

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS for Ashwood ("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 practicable, 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.

(b) 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. 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 are 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.

(a) 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 each 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 sightly 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.

(a) 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 the "landscape areas 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.

Section 3. Limit of Association's Liability. In consideration of the Association's undertaking to maintain the Retention Areas, community fencing, and landscape areas and to maintain 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 or improvement services unless gross negligence or an intentional act or failure to act is the proximate cause of such liability.

### ARTICLE IV

#### ASSESSMENTS

#### Section 1. Creation of Permanent Charge and Lien of Assessments; Personal Obligation of Owners; Remedies of Association.

(a) "Owner," within the meaning of this Section, shall mean the holder of any estate entitling such holder to membership in the Association.

(b) Each of the Lots described in Article I hereof is hereby made subject to a lien and permanent charge in favor of the Association for monthly assessments or charges, and special assessments or charges, and each Lot hereafter made subject to this Declaration shall automatically be subjected to said lien and permanent charge at the time such Lot is made subject to this Declaration. Such monthly and special assessments shall be fixed, established and collected as hereinafter provided. Any and all of said assessments and charges, together with interest thereon, if any, as hereinafter provided, shall constitute a permanent charge upon and a continuing lien on the Lot to which such assessments relate, and such permanent charge and lien shall bind such Lot and the successors in interest in such Lot while such successor holds an interest therein.

(c) Each Owner of any Lot which is or shall become subject to this Declaration, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such document, whether or not such document shall be signed by such Owner and whether or not such Owner shall otherwise consent in writing, shall be deemed to covenant, promise and agree to pay to the Association monthly assessments or charges and special assessments or charges, such monthly and special assessments to be fixed, established and collected from time to time as hereinafter provided; and any person or persons who was or were the Owner or Owners of any Lot or Lots subject to assessment by the Association at a time when any assessment came due with respect to such Lots shall be personally obligated to pay such assessment, together with interest thereon, if any.

(d) The permanent charge, the lien and the personal obligation hereby created may be enforced by the Association in any appropriate proceeding in law or in equity.

**Section 2. Monthly Assessments.** Beginning on the first day of the following month after closing, and for every month thereafter, unless changed as provided in Section 3 of this Article, the monthly assessment shall be initially thirteen (\$13.00) Dollars, subject to future adjustment as determined by the Association, for each Lot which has been purchased from the Company, each such Lot being hereby made subject to assessment by the Association. Each Owner shall also pay an initial assessment of \$100.00 to the Association fund at the closing on his or her lot. The monthly assessment shall be collected annually or as 51% of the majority so elects.

**Section 3. Changes in Assessments.** The amount of the monthly assessment fixed by Section 2 hereof may be changed by the assent of 66.7% of the votes of the members eligible to vote on such proposed change who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 4. Special Assessments.** In addition to the monthly assessment authorized by Section 2 of this Article, the Association may levy in any assessment month a special assessment, provided that any such special assessment shall have the assent of all of the votes 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 5. Purpose of Assessments.** The monthly and special assessments levied by the Association may be spent or used in furtherance of any corporate purpose including the maintenance and repair of the Retention Area and Landscape Areas on Lots.

**Section 6. Date of Commencement of Assessments; Due Dates.** The monthly assessments provided for in this Article IV shall commence as to each Lot on the first day of the month following the month in which the permanent loan is placed on the house and continue for each month thereafter. Any assessment not paid within ten (10) days shall become delinquent and shall bear interest at the rate of one and one-half (1.5%) 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 has been paid. A reasonable charge, as determined by the Association's Board of Directors, may be made for the issuance of such certificates. Such certificate shall be conclusive evidence, against all but the Owner, of payment of any assessment therein stated to have been paid.

**Section 7. Subordination of the Charge and Lien to Mortgages.**

(a) The lien and permanent charge of all assessments authorized herein (including initial, monthly and special) with respect to any Lot is hereby made subordinate to the lien of any first priority mortgage placed on such Lot and to the lien of any mortgage recorded prior to the recording of this Declaration.

(b) Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he or she is the Owner of such property.

(c) "Mortgage" and "mortgages", as used in this Section, shall include deeds to secure debt. "Lien", as used in this Section, shall include, where the context requires, the security title of any holder of a deed to secure debt. "Mortgagee" and "mortgagees" shall include any holder or holders of a deed or deeds to secure debt.

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.**

(a) No fence or wall shall be erected, placed or altered on any lot nearer to any street than the front of structure unless similarly approved. Any yard fencing shall be submitted to the Owners for approval before installation. No type of chain link fencing will be allowed. No clothesline will be allowed in any yard.

(b) No window air conditioning units will be permissible without the prior approval of all members of the architectural Control committee.

(c) Any changes in the front exterior elevation, which includes the enclosure of any garage or patio for living space, must be approved by 51% of the members of the architectural control committee.

(e) Mobile homes, campers, and/or commercial vehicles may not be parked permanently (longer than a 48 hour period) and are subject to the approval by 51% of the members of the architectural control committee.

(f) 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 structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any Lot for more than a 24 hour period and under no circumstances for a residence either temporarily or permanently.

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. No dish or dish type radio and television antennas and no radio or television antenna towers shall be installed that exceed eight (8') feet in height nor be any closer than 20 feet from an exterior boundary. Said antennas must be landscaped so as to not be readily visible to its neighbors.

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

Section 11. Swimming Pools. Above ground swimming pools will not be permitted. No pool can be situated closer than 20 feet from an exterior boundary unless the location of which is approved by the consent of 51% of the lot owning 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 of 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. All trailers or recreational vehicles, trucks other than small vans and boats or boat trailers shall be parked so as to be out of view from the public road right-of-way. 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 fences shall exceed 6 foot in height. All fences may be constructed of natural wood, such as cedar. There shall not be any chain link fences unless its constructed on the exterior rear boundary unless it is black or green in color. Split rail fences with a dark coated mesh backing is also permitted.

## ARTICLE VI

### ADMINISTRATION

#### Section 1. Architectural Control Committee.

(a) Membership. There shall be an Architectural Control Committee shall be composed of SAM L. LEVETO until such time as all Lots in Ashwood have been sold by the builder to new homeowners. In the event of death or resignation of either initial member of the Architectural Control Committee, the remaining member shall have full authority to designate a successor. After the Company has sold all Lots in Ashwood, the owners of each lot (one vote per lot) shall become members of the Association and make all decisions concerning the governing of the association under the power granted to them under these covenants.

(b) Procedure. the Architectural Control Committee's approval or disapproval as required in this Declaration shall be in writing. In the event the Architectural Control Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

(c) Construction Commencement, Completion. Any purchaser of a Lot must commence construction on the home on said Lot within one year following the date of closing. Construction shall be deemed to have begun when the Lot has

been fully cleared and graded in preparation for construction and a building permit obtained. In addition to the commencement of construction within six (6) months following the date of closing, any Owner having a home built on his or her Lot shall ensure that construction is completed within twelve (12) months following the date of closing. Construction shall be deemed to be completed as of the date of the issuance of a certificate of occupancy for the residence under construction.

(d) All homes shall be owner-occupied unless a tenant shall be approved as provided in subparagraph ii of paragraph c of Article II, Section 2 above.

**Section 2. Association.** The administration of those acts required of the Association by this Declaration shall be the responsibility of the Association. Such administration shall be governed by this Declaration and by the Association's Articles of Incorporation and Bylaws, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents, together with those reasonably implied as necessary to effect its purposes, and shall be exercised in the manner provided therein.

## ARTICLE VII

**Section 1. Duration.** The protective covenants set forth in Article V and the administration procedures set forth in Article VI, Section 1 (all of which are hereinafter referred to as the "Protective Covenants and the Section 1 Procedures") 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.

The Protective Covenants and Section 1 Procedures 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 of the Protective Covenants and Section 1 Procedures contained in this Declaration and shall then record said termination agreement in the Office of the Clerk of the superior court of the county in which the Property or any portion thereof lies; provided, however, that each such termination agreement shall specify which such provisions of the Protective Covenants and Section 1 Procedures 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 the Protective Covenants and Section 1 Procedures 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.** Enforcement of the covenants, restrictions and easements contained herein and of any other provision hereof shall be by any appropriate proceeding at law or in equity against any person or persons violating or attempting to violate any of said covenants, restrictions and easements or other provision, either to restrain violation, to enforce personal liability or to recover damages, or by any appropriate proceeding at law or in equity against the land to enforce any lien or charge arising by virtue thereof. The failure of the Company, the Association or any Member to enforce any of said covenants, restrictions and easements or other provision shall in no event be deemed a waiver of the right to do so thereafter.

**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. No Liability.** The Company has used its best efforts and acted with due diligence in connection with the preparation and recording of this Declaration to ensure that the Association and each Owner has the right and power to enforce the terms and provisions hereof against every other Owner. In the event this Declaration is unenforceable by the

Association or an Owner or any other person for any reason whatsoever, the Company and its agents shall have no liability of any kind as a result of such unenforceability, and each Owner, by acceptance of a deed conveying a Lot, acknowledges and agrees that the Company and its agents shall have no such liability.

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. Definitions. Unless the context otherwise requires, whenever used in this Declaration:

(a) "Person" shall include a corporation or other legal entity.

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

(c) "Owner" shall mean the Company or an individual lot owner. The Company shall have total control over the use of each lot where a permanent loan has not be closed by an individual lot owner. "Owner" shall be the owner of one lot where the permanent loan has been closed. Each owner shall have one vote.

IN WITNESS WHEREOF, the Company has caused this Declaration to be executed by its duly authorized officer, and its corporate seal to be hereunto affixed, the day and year first above written.

Shawn Development & Investment Corp.

By: [Signature]  
Sam L. Leveto  
Its President, Declarant  
( CORPORATE SEAL )



Signed, sealed and delivered  
in the presence of

[Signature]  
Unofficial Witness

[Signature]  
Notary Public

