

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR
WALNUT CREEK

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DEKALB COUNTY, GEORGIA RECORDS

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR
WALNUT CREEK

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**DECLARATION OR COVENANT
CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR:**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR WALNUT CREEK, is made this _____ day of _____, 20 by Salem Road, L.L.C. a Georgia Corporation (hereinafter referred to as "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of certain real property located in Dekalb County, Georgia, which is more particularly described on Exhibit "A" attached hereto and made a part hereof.

Declarant intends to develop on the real property described above a development to be known as Walnut Creek (hereinafter referred to as the "Development"). Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Walnut Creek by the recording of this Declaration and amendments thereto. Declarant desires to provide flexible and reasonable procedures for the overall development of Walnut Creek. Declarant also desires to establish a method for the administration of the property that is now or hereafter subjected to this Declaration.

DECLARATION

The Declarant hereby declares that all of the real property described above shall be held, sold and conveyed subject to this Declaration of Covenants, Restrictions and Easements (the "Declaration"), which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns.

**ARTICLE I
DEFINITIONS**

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

1.01 **Builder**. "Builder" shall mean any individual, corporation, partnership or other entity engaged principally in the business of constructing for sale to homeowners single family residential dwellings to whom the Declarant sells or has sold one or more Lots for the purpose of constructing thereon a Residence.

1.02 **Declarant**. "Declarant" means Salem Road, L.L.C. a Georgia corporation, and its successors-in-title and assigns, provided that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of a successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A" attached hereto, and which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.03 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the office of the Clerk of the Superior Court of Dekalb County, Georgia, covering any portion of the Property.

1.04 Occupant. "Occupant" shall mean any person occupying all of any portion of a Residence located within the Development for any period of time, regardless of whether such person is a tenant or the Owner of such property.

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

1.06 Property. "Property" means that certain real property described on Exhibit "A" attached hereto and made a part hereof which Property is hereby made subject to the covenants and restrictions herein set forth.

1.07 Residence. "Residence" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as a part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a pre-requisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the Builder thereof.

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

1.09 Structure. "Structure" means:

- (a) any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, Swimming pool, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;
- (b) any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and
- (c) any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 1.09 applies to such change.

1.10 Survey. "Survey" means that certain boundary survey- of the Property prepared for Salem Road, L.L.C. a Georgia corporation as recorded in Plat Book , Page , in the Office of the Clerk of the Superior Court of Dekalb County, Georgia, also including all

- 1.11 Association. "Association" means Walnut Creek Residents Association, Inc. (A nonprofit corporation organized under the Georgia Nonprofit Corporation Code), its successors and assigns.
- 1.12 Board. "Board" means the Board of Directors of the Association.
- 1.13 Bylaws. "Bylaws" means the Bylaws of the Association.
- 1.14 Member. "Member" means any member of the Association.

ARTICLE II ARCHITECTURAL CONTROL -

2.01 Architectural Control Committee - Creation and Composition. The Architectural Control Committee (the "ACC") shall be appointed by the Declarant.

2.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

2.03 Operations of the ACC.

- (a) Meetings. The ACC shall hold meetings as needed.
- (b) Activities. The ACC shall adopt and promulgate the Design Standards described in Exhibit "B" hereof and shall, as required, make findings, determinations, rulings, and orders which respect to the conformity with said Design Standards of plans and specifications to be submitted for approval to the ACC pursuant to the provisions of this Declaration. The ACC shall, as required, issue permits, authorizations or approvals, which may include specified requirements or conditions, pursuant to the provisions of this Declaration.

2.04 Design Standards. The ACC shall from time to time adopt, promulgate, amend, revoke and enforce guidelines (the "Design Standards") for the purpose of:

- i) governing the form, content and procedure for submission of plans and specifications to be submitted to the ACC for approval pursuant to the provisions of this Declaration;
- ii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details or construction, location and size of Structures and all other matters that require approval by the ACC pursuant to this Declaration; and

- iii) assuring the conformity and harmony of external design and general quality of the Development.

2.05 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure of Lot, unless plans and specifications therefore shall have been submitted to an approved in writing by the ACC.

2.06 Approval of Plans and Specifications. Approval of any such plans and specifications relating to any Lot or Structure shall be final as to that Lot or Structure and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

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

- (a) the failure to include information in such plans and specifications as may have been reasonably requested;
- (b) the failure of such plans or specifications to comply with this Declaration or the Design Standards;
- (c) any other matter which, in the judgment of the ACC, would be likely to cause the proposed installation, construction or alteration of a Structure (i) to fail to be in conformity and harmony of external design and general quality with the standards for Walnut Creek as set forth in the Design Standards, or (ii) as to location to be incompatible with topography, finished ground elevation and surrounding Structures. In any case in which the ACC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the ACC shall, if requested, made reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

2.08 Obligation to Act. The ACC shall take action on any plans and specifications submitted as herein provided within thirty (30) days after receipt thereof. Failure by the ACC to take action within thirty (30) days of receipt of plans and specifications submitted for approval shall be deemed approval of such plans and specifications.

2.09 Inspection Rights. The ACC may, after reasonable notice, at any reasonable time enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration.

2.10 Violations. If any Structure shall be erected, placed, maintained or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the ACC pursuant to the provisions of this Article, such erection, replacement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ACC such violation shall have occurred, the ACC shall provide written notice to the Owner, setting forth in reasonable detail the nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (14) days after the delivery of the aforesaid notice of violation, then the Declarant shall have the Right of Abatement as provided in Section 5.02 hereof.

2.11 Fees. The ACC may impose and collect a reasonable and appropriate fee to cover the cost of review of plans and of inspections. The fee shall be established from time to time by the ACC and published in the Design Standards.

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

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

ARTICLE III GENERAL COVENANTS AND RESTRICTIONS

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

3.02 Restriction of Use. Lots may be used for single-family residences only and for no other purpose, provided that the Declarant may operate a sales office and/or model home on a Lot or Lots designated by Declarant. No business, fraternal, civic, or historic or religious institution or organization may establish headquarters or hold regular meetings on a Lot. No more than one family shall reside on a Lot.

3.03 Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent the Owner of any Lot from combining two or more Lots into one Lot for construction of a single Residence thereon; provided, however, that such combined Lot may not be subdivided thereafter; and, provided further, that the Owner of the Residence on such lot shall be responsible for annual and special assessments based upon the number of Lots combined into one Lot.

3.04 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ACC of plans and specifications for

the prevention and control of such erosion or siltation. The ACC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the ACC.

3.05 Landscaping. All front yards of all Lots shall be sodded with Bermuda sod (or an equivalent substitute sod).

3.06 Trees. Guidelines relating to the preservation of trees and other natural resources upon the Property may be included in the Design Standards of the ACC.

3.07 Temporary Buildings. No temporary buildings, trailers, garages or buildings under construction shall be used, temporarily or permanently, as a Residence of any Lot. Only one (1) Residence shall be permitted to be placed on a Lot.

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

- i) such signs as may be required by legal proceedings;
- ii) not more than one "For Sale" sign, such sign having a maximum face area of four square feet; provided that such sign may only be displayed in the front yard of a Lot; and, provided, further, that if, at the time of any desired use of such sign, the Development is making "For Sale" signs available for the use of Owners, the signs made available must be used;
- iii) Directional signs for vehicular or pedestrian safety in accordance with plans and specifications approved by the ACC.
- iv) The ACC or the Declarant can impose a fine of \$100.00 per day for an unauthorized sign, especially a sign of a derogatory nature toward any builder or the developer. Any disputes are to be handled by arbitration or in court and never posted in the subdivision.

3.09 Setbacks. In approving plans and specifications for any proposed structure, the ACC may establish setback requirements for the location of such Structure. Guidelines for setbacks may be included in the Design Standards of the ACC. No structure shall be erected or placed on any Lot unless its location is consistent with such setbacks.

3.10 Construction of Residences. The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of one-story Residence shall contain not less than 1,400 square feet. The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) of all two-story or split-level Residence shall contain no less than 1,400 square feet. No Residence shall be constructed exceeding three stories in height on any Lot. No window air conditioning unit may be located in any part of a Residence, and all exterior compressor units shall be ground mounted. No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located on any Lot. Concrete or cinder block shall not be used as a building material for the exposed exterior surface of any Residence.

3.11 Fences. No fence or wall of any kind shall be erected, maintained, or altered on any lot without the prior written approval of the ACC of plans and specifications for such fences and walls. Guidelines relating to the design, location and uses of fences and walls may be included in the Design Standards of the ACC. All fences shall be approved by the ACC.

3.12 Roads and Driveways. No road or driveway shall be constructed or altered on any Lot without the prior written approval of the ACC of plans and specifications for such roads and driveways. Guidelines relating to the design and location of roads and driveways may be included in the Design Standards.

3.13 Antennae, Etc. No exterior television or radio antennae or satellite dish or receiver or solar equipment of any sort shall be placed, allowed or maintained upon any portion of a Structure or Lot without prior written consent of the ACC.

3.14 Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans and woodpiles shall be kept screened by adequate planting or fencing so as to conceal them from view by neighboring Lots and streets, and may be maintained only in the rear yard of a Lot.

3.15 Mailboxes. Only one (1) mailbox shall be located on any Lot All mailboxes will be same design.

3.16 Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon, in good condition and repair, including, but not limited to (i) the repairing and painting of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of street traffic. If in the opinion of the ACC, any Owner shall fail to perform the duties imposed by this Section, the ACC shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy such condition within thirty (30) days after the mailing of said written notice, then the ACC shall have the Right of Abatement as provided in Section 5.02 hereof. Guidelines relating to the maintenance of Structures and landscaping may be included in the Design Standards of the ACC.

3.17 Commercial and Recreational Vehicles and Trailers. No commercial vehicle, bus, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, jet ski, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed twenty-four (24) consecutive hours once per month. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view by neighboring residences and streets. No motorized vehicles of any nature shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board. No commercial vehicle, bus, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, jet ski, boat or boat trailer or like equipment shall be permitted to be parked on the streets in the subdivision except for the limited purpose of pickup or delivery. The following parking limitations shall not apply to trucks, cars, and related vehicles involved in the construction of any residence on a lot.

3.18 Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot as approved by the ACC. Basketball goals may be placed adjacent to a driveway, but shall be painted to match the house.

3.19 Non-Discrimination. No owner or person authorized to act for an Owner shall refuse to sell or rent, after receiving a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the purchase or rental of any Lot to any persons because of race, color, religion, sex, age or national origin. Anything in this Declaration to the contrary notwithstanding, this covenant shall run with the land and shall remain in effect without any limitation in time.

3.20 Animals. No agricultural animals may be kept on any Lot and no animals may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless approved by the ACC.

3.21 Solid Waste.

- (a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot;
- (b) Except during approved construction as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot.
- (c) No lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standards;
- (d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards,

3.22 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become any annoyance or nuisance to the community. No abandoned, inoperable or unlicensed vehicles shall be parked on any streets within the Development or in the front, rear or side yards of any Lot.

3.23 Marketing. Declarant shall have the right to appoint the real estate marketing firm to handle the marketing and sale of all new Lots and Residences located within the Development.

ARTICLE IV EASEMENTS, ZONING AND OTHER RESTRICTIONS

4.01 Easements.

- (a) Declarant hereby expressly reserves to the Declarant, Dekalb County, or such other municipality or political subdivision as may have jurisdiction thereof, and for utility companies as may from time to time serve the Development, their respective successors and assigns forever, the right to create perpetual easements in, on, over and under any part of the Property owned by Declarant for any purpose which Declarant deems necessary, including, by way of example, and not limitation, the following:

- (i) the erection, installation, construction and maintenance of wires, lines, conduits and poles and the necessary or proper attachments in connection with the transmission of electricity, telephone, cable television cables and other utilities and similar facilities; (ii) the erection, installation, construction and maintenance of storm-water drains, land drains, driveways, public gas, water and heat, and for any other public quasi-public facility, service or function;
 - (iii) slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and
 - (iv) the planting or re-planting of hedges, shrubbery, bushes, trees, flowers and plants of any nature.
- (b) No Owner shall have any right to use any easement created by the Declarant in, on or over any portion of the Property unless such easement has been expressly assigned by the Declarant.
- (c) The easement restrictions set forth herein shall not be considered an obligation of Declarant to provide or maintain any such utilities, drainage facilities or services.

4.02 Easement Area. The words "Easement Area" as used herein shall mean those areas on any Lot or any other portion of the Property with respect to which easements are shown on a recorded deed, easement agreement, this Declaration, on the Survey or on any other recorded map or plat relating thereto.

4.03 Entry. The Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass, provided the same is done in accordance with the provisions of this Section. The Declarant and its employees, agents, successors and assigns shall be responsible for leaving each Lot in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of Section 4.01.

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

ARTICLE V ENFORCEMENT

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

5.02 Right of Abatement

- (a) In the event of a violation or breach of any Restriction contained in this Declaration, Declarant or Owners shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Declarant or Owners shall have the Right of Abatement.
- (b) The Right of Abatement, as used in this Section, means the right of the Declarant and Owners, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof, including the costs of collection including reasonable attorneys' fees, together with interest thereon at the lower of the highest rate permitted by law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on such Owner's Lot enforceable in law. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgement or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.
- (c) Any sign violation shall be remedied within twenty four (24) hours of notification (regular mail, certified mail, or personal notification) or the ACC shall have the right to fine the violator \$100.00 per day. The ACC shall have the right to file a lien for these fines plus attorney fees.

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

5.04 Enforcement of Lien.

- (a) If any interest, cost or other charge is not paid as required by this Declaration, the Declarant or Owners may bring either an action at law against the Owner personally obligated to pay the same, or an action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fee.

- (b) WAIVER. EACH OWNER, BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

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

ARTICLE VI DURATION AND AMENDMENT

6.01 Duration. This Declaration and the Restrictions contained herein shall run with and bind the Property for a period of twenty (20) years from and after the date when this Declaration is filed for record with the Clerk of the Superior Court of Dekalb County, Georgia, after which time this Declaration and the Restrictions shall be automatically renewed for successive periods of ten (10) years provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this Declaration and the Restrictions contained herein may be terminated by an instrument executed by the majority of homeowners and recorded in the office of the Clerk of the Superior Court of Dekalb County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds vote of the Homeowners.

6.02 Amendments by Declarant. Declarant may amend this Declaration by an instrument in writing filed and recorded in the Office of the Superior Court of Dekalb County, Georgia, without the approval of any Owner or Mortgagee; provided, however that (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of such Owner's Lot, or if such amendment adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by two-thirds (2/3) of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any mortgage, such amendment shall be valid only upon the written consent thereto of all such mortgagees so affected. Any amendment made pursuant to this Section 7.01 shall be certified by Declarant as having been duly approved by Declarant, and such Owners and mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or

other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 7.01, and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender, purchaser or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot subject to this Declaration, (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration or (v) if such amendment is necessary to correct a scrivener's error in the drafting of this Declaration.

6.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 6.02 hereof, shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment must be approved by Members holding at least two-thirds (2/3) of the total votes in the Association, provided, however (i) that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such mortgagee and (ii) during any period in which Declarant has the right to appoint and remove officers and directors of the Association, such amendment must be approved by Declarant.
- (c) The agreement of the required percentage of the Owner and, where required, the Declarant and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, and provided that Declarant does not then have the right to approve such amendment, the sworn statement of the President and any Vice-President or the Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

ARTICLE VII MISCELLANEOUS

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

7.02 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if the application of any provision of this

Declaration 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.

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

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

7.05 Notices. All amendments, notices, requests objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to this Declaration, whether made by the Declarant, the Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

- (a) Declarant: Salem Road, L.L.C.
P.O. Box 856
Duluth, Georgia 30096
- (b) Owner: Each Owner's address by Deed of Record.

7.06 No Liability. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have not liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have no such liability.

ARTICLE VIII COMMON PROPERTY

8.01 Conveyance of Common Property.

- (a) The Declarant may from time to time cause to be conveyed to the Association certain improved or unimproved real property, personal property, or grants of easements for the common use and enjoyment of the Owners and such real and personal property shall thereafter be Common Property to be maintained by the Association for the benefit of all or part of its Members. In addition, the Declarant may from time to time cause the conveyance of certain real property or grants of easements to the general public as may be required by governing authorities in accordance with this Declaration. The Association hereby covenants and agrees to accept all such conveyances of Common Property.
- (b) The Declarant may convey to the Association Common Property for scenic and natural area preservation. The Declarant may, at Declarant's sole discretion, modify, alter, increase, reduce and otherwise change the Common Property contemplated to be conveyed to the Association in accordance with this subsection (b) of this Section 8.01 at any time prior to conveyance of such Common Property to the Association.

- (c) In addition to the property described in subsection (b) of this Section 8.01, the Declarant may convey to the Association in accordance with this Section 8.01 such other real and personal property as the Declarant may determine to be necessary or proper for the completion of the Development.
- (d) Notwithstanding any legal presumption to the contrary, the fee title to, and all rights in, any portion of the Property owned by the Declarant and designated as Common Property or designated for public use shall be reserved to the Declarant until such time as the same shall be conveyed to the Association or to any municipality or other governmental body, agency or authority.

8.02 Right of Enjoyment. Every Owner shall have a right and easement to use and enjoy the common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The right and easement of enjoyment granted or permitted by this Section 8.02 is subject to those items set forth in Section 8.03, which include suspension by the Association as provided in Sections 8.03 (c) and 9.05.

8.03 Rights of the Association. The rights and privileges conferred in Section 802 hereof shall be subject to the right of the Association acting through the Board to:

- (a) promulgate rules and regulation relating to the use, operation and maintenance of the Common Property;
- (b) charge reasonable fees in connection with the admission to and use of facilities or services; provided that in setting any such fee the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;
- (c) suspend the voting rights of any Member, pursuant to Section 9.05, and the right of enjoyment granted or permitted by Section 8.02 for any period during which any assessment against such Owner's Lot which is herein provided for remains unpaid, and, for a reasonable period of time for any infraction of the Declaration, Bylaws or rules and regulations;
- (d) grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;
- (e) enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof;
- (f) borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of Common Property, and in aid thereof to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources~
- (g) dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall cease to be subject to this Declaration or all or any part of the Restrictions while held by any such municipality or other governmental body, agency or authority;

- (h) to sell, lease or otherwise convey all or any part of its properties and interest therein; provided, however, that the Association shall not sell, encumber by security interest, convey, dedicate or transfer any Common Property or interest therein without the approval of two-thirds (2/3) of each class of Members.

8.04 Types of Common Property. At the time of the conveyance of any real property or grant of easement by the Declarant to the Association to be used as Common Property, the Declarant shall designate in the deed of conveyance or easement that such real property is to be Common Property, and further may designate in the deed of conveyance or easement the specific or general purpose or purposes for which such real property or any portion thereof may be used, and in such event, such real property or portion thereof shall not, without a two-thirds (2/3) vote of each class of Members of the Association, be used for any different purpose or purposes without the prior written consent of the Declarant. Notwithstanding anything provided herein to the contrary, the failure of the Declarant to make such designation in the deed of conveyance or easement shall not affect the validity of such conveyance or grant of easement.

8.05 Entrance and Scenic Strip Landscaping Easement. It is contemplated that certain easements for the erection and maintenance of entrance monuments, subdivision signs, walls, fences, scenic strips and other structures intended to provide an attractive atmosphere or to provide privacy to Owners within the Development will be reserved by the Declarant or granted to the Association (whether or not such easement areas are a part of the Property) and may be set forth on plats of survey of the Development recorded in the County Records. Such easements shall be perpetual in duration and shall include the right to erect, maintain, repair and replace any such structures within the easement areas, as well as the right to plant grass, plants, flowers, shrubs and trees, to tend and garden the same, and to generally landscape the area within said easements to keep them clean, attractive and uniform in appearance for the benefit of all Owners within the Development. All Owners taking title to any Lot upon which such an easement lies will take title subject to the easement rights set forth herein, as well as such rights as may be set forth in the deed conveying such easements to the Association. Such easements shall be Common Property.

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

8.07 Maintenance Obligations of Association. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, property taxes, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. The Association shall also maintain all drainage detention and retention areas originally maintained by Declarant to the extent such areas are not maintained on an ongoing basis by a local governmental entity and all

property outside of Lots located within the Community which was originally maintained by Declarant.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within the Community, where the Board has determined that such maintenance would benefit all Owners. The Association shall be responsible for maintaining the entrance features and all landscaping located at the entrance to the Development located on those areas describe as "10' Landscape Easement" areas on that certain Final Plat for Unit One Walnut Creek dated _____, prepared by Watts & Browning Engineers, Inc. and recorded on _____20__ in the DeKalb County, Georgia records, and all future recorded Units. The Association has been granted, and hereby accepts the grant of, an easement in perpetuity to allow the Association to perform such maintenance responsibility.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

8.08 Easement for Maintenance by the Association. There is hereby granted to the Association and its designated representatives an easement across such portions of the Property, including, without limitation, the Lots, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required of the Association hereunder.

ARTICLE IX THE HOMEOWNERS ASSOCIATION

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

9.02 Membership in the Association. Every Owner shall automatically be a Member of the Association and such membership shall terminate only as provided in this Declaration of Covenants, Conditions and Restrictions.

9.03 Voting Rights. Subject to the following provisions of this Section 9.03, the Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. Every person who is an Owner, with the exception of the Declarant except as otherwise set forth herein, shall be a Class A Member and shall be entitled to one vote for each Lot owned. When more than one person is a Class A Member by virtue of an ownership interest in the same Lot, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of

them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of a Class A Member shall automatically terminate upon the Member's sale of his Lot. However, no termination of Class A membership shall affect such Member's obligation to pay assessments, fines or other charges as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

- (b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and during its existence the Class B Member shall be entitled to vote on all matters and in all events. The Class B Member shall be entitled to three (3) votes for each Lot owned by it; provided, however, in no event shall the Class B Member have less than the total number of Class A votes plus one (1). The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur: (a) the expiration of seven (7) years from the date of recording of this Declaration; (b) the date on which three-fourths (3/4) of the Lots which may be developed on the Property shall have been conveyed to an individual Owner or Owners for residential occupancy; or (c) the surrender, in writing, by the Declarant of the authority to appoint and remove members of the Board of the Association; provided, however, that so long as any mortgagee of Declarant holds a security interest in any portion of the Property, as security for a development loan to Declarant, the Class B membership shall not terminate without the prior written consent of such mortgagee. If at the time of termination of the Class B membership, Declarant still owns any Lots, then as to each Lot owned by Declarant, Declarant shall be deemed to be a Class A Member.
- (c) The Development may be composed of Lots to be developed in phases containing unequal number of Lots. Each such phase will be platted of record in the office of the Clerk of the Superior Court of Dekalb County. The Declarant shall notify the Association in writing when the final phase of the Development has been so platted of record. By acceptance of a deed conveying a Lot, each Owner acknowledges that, upon the filing by Declarant of the subdivision plats covering such phases, the total votes outstanding in the Association will automatically increase based upon the number of Lots in the phases added and in accordance with the formula set forth in subsection (b) of this Section 9.03 and in no event shall Class B Membership cease and be converted to Class A Membership (as provided in subsection (b) of this Section 9.03) until after the Association receives the written notice provided for in the preceding sentence; provided, however, nothing contained herein shall obligate the Declarant to develop any proposed phase of the Development unless such phase is subject to this Declaration.

9.04 Board of Directors and Officers.

- (a) Board. The affairs of the Association shall be managed by a Board of Directors. The number of directors and the method of election of directors shall be as set forth in this Declaration and in the Bylaws of the Association. Except to the extent otherwise expressly required or authorized by the Georgia Nonprofit Corporation Code or this Declaration, the Association's Bylaws or Articles of Incorporation, the powers inherent in or expressly granted to the Association may be exercised by the Board, acting through the officers of the Association, without any further consent or action on the part of the Members.

- (b) Officers. The number of officers and the method of election of officers shall be as set forth in this Declaration and the Bylaws of the Association.
- (c) Casting of Votes. The votes of the Members shall be cast under such rules and procedures as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by law.

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

- (a) shall be subject to the Right of Abatement, as defined in Section 5.02 by reason of having failed to take the reasonable steps to remedy a violation or breach of either the Restrictions or the Design Standards of the ACC (as herein defined) within thirty (30) days after having received notice of the same.
- (b) shall be delinquent in the payment of any assessment, fine or other charge levied by the Association pursuant to the provisions of this Declaration; or
- (c) shall be in violation of the rules and regulations of the Association relating to the use, operation and maintenance of Common Property.

Any suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default, as aforesaid, except that in the case of a violation described in subsection (c) of this Section 9.05, the suspension may be for a period not to exceed sixty (60) days after the cure or termination of such violation. No such suspension shall prevent an Owner's ingress to or egress from his Lot.

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

9.07 Control by Declarant and Appointment of the Board.

- (a) Until such time as Declarant no longer has the right to appoint members to the Board, the Board of the Association shall consist of three (3) members. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, the Declarant hereby retains the right to appoint all members to the Board. The rights of Declarant to appoint members of the Board also included the right to remove and replace appointees until such time as Declarant's rights to appoint members to the Board ceases. Declarant shall retain the right to appoint and remove members of the Board until such time as the first of the following events shall occur: (i) the expiration of seven (7) years from the date of the recording of this Declaration; (ii) the date upon which three-fourths (3/4) of the Lots which may be developed on the Property and the Additional Property shall have been conveyed, by Declarant to an individual Owner or Owners for residential occupancy; or (iii) the surrender, in writing, by Declarant of the authority to appoint and replace directors. Upon the final expiration of all rights of Declarant to appoint and replace directors of the Association a special meeting of the Association shall be called. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board, and Declarant shall deliver the books,

accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period, which Declarant has in its possession. Each Owner by acceptance of the deed to or other conveyances of a Lot vests in Declarant such authority to appoint and replace directors and officers of the Association as provided in this Section.

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

ARTICLE X ASSESSMENTS

10.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Residence, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Residence, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) to pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;
- (b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;
- (c) that there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 10.09 hereof and costs of collection including reasonable attorneys' fees;
- (d) that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction or repair or alteration of Structures.
- (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed;
- (f) that all annual, special and specific assessments (together with interest thereon as provided in Section 10.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in Section 10.0(c) of this Declaration) a personal obligation which will survive any sale or

transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to Owner's successor in title unless expressly assumed by such successor.

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

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

10.04 Annual Assessment.

- (a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment as established by the Board, which assessment shall initially be set at \$ 145.00 per Lot. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date. For so long as Declarant has the right to appoint and remove Directors and Officers of the Association, the annual assessment shall not be reduced below the amount initially established by the Board without the express written consent of Declarant.
- (b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year at not more than thirty-three and one-third percent (33.33%) above the annual assessment for the previous Assessment Year without a vote of the Membership.
- (c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than thirty-three and one-third percent (33.33%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

10.05 Special and Parcel Assessments:

- (a) In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any

unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the Members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

- (b) The Association shall also be authorized to levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Parcel Assessments for the Purpose of paying, in whole or in part, the cost of estimated expenses for the sole benefit of a particular Parcel, which Parcel Assessments shall be allocated equally among the Residences in a Parcel.

10.06 Assessment Procedure.

- (a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article X, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of the Article X.
- (b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 10.04(u) and Section 10.05 of this Article X. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members. Notwithstanding the required quorum requirements stated herein, a minimum vote of fifty-one percent (51%) of all of the votes of the Association shall be required to disapprove the Association's annual budget.

10.07 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Residences.

10.08 Contribution by Declarant. For so long as Declarant has the authority to appoint and remove Directors and Offices of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advanced shall be evidenced by promissory notes from the Association to Declarant bearing interest at the annual rate of twelve (12%) percent and having payment schedules and maturity dates as agreed between Declarant and the Association, but failing such agreement, being demand notes.

10.09 Effect of Nonpayment of Assessments. Any Assessment which is not paid on or before the Due Date shall bear interest after the Due Date at the lower of the highest legal rate of interest which can be charged or the rate of eighteen percent (18%) per annum or at such rate as the Board may from time to time establish, provided, however, that in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of Georgia. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorney's fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Residence, enforceable in accordance with the provisions of the Declaration.

10.10 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of the date of such certificate, or that all assessments, interest and costs have not been paid setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

10.11 Approval by Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint officers and directors of the Association.

10.12 Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, 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 with respect to any expenses, including any expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owner for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitable among all of the Residences which are benefited according to the benefit received;
- (b) Expenses incurred by the Association pursuant to Section 10.02 hereof; and
- (c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

ARTICLE XI ANNEXATION AND FUTURE DEVELOPMENT

11.01 Annexation.

- (a) For so long as Declarant has authority to appoint and remove Directors and Officers of the Association, additional real property may be annexed to the Property by the Declarant without the consent of the Class A Members. Such additional real property may, but does not need to be contiguous to any portion of the Property which is then subject to this Declaration; and may be either raw land which is intended to be or is in the process of being developed into residential subdivision lots, or is fully developed into residential lots at the time of annexation. Such annexation shall be accomplished by filing in the Office of the Clerk of the Superior Court of Dekalb County, Georgia, one or more Supplementary Declarations with respect to the additional properties, executed by the Declarant, its successors or assigns, which shall extend the scheme of the Covenants contained herein to such properties and thereby subject such additions to assessment for their just share of the Association expenses. Said Supplementary Declarations may contain such complimentary additions and modifications of the Covenants contained herein as may be necessary to reflect the different character of the additional properties as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify or add to the Covenants established by this Declaration regarding the property described in said Exhibit "A". If the additional properties or any portion thereof are made subject to the provisions hereof, Declarant, its successors and assigns, shall have the right, but not the obligation, to construct on the additional properties such recreational and other facilities as Declarant, its successors and assigns, shall deem advisable for the common use and enjoyment of the Owners. If someone other than Declarant owns the real property to be annexed, the Supplementary Declaration shall be consented to by the owner of the real property to be annexed in addition to being signed by the Declarant.
- (b) At the expiration of Declarant's right to appoint and remove Directors and Officers of the Association, no real property may be annexed to the Property unless such annexation is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association. Declarant also reserves the right to amend this Declaration unilaterally at any time so long as it has the authority under this Article XL without the prior notice and without the consent of any owner, for the purpose of removing certain portions of the Property then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development of the Property.

IN WITNESS WHEREOF, The Declarant has caused this Declaration to be duly executed and sealed the day and year first above written.

Salem Road, L.L.C.
A Georgia Limited Liability Company

Signed, sealed and delivered
Georgia
in the presence of:

BY: Hallmark Developers, Inc., a
Corporation, Manager

Unofficial Witness

BY: _____
Chris S. Doughtie, President

Notary Public – Nancy H. Green

Date of Execution by Notary

January 26, 2001

EXHIBIT "A-I"

ALL THAT TRACT or parcel of land lying and being in Land Lot 45 of the 16th District, DeKalb County, Georgia, and being 39.06476 acres as shown on that certain Boundary Survey for Salem Road, L.L.C., FT Mortgage Companies and Chicago Title Insurance Company prepared by Watts & Browning Engineers, Inc., V. T. Hammond, Georgia RLS #2554, dated 02/04/99, last revised 01/26/00, and being more particularly described as follows:

To find the true Point of Beginning commence at an iron pin found at the corner common to Land Lots 45, 46, 51 and 52, aforesaid District and County; proceed thence along the land lot line common to Land Lots 45 and 52 north 01°04'21"35"11" west 564.77 feet to an iron pin found and the POINT OF BEGINNING; and from said POINT OF BEGINNING and leaving said land lot line and proceeding south 67°35'35"~ west 363.51 feet to an iron pin found; proceed thence north 66°42'26" west 84.94 feet to an iron pin found; proceed thence south 70°59'43" west 193.98 feet to an iron pin found; proceed thence in a northerly direction along the western boundary of Salem Hills Subdivision, Unit TB, as per plat recorded in Plat Book 164, Page 94, DeKalb County Records and Salem Hills Subdivision, Unit IA, as per plat recorded in Plat Book 104, Page 67, aforesaid records, the following courses and distances: north 22°30'11" west 273.96 feet to an iron pin found; north 36°29'30" west 164.08 feet to an iron pin found; north 20°54'03" west 337.16 feet to an iron pin found; north 21°02'9"13"1"U west 82.03 feet to an iron pin found; north 00°00'0"13"1"~ west 158.43 feet to an iron pin found; north 27°45'38" east 189.00 feet to an iron pin found; north 47°05'8"14°0"1" east 157.0 feet to an iron pin found; north 41°05'7"10°8"1"1" east 124.95 feet to an iron pin found; north 07°31'02" east 130.0 feet to an iron pin found; north 01°05'8"15°8"n west 145.0 feet to an iron pin found; north 09°28'58" west 146.0 feet to an iron pin found; north 51°47'03" west 263.02 feet to an iron pin found; north 27°01'6'07" west 167.91 feet to a point; north 13°05'9"14°9"1"1" east 100.0 feet to a point; north 01°0~51°f1e1 west 250.58 feet to an iron pin found on the southerly right of way of Salem Road (80 foot right of way); proceed thence along said right of way the following courses and distances: north 89°03'51°58"fl east 350.42 feet to a point; southeasterly along the arc of a curve having a radius of 479.80 feet, said arc being subtended by a chord bearing south 63°04'9"b06"u east and having a chord length of 429.40 feet an arc distance of 445.20 feet to a point; south 37°14'10" east 174.16 feet to an iron pin found; southeasterly along the arc of a curve having a radius of 3030.31, said arc being subtended by a chord bearing south 37°24'07" east and having a chord length of 17.53, an arc distance of 17.53 feet to a point; thence leaving said right of way and proceeding south 88°38'1"1" west 306.91 feet to an iron pin found; proceed thence south 00°27'59" east 130.03 feet to a point; proceed thence north 88°32'32"~ east 340.94 feet to an iron pin found on the land lot line common to Land Lots 45 and 52; proceed thence along said land lot line south 01°43'00" east 1741.71 feet to an iron pin found at the POINT OF BEGINNING.

EXHIBIT "B"
DESIGN STANDARDS
WALNUT CREEK

1. **AUTHORITY.** These Design Standards are promulgated pursuant to authority granted to the Architectural Control Committee (hereinafter referred to as the "ACC") of the Walnut Creek Subdivision (hereinafter referred to as the "Development") under the Declaration of Covenants, Restrictions and Easements for Walnut Creek (hereinafter referred to as the "Declaration"). The requirements of these Design Standards shall be in addition to and not in lieu of the requirements and provisions of the Declaration.
2. **PURPOSE.** Plans and specifications must be submitted to and approved by the ACC pursuant to the Declaration and these Design Standards for the sole and exclusive purpose of assuring that all Structures within the Development remain in conformity and harmony of external design with existing standards of the neighborhood.
3. **DEFINITIONS.** The words "Structure", "Owner", and "Lot" as used herein shall have the same meanings as such words have in the Declaration.
4. **SUBMISSION OF PLANS AND SPECIFICATIONS.**
 - A. Plans and specifications for the construction or replacement of any Structure on any Lot shall be submitted to and reviewed by the ACC in accordance with the requirements of Section 2.05 of the Declaration. Each Owner shall submit to the ACC two (2) complete sets of such plans and specifications clearly designating which Lot is covered by such plans and specifications.
 - B. All plans and specifications required to be submitted to the ACC shall be delivered to the following address:

Salem Road, L.L.C.
P.O. Box 856
Duluth, Georgia 30096
5. **CONSTRUCTION.**
 - A. After approval by the ACC of plans and specifications for any Structure and prior to the commencement of any construction or grading on the Lot for which such plans and specifications were approved, the location of such Structure shall be clearly marked on such Lot. After such marking, the Owner or the Owner's contractor shall request in writing that a representative of the ACC inspect the proposed location of the Structure as marked on the Lot to determine whether such location is consistent with the guidelines for location of buildings contained in Section 7.A. of these Design Standards. After receipt of such written request, the ACC shall have the right to inspect the proposed location of the Structure as marked on the Lot, and notify the Owner in writing of its approval or disapproval of the proposed location of the Structure. In any case in which the ACC shall disapprove the proposed location, or shall approved the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the ground or

grounds upon which such action was based. In any case the ACC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable location may be marked and submitted for approval. In no event shall the Owner allow any grading or cutting of trees on the Lot prior to approval of the proposed location by the ACC. In the event the ACC fails to make the foregoing inspection and notify the Owner of its approval or disapproval of the proposed location of the Structure within seven (7) days after receipt of written request, the ACC shall be deemed to have approved the proposed location.

- B. During approved construction, all vehicles in any way connected with such construction shall enter the Lot under construction only by the driveway as approved in the plans and specification by the ACC. In no event shall any driveways other than those approved by the ACC be constructed or used for temporary access to any Lot. All vehicles shall be parked at the Lot to avoid damage to trees, paving, curbs, gutters and any other improvements on the Lot.
- C. Construction debris shall be removed as often as necessary to keep the Lot and any Structure thereon attractive. Construction debris shall not be dumped in any area of the Development unless approved in writing by the ACC.
- D. Lots shall be graded in such a manner so as not to block any natural or manmade swales, ditches, or drainage structures. Earth and hay berms shall be installed on Lots by the Owner thereof when, in the opinion of the ACC, such Lot may erode due to topography. Whenever possible, Lots shall drain independently rather than to adjoining Lots.

6. DESIGN DETAILS.

- A. Minimum House Sizes. No residential Structure shall exceed three stories in height, minimum heated finished floor area is 1,400 square feet of living space, not to include basement area or attic space.
- B. Set-Backs. Building area set-backs shall be within the recommended building lines indicated on the recorded subdivision plats of Walnut Creek, provided, however, that less restrictive set-backs may be approved by the ACC if an exception is requested when plans and specifications are submitted to the ACC for approval. In no event shall the set-backs be less than those required by the Dekalb County Subdivision Ordinance.
- C. Exterior Colors and Materials. All exterior colors and materials of all Structures shall be specified in the plans and specifications submitted to the ACC for approval and shall be subject to the color and material guidelines contained in Section 8 of these Design Standards. Should a homeowner wish to make changes in these scheduled color schemes or in the colors of the initial construction, this may be done only by consulting with the ACC in order to achieve a well coordinated color scheme throughout the community.
- D. Roof. Roofing material and color shall be specified in the plans and specifications submitted to the ACC for approval, and shall be subject to the color and material guidelines contained in Section 8 of these Design Standards. No plumbing or heating vent shall penetrate the roof surfaces which face the street or streets adjacent to the residential Structures without the approval of the ACC.

- E. Driveways. Driveways shall be constructed with concrete, provided, however, that other hard surface materials may be approved by the ACC if an exception is requested when plans and specifications are submitted to the ACC for approval.
- F. Landscaping. A written plan of landscaping must be submitted to the ACC prior to all major alterations of the landscaping; this plan should include a drawing to show location, variety and size of all plant materials, as well as location and description of all “landscape” items such as fences, walls, rocks, fountains, statuary, and so forth. Statues, cement ornamental structures, and plastic flowers shall not be permitted in the front yard of any Lot.
- G. Mailboxes. No mail box or paper box of other receptacle of any kind for use in the delivery of mail, newspapers or similar material shall be erected or placed on any Lot or Structure unless it shall conform to the design and specifications adopted for the entire Development and plans and specifications are available from the ACC.
- H. Manufactured Structures. Pre-fabricated or factory built Structures shall not be permitted within the Development, or employed as elements in the construction of residential Structures within the Development except by express written consent of the ACC.

7. SITE PLANNING AND DESIGN.

- A. Location of Structures. All additions to or alterations of Structures together with related paved and open areas, shall be located on each Lot to:

- (1) minimize changes in the existing topography;
- (2) preserved existing trees and vegetation to the maximum extent possible;
- (3) control drainage and prevent erosion; and
- (4) create prime views and conceal unsightly areas.

8. COLORS AND MATERIALS GUIDELINES.

- A. Materials.

- (1) A minimum number of exterior materials shall be used on Structures to avoid a cluttered appearance. Where two materials are used (in addition to glass), one shall be dominant. All additions to and alterations of Structures shall utilize the same (or as close as reasonably practicable) materials, styles, and colors as were utilized in the initial construction of each Structure.
- (2) Secondary materials, when used, shall complement the dominant material in texture and color.
- (3) The exterior materials of all Structures on all Lots shall be harmonious and complementary.