section 14. Building Location. No buildings shall be located nearer to a street or side line than indicated by the building line restriction shown on the Plat or as approved by Dekalb County. For the purposes of this Article V, eaves, steps, portes cocheres (attached carports) and open porches not covered by roof structures shall not be considered as a part of a building; provided however, that this shall not be construed to permit any portion of the building or construction on any Lot to encroach upon another Lot or upon the easements reserved in Article III hereof.

Section 15. Dwelling Size. One-story dwelling buildings erected on any Lot shall have not less than 1,200 square feet or heated floor space each. Multi-level buildings such as two stories, split-levels and tri-levels shall have not less than 1,200 square feet of heated floor space. The foregoing minimum space requirements, within the sole discretion of 51% of the members of the Architectural Control Committee, can be waived in writing but not below 1,200 square feet. These minimum floor space requirements shall be exclusive of any space in garages, porches, and finished basements, whether heated or not.

Section 16. Garages and Carports. All garages shall be enclosed with doors. Open carports are not permitted on any Lot.

Section 17. Vehicles. Mobile homes, campers or commercial vehicles may not be parked permanently (longer than a 48 hour period) on or adjacent to any Lot. No disabled, wrecked, or otherwise unusable truck, automobile, motorcycle or similar equipment may be brought onto any Lot for the purpose of dismantling same or for any purpose other than the complete restoration of a personal vehicle. Any such restoration or repairs must be performed in an inconspicuous manner. Adequate off—street parking shall be provided by each Owner for the parking of automobiles owned by such Owner, and Owners shall not park their vehicles on adjacent roads and streets as a matter of course.

Section 18. Mail Boxes. Mail boxes of a type consistent with the character of the neighborhood or designated by the Company shall be selected and placed by the builders for the benefit of each lot and shall be maintained by the Owners to compliment the residences and the neighborhood.

Section 19. Zoning. Zoning regulations applicable to the Property subject to this Declaration shall be observed. In the event of any conflict between any provision of such zoning restrictions and the restrictions of this Declaration, the more restrictive provisions shall apply.

Section 20. Fences. No fence shall be constructed or erected that exceeds six (6) feet in height. No fence existing on the date of these Amendments shall be replaced by a fence that exceeds the height of the existing fence. All fences must be constructed of natural wood, such as cedar. Split rail fences with dark coated mesh backings shall be permitted. There shall be no chain link fence on any Lot, unless it is dark green or black in color and constructed on the subdivision's exterior boundary line.

Section 21. Appeals. Any Owner dissatisfied with a decision rendered by the Architectural Control Committee ("the Committee") may appeal that decision by submitting to any member of the Committee a written Notice of Appeal, within ten (10) calendar days after the date of the Committee's decision. The Notice shall fully state the basis for the Owner's dissatisfaction with the Committee's decision and the reasons supporting a reversal of the decision. The Owner's appeal will be considered at the next regularly scheduled meeting of the Association. The decision of the Committee that is the subject of the appeal shall be reversed upon the affirmative vote of at least two-thirds of the Lots in Ashwood. The vote of the Association shall be the final determination of the appeal.

Section 22. Woodpiles, etc. Owner shall be entitled to maintain or construct woodpiles, decorative lighting, sculptures, artificial vegetation, flags and the like, having written approval of the Board of Directors.

ARTICLE VI Architectural Control Committee

Section 1. Membership. The Board shall establish and maintain an Architectural and Environmental Control Committee consisting of at least five (5) members. The Board shall have the exclusive right and authority at any time, and from time to time, to appoint and remove members of the Architectural Control Committee with or without cause.

Section 2. Procedure. No Improvements shall be erected, constructed, placed, altered, remodeled, maintained or permitted to remain on any portion of the Property, including on any Lot, until plans and specifications, in such form and detail as the Architectural Control Committee may deem necessary, shall have been submitted to the Architectural Control Committee and approved within thirty (30) days after submission in writing. If an owner violates this provision, he should do so at his own risk, whether the Association files immediate legal action or exercises other legal remedies to have the violation removed,

Section 3. Plans and Specifications. The Architectural Control Committee shall have the right to approve any submitted plans or specifications that are in compliance with this Declaration if the Architectural Control Committee reasonably determines that such plans and specifications are consistent with the Community-Wide Standards considering among other things, the following:

- (a) architectural character and nature, shape, color, size, material, location and kind of all proposed Improvements, taking in consideration the aesthetic quality of any Residential Unit with respect to height, form, proportion, volume, sitting and exterior materials;
- (b) adequacy of lot dimensions for proposed improvements;
- (c) conformity and harmony of exterior design with neighboring Lots and Improvements;
- (d) relation of topography, grade and finished ground elevations to that of neighboring Lots and Improvements;
- (e) screening of mechanical and other installations;
- (f) functional appropriateness with respect to vehicle handling, sitting of buildings (both in relationship to one another and in relationship to buildings, existing or proposed, located on other Lots), drainage, utility service systems and lighting;
- (g) extent and quality of landscaped areas; or
- (h) compliance with the Community-Wide Standard.

Prior to the commencement of work on Improvements on any Lot, the Owner of such Lot shall submit detailed information in writing regarding the proposed Improvements including site plans and two (2) full sets of final drawings and specifications (which shall be sealed and certified by duly licensed architect or engineer if so required by the Architectural Control Committee) (hereinafter the “Plans”), showing or stating all aspects of the proposed Improvements or modifications or alterations thereto including but not limited the following:

- (a) location of all structures, street rights- of-way and setback lines;
- (b) location, color, size, texture and style of all walks, driveways and curve lines;
- (c) all landscaping, including location, height, spread, type and number trees and shrubs and location and type of all ground cover and material, and existing trees and limits of clearing and grading;
- (d) location, height, intensity and fixture type of all exterior lighting;
- (e) location, size, color and type of all fencing;
- (f) architectural floor plans, elevation, wall sections and details of the Residential Unit;
- (g) building material and color information, including samples if requested; and
- (h) size and square footage and height of the Residential Units or all other Improvements.

Should the Architectural Control Committee fail either to approve or disapprove the Plans within thirty (30) days after submission in accordance with the terms of this Declaration, it shall be conclusively presumed that the Architectural Control Committee has approved the Plans. Approval of any Plans with regard to a Lot shall not be deemed to be a waiver of the Architectural Control Committee’s right, in its discretion, to disapprove similar plans and specifications, or any features or elements included therein, for any other Lot.

If the approved work has not commenced within one (1) year from the date the Plans are approved, then the approval given pursuant to this Article shall be deemed to be automatically revoked by the Architectural Control Committee, unless the Architectural Control Committee extends the time for commencing work. In any event, all work covered by such approval shall be completed within sixty (60) days of the commencement thereof, except for such period of time as completion is rendered impossible or would result in great hardship due to strikes, fires, national emergencies, critical material shortages or other intervening forces beyond the control of the Owner, unless the Architectural Control Committee extends the time for completion.

Section 4. Release of Liability. Each Owner hereby releases the Association, the Board of Directors, and the Architectural Control Committee from any and all liability for (i) any defects in any plans and specifications submitted, revised or approved pursuant to the terms of this Declaration, (ii) any loss or damage to any Person arising out of the approval or disapproval of any such plans and specifications, (iii) any loss or damage arising from the noncompliance with such plans and specifications or any governmental ordinance or regulation, or (iv) any defects in work undertaken pursuant to such plans and specifications, regardless of whether such claim arises by reason of mistake in judgment, negligence or nonfeasance by the Architectural Control Committee.

Section 5. Compliance with Law. All Improvements, including Residential Units, constructed, erected, placed, altered, remodeled, maintained or permitted on any Lot shall comply with any and all applicable federal, state, county and municipal zoning and building restrictions, including, but not limited to, grading, clearing, construction of impervious surfaces, building and other construction rules and regulations.

Section 6. Inspection. The Architectural Control Committee, or its designee, shall have the right during reasonable business hours to enter upon and inspect any Lot or Improvement to determine whether the approved Plans are being followed or adhered to. If the Architectural Control Committee shall determine that such Plans have not been approved or that the Plans are not being followed or adhered to, the Architectural Control Committee may in its discretion give the Owner of such Lot written notice of such violation. If such violation is not corrected, the Board of Directors shall have the right to stop further work and/or require the removal or correction of any work in place that does not comply with the approved Plans or this Declaration and to take such other action as may be allowed under this Declaration, the By-Laws or under applicable law.

ARTICLE VII

Section 1. Duration. The terms and provisions of this Declaration shall run with and bind the Property, shall be and remain in effect, and shall inure to the benefit of and be enforceable by the Company, the Association or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded.

This Declaration shall be automatically renewed and extended beyond said 20-year term for successive periods of ten (10) years each unless, at the end of the initial twenty (20) years or at any time thereafter, two-thirds (2/3) of the Members shall execute an agreement terminating some or all of the provisions contained in the Declaration and shall then record the termination agreement in the DeKalb County, Georgia; provided, however, that each such termination agreement shall specify which such provisions of the Declaration are so terminated. Every purchaser or grantee of any interest in any property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the provisions of this Declaration may be extended as provided above.

Section 2. Notices. Any notice required to be sent to any Member pursuant to any provision of this Declaration shall be served by depositing such notice in the mails, post-paid, regular mail, addressed to the Member for whom it is intended at his or her last known place of residence, or to such other address as may be furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

Section 3. Enforcement. Every Owner and every occupant of any Lot, and their respective families, guests, invitees, licensees, successors and assigns, shall comply with this Declaration, the By-Laws and the Rules and Regulations of the Association, as they now exist and may be amended from time to time. Except as otherwise provided herein, the Association shall send written notice of any violation to the violating Owner, who shall have ten (10) days from the date of the notice (in the event of an emergency, as determined by the Board of Directors, only reasonable notice is required) to correct and cure the violation and comply with this Declaration,

the By-Laws or the Rules and Regulations. Additionally, any lack of such compliance shall entitle the Board of Directors to impose and assess fines and other sanctions against the Owner of the Lot, which shall be collected as provided herein for the collection of assessments. Furthermore, any lack of such compliance shall authorize the Board of Directors to institute legal action against the Owner and occupant of a Lot to recover damages as a result of such party's action or for injunctive relief, or both, which action shall be maintainable by the Board of Directors on behalf of the Association or, in a proper case, by any aggrieved Owner. Failure by the Board of Directors or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors shall have the right to record in the appropriate land records a notice of violation of the Declaration, the By-Laws, or the Rules and Regulations, and assess the cost of the recording and removing of such notice against the Owner responsible for the violation of such documents.

In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon any portion of the Property, including Lots and Residential Units, to abate or remove, using such force as may be reasonably necessary, any Improvement, Residential Unit, thing or condition which violates this Declaration, the By-Laws, or the Rules and Regulations. The Board shall give the violating Owner ten (10) days written notice of its intent to exercise self-help (except in the event of an emergency, as determined by the Board of Directors in which event only reasonable notice is required). All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 4. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 5. Indemnification. In accordance with Section 14-3-850, et seq., of the Georgia Nonprofit Corporation Code, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the name of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any

indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be liable as Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is available at reasonable cost, as determined in the sole discretion of the Board.

Section 6. Captions. The captions of each Section hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular sections to which they refer.

Section 7. Gender. The masculine gender shall be construed to include a female or a corporation where the context so requires.

Section 8. Rules and Regulations. The Association, acting through its Board of Directors, may promulgate Rules and Regulations governing the use and occupancy of the Lots and all Improvements located thereon, and the Common Area and governing the operation of the Community. Copies of all Rules and Regulations, and any changes thereto, must be furnished by the Association to all Owners prior to their effective date. The Rules and Regulations shall be binding upon all Owners and their families, tenants, guests, licensees, invitees and agents. The Owner of each Lot shall be responsible for the conduct of his family, tenants, guests, licensees, invitees and agents and shall ensure that all of the foregoing individuals comply with the terms of this Declaration, the Bylaws and Rules and Regulations.

ARTICLE VIII Amendments

This Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Members representing two-thirds (2/3) of the total Association vote. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to the Declaration shall become effective upon recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within two (2) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or by-laws. Agreement of the required majority of Lot Owners to any amendment of this Declaration shall be evidenced by a certification signed by the president of the Association attesting that the proper vote has been obtained.

ARTICLE IX Leasing of Residential Units

Section 1. General. “Leasing,” for purposes of this Declaration, is defined as regular occupancy of a Unit by any person other than the Owner, with or without a written agreement. In order (i) to protect the equity of the Owners; (ii) to carry out the purposes for which Ashwood was formed by preserving the character of Ashwood as a homogeneous residential community of predominantly owner-occupied homes and to prevent Ashwood from assuming the character of a renter-occupied subdivision; (iii) to assist in compliance with the eligibility requirements for financing in a secondary mortgage market; and (iv) for other purposes, leasing of Residential Units at Ashwood shall be subject to the terms and conditions of this Article IX and shall be limited to twenty-five percent (25%) of the total number Residential Units located at Ashwood. Residential Units may be leased only in their entirety; no fraction or portion may be leased. There shall be no subleasing of Residential Units or assignment of leases unless approved in writing by the Board of Directors. No transient lessees may be accommodated in a Unit. No Unit may be leased by an Owner who has a past due balance on any assessment account for any Unit at Ashwood or whose is in violation of the Declaration, the by-laws or the Rules and Regulations. All leases shall be in writing and approved by the Board of Directors. All leases must be for a minimum term of one (1) year. Each Unit Owner shall give each lessee copies of the Declaration, by-laws and the Rules and Regulations of the Association. The Owner shall hire a property management company to ensure the lease is enforced.

Section 2. Specific Lease Terms. Each lease of a Unit shall contain these express terms, but if not included in the lease, these terms shall be deemed incorporated into such Owner’s lease by existence of this covenant. Any lessee, by occupancy of a Unit, agrees to the applicability of this covenant and to the incorporation of this language into such lessee’s lease with the Owner:

Section 3. Liability for Assessments, Fines and Other Charges. Lessee agrees to be personally obligated for the payment of all assessments, fines and other charges levied against the Owner which become due during any period of occupancy by the lessee or which become due as a consequence of lessee’s activities, including, but not limited to, activities which violate the provisions of

the Act, or the Declaration, bylaws or Rules and Regulations of the Association. This provision shall not be construed to release the Owner from any such obligation.

Upon the failure of an Owner to pay such assessments, fines and other charges, and upon the request by the Association, a lessee shall pay to the Association all rents and other charges payable to the Owner. All such payments made by the lessee to the Association shall reduce, by the same amount, lessee's obligation to make monthly rental payments to the Owner. It shall be the responsibility of the Association and not of the lessee to account to the Owner for funds actually received by the Association from the lessee. In the event the lessee fails to comply with the Association's request to pay such rents and other charges to the Association, lessee shall pay to the Association all late charges, fines, interests and costs of collection, including reasonable attorneys fees actually incurred, to the same extent lessee would be required to make such payments to the Association if the lessee were the owner of the Unit.

Section 4. Compliance with Declaration, by-laws and Rules and Regulations of the

Association. Lessee agrees to abide and comply with all provisions of the Declaration, by-laws and Rules and Regulations of the Association. Lessee shall control the conduct of all other occupants and guests of lessee at Ashwood in order to assure compliance with the forgoing. The Owner acknowledges he is responsible for all violations, losses and damages caused by his lessee and lessee's guests, notwithstanding the fact that such occupants and guests may be fully liable for their failure to comply with the Declaration, by-laws and Rules and Regulations of the Association. The Owner further agrees that any fines or other charges may be assessed against him due to the conduct of his lessee or the lessee's guests.

Section 5. Violations. Any violation of the Declaration, by-laws or Rules and Regulations of the Association by a lessee shall be deemed to be a default and violation of the terms of a Owner's lease, authorizing the Owner to terminate such lease without liability and to evict the lessee in accordance with Georgia law. Each Owner hereby designates and appoints the Association, acting by and through the Board of Directors, as such Owner's attorney-in-fact to do any and every act that the Owner may do, and to exercise all rights of the Owner under the lease, to enforce any breach of such lease against the lessee thereunder, including the power to evict the lessee from the Unit. In the event the Association proceeds to evict any lessee, all costs, including reasonable attorneys fees actually incurred, associated with the eviction shall be specially assessed against the Owner as an expense which benefits the leased Unit and the Owner thereof. The Association shall have the authority to enforce all rights under any lease as a third party beneficiary and shall have all rights and remedies set forth herein.

Section 6. Applicability. Any leases existing on the date on which this Declaration is recorded shall not be subject to the terms of this Declaration. Such leases shall continue in accordance with the terms of the Declaration as it existed prior to the recording date of this Declaration. However, any assignment, extension, renewal or modification of any such lease, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and a commencement of a new lease which must comply with the provisions of this Declaration. All Owners who are currently leasing shall file copies of their leases with the Board of Directors within fifteen (15) days of the date on which this Declaration is recorded in the DeKalb County, Georgia records. This Declaration shall not apply to any leasing transaction entered into by the holder of any first mortgage on

a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

Section 7. Use of Common Elements. By execution of a lease to the Association, the Unit Owner shall be deemed to transfer and assign to the lessee thereunder for the term of the lease any and all rights and privileges that the Owner has to use the Common Elements.

Section 8. Undue Hardship. Notwithstanding the limitation in subsection (c) of this Article IX, the Board of Directors, in their discretion, shall be empowered to allow reasonable leasing of Residential Units, upon written application, to avoid undue hardship upon an Owner, including, but not limited to, those instances where (i) an Owner must relocate his residence and cannot, within ninety (90) days from the date that the Unit was placed on the market, sell the Unit for the current fair market value (as may be determined by an appraiser or any other person approved by the Board and paid for by the Owner), after having made reasonable efforts to do so; (ii) the Owner dies and the Unit is being administered by his estate; (iii) the Owner temporarily relocates outside the metropolitan Atlanta area and intends to return to reside in the Unit; (iv) the Unit is to be leased to a parent, brother, sister, or child of the owner. Those Owners who are required to demonstrate and who have demonstrated that the inability to lease their Unit would result in undue hardship and have obtained the requisite approval of the Board may lease their Residential Units for such duration as the Board reasonably determines is necessary to prevent undue hardship. In the event the Board permits an Owner to lease a Unit for a stated period of time in order to prevent undue hardship, such Owner shall immediately discontinue leasing of his Unit at the end of such period of time unless the Board renews or extends permission to lease. Any Owner who believes that he must lease his Unit to avoid undue hardship shall submit a written application to the Board at least thirty (30) days in advance of the proposed commencement of such lease term, setting forth the circumstances necessitating the leasing, the name of the proposed lessee, a copy of the proposed lease, and such other information as the Board may reasonably require. However, failure of the Board to approve or disapprove such written application to allow for leasing due to undue hardship within thirty (30) days from the date of its submission shall automatically deem such application approved by the Board.

ARTICLE X Compliance with Declaration, Bylaws, Rules and Regulations

Every Owner and all those entitled to occupy a Lot shall comply strictly with all lawful provisions of the Georgia Property Owners Association Act, with any reasonable rules and regulations of the Association, the provisions of the Declaration, and with the provisions of the Bylaws of the Association. Any lack of such compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in any proper case, by one or more aggrieved Owners on their own behalf or as a class action. The Association shall be empowered to impose and assess fines and other sanctions against the Owner of the Lot, which shall be collected as provided herein for the collection of assessments.

ARTICLE XI Election to be Governed by the Georgia Property Owners Association Act

The Property shall be subject to and governed by the Georgia Property Owners Association Act, set forth in Article VI of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, as the same now exists or may be amended from time to time.

ARTICLE XII Definitions

The following words, when used in this Declaration or in any amendment to this Declaration shall have the following meanings:

Section 1. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as such document may be amended from time to time.

Section 2. "Association" shall mean and refer to Ashwood Homeowners Association, Inc., a non-profit, non-stock, membership corporation incorporated under the laws of the State of Georgia, and its successors and assigns.

Section 3. "Board of Directors" or "Board" shall mean and refer to the governing body of the Association, having such duties as are provided in the Declaration, the by-laws, the Articles of Incorporation, the Georgia Non-Profit Corporation Code and under other applicable Georgia law.

Section 4. "by-laws" shall mean and refer to the by-laws of the Association which govern the administration and operation of the Association, as such document may be amended from time to time.

Section 5. "Common Area" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or otherwise made available for the exclusive use and enjoyment of the Owners.

Section 6. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association and the Community, including reasonable capital reserves, all as may be

imposed hereunder or found to be necessary or appropriate by the Board pursuant to this Declaration, the by-laws and the Articles of Incorporation.

Section 7. "Community" shall mean and refer to the residential development by Declarant on the Property known as Ashwood.

Section 8. "Community-Wide Standard" shall mean and refer to the standard generally prevailing in the Community for conduct, maintenance, architectural and design standards and other matters as determined by the Board.

Section 9. "Improvements" shall mean and refer to any Residential Unit, driveways, parking areas, fences, walls, recreational equipment, playhouses, play equipment, steps, landscaping, lighting, signage, excavation, ditches, diversions, beams or any other thing or device that alters the flow of any water and all other structures, improvements or landscaping materials of every kind and type placed, erected, constructed, maintained or permitted on a Lot.

Section 10. "Lot" shall mean any plot of land shown as a numbered parcel on the plat or any plat of survey hereafter recorded if such numbered parcel becomes subject to this Declaration and the jurisdiction of the Association.

Section 11. "Majority" shall mean and refer to those eligible votes totaling more than fifty percent (50%) of the total eligible number.

Section 12. "Member" shall mean and refer to an Owner.

Section 13. "Owner" shall mean and refer to the record Owner of any Lot which is part of the Property within the Community, but excluding (i) any Person holding an interest merely as security for the performance or satisfaction of any obligation and (ii) contract purchasers.

Section 14. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), association, trust or other legal entity.

Section 15. "Property" shall mean and refer to that certain real property described in Article I.

Section 16. "Residential Unit" shall mean and refer to any building, structure, or improvement on any Lot intended for use and occupancy as a residence and all appurtenances thereto including but not limited to all garages, porches, balconies, accessory structures, decks, overhangs, foundations, extensions and projections therefrom.

Section 17. "Rules and Regulations" shall mean and refer to those rules and regulations promulgated by the Board of Directors of the Association pursuant to this Declaration and the by-laws, as such rules and regulations may be amended from time to time.