

## **Covenants**

**INTRODUCTORY NOTE:** *This version of the Shoal Creek Farm Covenants was produced by scanning and correcting a photocopy of the covenants on file in the Office of the Clerk of the Superior Court of Clarke County. The goal was to produce a copy having exact verbal fidelity to the original. Spelling corrections are shown in [ ] after the original, and two commas were inserted in [,] to make the meanings of two phrases more clear (See Article V (G)). A few other editorial suggestions are shown in [ ] following the portion of the original Declaration that appears ambiguous or incorrect. In one or two places, a “space” was inserted after a comma and before the following word, and those changes were not marked. Otherwise, to the best of the Board’s knowledge, the scanned version faithfully reproduces the original. In any dispute concerning the covenants, the Declaration on file at the Superior Court, Clarke County shall be the controlling version.*

*The pagination of the original Declaration is indicated in this scanned version by inserting [Book #/Page #] in the text where the indicated page begins. This scanned version was last corrected on March 31, 2005]*

[Book 757/Page 157]

## **DECLARATION OF COVENANTS AND RESTRICTIONS SHOAL CREEK FARMS**

This declaration made this first day of September, 1986, by Ronald M. North, dba SHOAL CREEK FARMS and by NORTH DEVELOPMENT COMPANY, a partnership, their successors, successor organizations and assigns, hereinafter referred to as “DECLARANTS,” is intended in all of its declarations to protect existing and future owners of property in SHOAL CREEK FARMS from activities and behavior detrimental to community values, to enhance expectations and to insure a reasonable process for establishing a community of residents mutually protected to maintain the desirability [desirability] of the property.

### **RECITALS**

A. Declarants are the owners and developers of the real property and improvements thereon known as SHOAL CREEK FARMS and consisting of 315 acres of land fronting on Morton Road on the east

and Shoal Creek on the west as described on the respective plats for this property (Attachment A).

B. Declarants desire to subject the real property described in Attachment A and improvements constructed or to be constructed thereon to th [the] provisions of this declaration. All real property and improvements thereto and thereon are subject to these declarations and shall be held, improved, sold, transferred, conveyed, used, occupied, taxed, mortgaged or otherwise encumbered subject to these covenants and restrictions which shall run with the title to the real property and shall be binding on all persons having any right, title or interest in all or any part of the real property subject hereto as well as their respective heirs, assigns, representatives or successors with the benefits therefrom inuring to each and every owner of all or any portion thereof.

## **DEFINITIONS**

A. “Architectural Review Committee” (hereinafter the ARC) shall mean and refer to the Board of Directors of SHOAL CREEK FARMS HOMEOWNER’S ASSOCIATION, Inc. which shall initially be comprised of the declarants and such other individuals or entities as declarants may appoint and upon conversion or completion of development, those persons selected annually by the owners in compliance with the provisions of these declarations and the bylaws of the Association.

B. “Association” shall mean and refer to the SHOAL CREEK FARMS HOMEOWNER’S ASSOCIATION, INC., a nonprofit Georgia corporation, its successors and assigns.[Book 757/Page 158]

C. “Community” shall mean and refer to that real property described in Exhibit A attached hereto and any additional real or personal property that may by attachment thereto or by amendment be subject to this declaration.

D. “Declarants” shall mean and refer to Ronald M. North, North Development Co. and Shoal Creek Farms, Inc., the parties executing this declaration, as well as any or all successors in title to any or all of the said parties to any portion or all of the property subject to this declaration. Further, should any or all of the property subject to this declaration be now or become subject to a mortgage given by declarants as security for the repayment of a loan, then all of the

rights, privileges, options and/or responsibilities herein reserved to “declarants” shall inure to the benefit of the holder of such mortgage upon its becoming the owner of all or a part of the property subject to these declarations.

E. “Owner” or “homeowner” shall mean and refer to the owner(s) of record, (whether one or more natural persons, a corporation, joint venture, partnership of any kind, association, trust or other legal entity), of the fee simple title to any unit within the community.

F. “Unit” shall mean and refer to any plot of land located within the community that constitutes a dwelling site designated on any plat of survey by declarants and recorded in the office of the Clerk of the Superior Court of Clarke County.

G. “Community property” shall mean and refer to any designated community use area such as trails, pastures, lakes, recreational areas, amenity areas or others intended for the use of declarants, owners and guests of owners and declarants. The use of and/or the right to use all community properties (real and personal) may be subject to appropriate admission, user and membership fees and assessments in any combination for their upkeep, maintenance, services, taxes and other costs of such reservations for the benefit of all owners and guests.

H. “Improvement” shall mean and include any change or modification of the appearance or structure of a unit from the state existing on the date of conveyance of a unit from the declarants to a unit owner.

## **Article I**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The real property described in Exhibit A, by the recording of this declaration, is subject to the covenants and restrictions hereinafter set forth sequentially as each phase of the development of SHOAL CREEK FARMS is approved by appropriate authorities of Clarke County and opened for development by declarants. Tracts not approved for development will not be subject hereto.[Book 757/Page 159]

## **Article II**

### **PLAN OF DEVELOPMENT**

Declarants hereby reserve the option to be exercised in their sole discretion to submit fromm [from] time to time additional properties or

phases of this property to the provisions of this declaration and thereby cause such property to become a part of the community. At this time declarants intend to construct a maximum of one hundred ninety-five (195) owner units in a manner consistent with the topographical, aesthetic, architectural and zoning conditions, together with roads, utility systems, trails, amenity areas and other improvements serving such units. However, declarants reserve the right to construct fewer or more units on the 315 acre property provided that declarants are in compliance with applicable zoning provisions of Clarke County. Phases of subject property may be subjected to these declarations at different times, there being no limits fixing the boundaries of these phases or regulating the order, sequence or location in which such phases may be added to the community.

As each phase of the property or any portion thereof is added to the community, the designs, improvements, easements thereon shall be compatible with such designs, improvements, easements and covenants required and constructed in previous phases (now phases one and two) with respect to quality, materials, style, ambience and value. Declarants shall construct on the property at selected locations such recreational and convenience facilities as declarants deem advisable for the common use and enjoyment of the owners, their families, guests and invitees. Such amenities shall consist of a common area to include a clubhouse, tennis courts, horse stable, riding areas, walking areas and associated recreational facilities in a number, size and location to meet community needs.

Every purchaser, mortgagee, lienholder [lien holder] or party acquiring or holding an interest to any unit herein shall take title or hold such security interest with notice of declarant's plan of development as set forth [set forth] herein and full acceptance of all covenants, restrictions, plans and schedules promulgated by declarants.

### **Article III**

#### **ARCHITECTURAL REVIEW COMMITTEE**

A. PURPOSE, POWERS and DUTIES. The purpose of the ARC is:  
(a) to administer and enforce the covenants and restrictions set forth in this declaration;  
(b) to set, collect and disburse any fees and charges in connection with the enforcement or administration of this declaration and  
(c) to assure the installation, construction or alteration of any structure on any [Book 757/Page 160] unit is submitted to the

Committee for prior approval as to its conformity and harmony of design and quality with the existing standards of the community and as to the location of structures with respect to topography, elevation, drainage, easements/setbacks and surrounding structures.

B. SELECTION. From the execution date of this declaration until such time as the declarants' rights pursuant to Article II expire, all units have been fully developed, permanently improved and sold to permanent residents, the ARC shall consist of the declarants or their designees. Upon the sale by declarants of the last unit and the completion of a permanent residence thereon, the declarants shall cease functioning as the ARC. However, the declarants may, at any time prior thereto, resign from the ARC, turning its functions over to the Board of Directors of the Shoal Creek Homeowners Association.

C. MEETINGS. The Committee shall hold such meetings as required for timely conduct of business or as allowed for the Board of Directors in the Bylaws of the Association.

D. ACTIONS of MEMBERS and APPLICANTS. Any member of the ARC may be authorized by the Committee or by the Board of Directors to exercise full authority of the Committee. The action of such authorized member, with respect to the decisions authorized, shall be final and binding on the Committee and upon any applicant for an approval, permit or authorization. However, such decision will be subject to review and modification by the full Committee on its own motion or on appeal by the applicant. Written notice of decisions of such authorized member shall be given to the applicant for an approval within five (5) business days of its submission. The applicant may, within ten (10) business days, after receipt of notice of any decision, file a written request to have the matter in question reviewed by the Committee. Upon the filing of any such request, the ARC shall provide its review promptly, but in no case later than thirty (30) days after the filing of an appeal. The decision of the majority of the Committee Members (or of the Board of Directors) shall be final and binding on all parties.

#### **ARTICLE IV BUILDING REQUIREMENTS**

The following property rights and architectural restrictions shall apply to the property initially subject to this declaration as well as to any later phases of development of this or additional property.

A. SUBDIVISION of UNIT. No unit shall be subdivided or its boundary lines changed except with the written approval of the ARC. However, declarants expressly reserve the right to replat any unit or units in order to create more acceptable residential units or amenities until such time as the last unit is sold. All of the covenants and restrictions set forth herein shall apply to each such modification. Any such replat or [Book 757/Page 161] boundary change shall be in conformance with and/or acceptable to Clarke County subdivision and zoning regulations.

B. APPROVAL of PLANS. No building, fence, wall, road, driveway, parking area, tennis court, swimming pool, barn, shed or structure or improvement or alteration of any kind shall be erected, placed, altered, added to, modified or reconstructed on any unit until the plans therefor and for the proposed location thereof upon the unit shall have been approved in writing by the ARC. Before taking any action requiring approval under this Article, a unit owner shall submit to the ARC a complete set of final plans and specifications showing: construction schedule, site plan, landscape layout, floor plans, exterior elevations, exterior materials/colors/finishes and how the modification or structure affects the surrounding environment. No changes or deviations from such approved plans shall be made without written approval from the ARC. Before beginning construction or modification, the contractor's name must be submitted to the ARC for approval as to experience, ability, cooperation and willingness to build or modify structures consistent with the class and type existing or to be built in the community. The ARC may disapprove plans, siting or specifications on technical and/or aesthetic or any other grounds which it shall deem sufficient. Approval of any one or a series of improvements shall not waive the Committee's rights to disapprove subsequent improvements to the same unit or similar improvements to different units. However, neither the Committee nor any party to whom such review and approval authority may be assigned, shall be responsible or liable in any way for the performance of any approved improvement or for the performance of any contractor or for for [an extra for in original] any defects in any plans or structures approved under this article.

C. BUILDING LOCATION. In order to improve privacy, views and environments or to provide air and water drainage, trails or other amenities, no specific setbacks or siting rules are promulgated by these covenants other than those required by governmental rules and regulations and those specifically shown on recorded plans and plats,

which shall be observed. The Committee shall provide every reasonable opportunity to each site for a plan appropriate to that site.

D. PROVISION of ADEQUATE PARKING. Each residence must have a garage of sufficient size to house two (2) motor vehicles within the approved building area and such vehicle housing must conform architecturally to the dwelling to which it relates. The Committee may grant waivers only when such variance is needed to preserve the overall design and integrity of the community. If the number of powered or towed vehicles exceeds the enclosed capacity, then the unit owner must provide off-street parking within the approved buildable area in a manner not to detract from the approved design or use off-site parking in an approved area.

E. SPECIFIC BUILDING REQUIREMENTS. The requirements set forth below are in no way to be construed as limiting the exercise of the ARC's discretion pursuant to Section B and C above. [Book 757/Page 162]

- (a) Each residence shall have a minimum of 2,200 square feet of heated living space or a quality and style of construction equal in value to a 2,200 square foot dwelling at prevailing average costs. Owners may request in writing to the ARC a waiver of this requirement to allow smaller heated living space where the resulting value and appearance of the Unit is likely to preserve the overall appearance and design of the Community.
- (b) Each residence and other structures shall be constructed only of materials, styles and colors approved in writing by the Architectural Review Committee.
- (c) Driveways, parking areas, pools, amenities and auxiliary structures shall be constructed only of materials and styles approved in writing by the ARC.
- (d) The exterior of all residences and other structures must be completed within six (6) months after commencement of construction and the landscaping on such Units must be completed within ninety (90) days thereafter except, in cases of great hardship to the owner or builder due to strike, fire, national emergency, or natural calamity.
- (e) All electrical service, exterior lights, cable television and telephone lines shall be placed underground, and no exterior pole, tower, antenna or other device shall be erected, placed or maintained on any Unit except as may be constructed by the Declarants or approved in writing by the ARC.
- (f) Mechanical equipment (other than heating or air conditioning equipment), fuel or water tanks and similar storage receptacles shall

be installed only within the main dwelling, within an accessory building, buried underground, or otherwise located or screened so as to be concealed from view of neighboring Units, streets and property located adjacent to the Community.

(g) No trees, shrubs, bushes or other vegetation having a trunk diameter of six (6) inches or more at a point two (2) feet above ground level may be cut, pruned, mutilated or destroyed without the prior written approval of the ARC; except that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly by the Owner thereof after such condition is first brought to the attention of the ARC.

(h) No temporary or accessory building structure shall be placed upon any Unit at any time, except for shelters used by a building contractor during the course of construction.

F. RIGHT OF INSPECTION. The ARC, its agents and representatives, shall have the right during reasonable hours to enter upon and inspect any Unit and improvement thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any improvement or the use of any Unit or improvement is in compliance with the provisions of this Declaration; and the ARC shall not be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection.

G. VIOLATIONS. Any improvement erected, placed, maintained or altered upon any Unit, otherwise than in accordance with the plans and specifications approved by the ARC shall be deemed in [Book 757/Page 163] violation of this Article. If, in the opinion of the ARC such violation shall have occurred, the Committee shall be entitled and empowered to enjoin or remove any such construction, and take any other action permitted in the By-Laws of the Association. Any costs and expenses incurred in enjoining and removing any construction or improvements shall become a lien against the Owner's Unit in accordance with Article VII, Section 2. Additionally, the ARC shall be entitled to pursue all legal and equitable remedies.

H. FEES. The ARC may impose and collect a reasonable and appropriate fee to cover the cost of inspections performed pursuant to Section 7 hereof. Such fees may be paid out of regular or special assessments established per Article VII hereof.

## **ARTICLE V** **USE RESTRICTIONS**

A. RESIDENTIAL USE. All units shall be used for single-family residential<sup>1</sup> purposes exclusively. No business or business activity shall be carried on or upon any unit at any time except with the written approval of the ARC; except that nothing herein shall prevent the Declarants from using any unit for the purpose of carrying on business related to the development and management the Community.

B. SIGNS. No commercial signs, including “for rent” or “for sale” signs or advertising posters of any kind shall be erected, placed or maintained on any unit except as may be required by legal proceedings or as approved by the ARC.

C. MAIL BOXES, PROPERTY IDENTIFICATION MARKERS, AND DECORATIVE HARDWARE. The ARC shall have the right to approve the location, color, size, design, lettering, and all other particulars of mail and newspaper boxes, as well as property identification markers and decorative hardware.

D. CLOTHESLINES, GARBAGE CANS, WOODPILES, ETC. All clotheslines, garbage cans, woodpiles, etc. shall be located or screened so as to be concealed from view of neighboring units, streets and property located adjacent to the Community. All rubbish, trash and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

E. PROHIBITED STRUCTURES. No mobile home, boat, recreational vehicle, house trailer, factory or manufacturer assembled homes, modular homes, tent, shack, barn, or other outbuilding [outbuilding] or structure (except accessory buildings. otherwise permitted hereunder) shall be placed on any unit at any time, either temporarily or permanently except for construction purposes during the construction period of residences or as one or more real estate sales offices of Declarant.

F. ANIMALS AND PETS. No animals, horses, livestock or poultry [Book 757/Page 164] of any kind may be raised, bred, kept or permitted on any unit with the exception of dogs, cats or other usual and common household pets in reasonable number, provided that said pets are not kept, bred or maintained for any commercial purpose, are not permitted to roam free, and in the sole discretion of the ARC, do not endanger the health, make objectional

[objectionable] noise or constitute a nuisance or inconvenience to the owners of other units or the owners of any property located adjacent to the Community. Dogs outside a dwelling shall be confined within a pen or a leash. No structure for the care, housing or confinement of any pets shall be maintained so as to be visible from neighboring property. HORSES will be encouraged but must be kept in the designated equestrian areas, pastures, trails and buildings.

G. PARKING. All motor vehicles[,] boats, recreational and travel vehicles shall be parked within a garage[,] in the designated unit parking areas or in the Association storage area. The exterior doors of such garage shall be kept closed at all times, except when entering or leaving the garage.

No private or commercial automobile, boat, recreational vehicle motor driven or towed vehicle may be left upon any unit for a period longer than five (5) days in a condition such that it is incapable of being operated upon the public highways. Commercial vehicles will not be parked, stored or temporarily kept within the Community except wholly within private garages or to service existing improvements or construction needs within the Community.

H. NUISANCES. It shall be the responsibility of each unit owner to prevent the development of unclean, unhealthy, unsightly, or unkempt buildings or grounds. No noxious, dangerous, unsightly or offensive activity can be carried on at or upon any unit nor shall any activity or behavior to cause discomfort, annoyance or embarrassment [embarrassment] to other persons in the community be conducted. The pursuit of hobbies which might tend to create disorderly, unsightly or unkempt conditions shall not be undertaken in any part of the community.

I. OWNER'S RESPONSIBILITIES. All portions of the unit shall be maintained by the Owner thereof in a manner consistent with the provisions contained herein. In the event that the Declarants determine that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at Owner's sole cost and expense, in accordance with procedures set forth in the By-Laws of the association. [Book 757/Page 165]

**ARTICLE VI**  
**ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

A. MEMBERSHIP. Every Owner of a unit in the Community shall be a member of the Association. If title to a unit is held by more than one person, each of such persons shall be members. Membership shall be appurtenant to the unit to which it appertains and shall be transferred automatically by conveyance of that unit. Membership in the Association may not be transferred except in connection with the transfer of title to a unit.

B. VOTING. The Association shall have two classes of voting membership.

Class A. Class A members shall be all **Owners**, with the exception of the Declarants and shall be **entitled to one vote for each unit owned**. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any unit.

Class B. Class B member(s) shall be the Declarants who shall be entitled to five (5) votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) the total number of votes outstanding in the Class A membership equals the total number of votes outstanding in the Class B membership; or

(b) the passage of ten (10) years following the date of the conveyance of the first unit in the Community to an Owner other than Declarants.

Said votes shall be cast under such rules and procedures as may be prescribed in the By- Laws of the Association, as amended from time to time, or by law.

C. MEETINGS. Except as may be herein otherwise provided, all matters concerning meetings of members of the Association, including the time within which and the manner in which notice of any meetings shall be given to said members, and the quorum required for the transaction of business at any of such meetings, shall be as specified in the Articles of Incorporation or By-Laws of the Association, as amended from time to time, and by law.

D. CASTING OF VOTES. Subject to the provisions of this Declaration and the Articles of Incorporation, the votes of the members shall be cast under rules and procedures as may be prescribed in the By-Laws of the Association, as amended from [Book 757/Page 166] time to time, or by law.

E. AMPLIFICATION. The provisions of this Article are to be amplified by the Articles of Incorporation and By-Laws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners or units as set forth herein. In the event of any conflict or inconsistencies among this Declaration, the Articles of Incorporation or the By-Laws of the Association, this Declaration and the Articles of Incorporation (in that order) shall prevail.

## **ARTICLE VII** **ASSESSMENTS**

A. PURPOSE OF ASSESSMENTS. The assessments provided for herein shall be used for the purpose of administering and enforcing the covenants and restrictions set forth in this Declaration and promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of units in the Community to include the upkeep, safety and convenience of Community property.

B. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. Each Owner of any unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association assessments which shall be fixed, established and collected from time to time as herein provided. Such assessments, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the unit against which each such assessment is made. Such lien shall be perfected by filing of record in the office of the Clerk of the Superior Court of Clarke County a claim of lien within ninety (90) days after the assessment, or portion thereof, for which a lien is claimed became due. Such a claim of lien shall also secure all assessments, or portions thereof, which come due thereafter until the claim of lien is cancelled of record. Also, each Owner shall be personally liable for the portion of any assessment coming due while he is the Owner of a unit and his grantee shall be jointly and severally liable for such portion

thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Provided, however, any person who becomes the Owner of a unit as purchaser at a judicial or foreclosure sale conducted with respect to a first mortgage on the unit or pursuant to any proceeding in lieu of the foreclosure of such mortgage shall be liable only for assessments coming due after the date such person so acquires title to the unit. [Book 757/Page 167]

C. ASSESSMENTS. Assessments may be of two types:

(1) an annual assessment for the general upkeep of Community property and (2) special assessments or user fee for specific services provided to using owners. The Class B members shall have the right to establish assessments for so long as Class B memberships shall exist. The Association, by majority vote of the owners which the Class A members present, or represented by written proxy, are entitled to cast at a meeting duly called for such purpose and with the consent of the Class B members for so long as such memberships shall exist, shall have the right to establish annual and/or user fee assessments to carry out the purposes set forth in "A" of Article VI [VII] herein.

D. UNIFORM RATES OF ASSESSMENTS. Except as otherwise provided in "H" of this Article, all assessments must be fixed at a uniform rate for all units or at a uniform rate for each service provided and may be collected monthly or in such other reasonable manner as may be determined by the Board [Board] of Directors of the Association. Due notice of assessments and due dates will be provided to Owners in advance.

E. ANNUAL ASSESSMENTS: DUE DATES. The annual assessments, if any, payable to the Association, as provided for in this Article VII, may be established on a calendar year basis and shall commence as to each unit as of the first day of the month next following the month in which any one of the following shall first occur: (i) the lapse of one (1) year from the date such unit is conveyed by Declarants, or (ii) a residence constructed on the unit is first occupied, whichever occurs first. The first annual assessment payable to the Association shall be adjusted according to the number of months remaining in the calendar year as of the commencement date.

F. SPECIAL ASSESSMENTS (USER FEES). In addition to annual assessments, if any, the Association, through the same voting procedure per "C" of this Article, may levy special assessments or user fees against all units or using units only for the following purposes:

- (a) Any of the purposes set forth in "A" of this Article, if no regular annual assessments are in effect;
- (b) To provide for the administration and enforcement of the covenants and restrictions set forth in this Declaration, including the payment of attorneys fees, court costs and other costs of litigation;
- (c) To resolve an emergency which threatens life or property of the Community; and
- (d) Special services provided to using units and Owners for their particular benefit. [Book 757/Page 168]

G. EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within ten (10) days after the due date, then a late charge equal to ten (10) percent of the amount thereof, or \$5.00, whichever is greater, shall also be due and payable to the Association. If any assessment or portion thereof is delinquent in accordance with "B" of this Article the Board of Directors of the Association may suspend the voting rights of the unit Owner during the period in which any assessment or portion thereof remains unpaid and may bring an action at law against the unit Owner or Owners personally obligated to pay the same or foreclose its lien against such Owner's unit. In this event late charges, interest, costs and attorney's fees in an amount equal to the greater of \$250.00 or fifteen (15%) percent of the amount of such assessment or portion thereof which is past due shall become due and payable to the Association. All payments on account shall be applied first to costs of collection, then to late charges, then interest and then to the assessment lien first due. Each unit Owner, by his acceptance of a deed or other conveyance to a unit, vests in the Association the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his unit in the same manner as other liens for the improvement of real property.

H. PRIORITY OF LIEN. The lien of the assessments and fees provided for in this Article and Article IV and V shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage on a unit, if any, filed of record in the

office of the Clerk of the Superior Court of the County in which the unit is located.

I. EXEMPT PROPERTY. Notwithstanding the commencement date otherwise established by “E” of this Article, all units made subject to this Declaration shall be exempt from the assessments created herein until conveyed by Declarants to another unit Owner. Provided, however, that all units made subject to this declaration and not so conveyed by Declarant shall be and become subject to such assessments as of the beginning of the calendar year next [year next] following the calendar year in which the Class B membership of the Association shall terminate and cease to exist. Thereupon, such assessments shall be imposed at such rates and on such terms and conditions as may then be applicable to all units conveyed by the Declarants prior thereto.

J. NOTICE TO ASSOCIATION. Each unit Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner’s unit. [Book 757/Page 169]

## **ARTICLE VIII** **GENERAL PROVISIONS**

### **A. EASEMENTS FOR ARCHITECTURAL REVIEW COMMITTEE.**

There is hereby created in favor of the Architectural Review Committee, its members, agents, employees and any management company retained by the Architectural Review Committee, an easement to enter in or to cross over the units to inspect and to perform the duties of maintenance and repair of the units, as provided for herein.

B. EASEMENTS FOR DECLARANTS. Declarants hereby reserve for themselves, their successors and assigns, agents, employees, contractors and subcontractors, the following easements and rights-of-way in, on, over, under and through any part of the Community as [Community as] well as in, on, over, under and through any part of Additional Property for so long as declarants own any unit primarily for the purpose of sale or so long as Declarants retain the right to submit the Community Property to the provisions of this Declaration pursuant to Article II hereof, whichever is longer.

(a) For the erection, installation, construction and maintenance of wires, lines and conduits and amenity improvements in connection with the transmission of electricity, gas, water, telephone, community

antenna, television cables, other utilities, trails, roads, access points and community amenity areas;

(b) For the construction of improvements on the Units;

(c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility

(d) For use as sales offices, model units and parking spaces in connection with its efforts to market units; and

(e) For the maintenance of such other facilities and equipment as in the sole discretion of Declarant may be reasonable [reasonably] required, convenient or incidental to the completion, improvement and sale of units

C. ENFORCEMENT. The Architectural Review Committee, the Association, or any Owner, including Declarants, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any person to enforce any covenant or restriction herein contained shall in no event be deemed a [Book 757/Page 170] waiver of the right to do so thereafter.

D. DURATION. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by Georgia law. Renewals or extensions of these Declarations beyond the initial period must be approved by at least eighty percent (80%) of the unit Owners. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this section.

E. RIGHTS OF MORTGAGEES. In addition to the rights elsewhere provided, each mortgagee of a unit, or purchaser or insurer of a mortgage on any unit subject to this Declaration, shall

(a) default by an Owner in the performance of his obligations under the Declaration which is not cured within 90 days;

(b) be entitled to timely written notice of any proposed action which would require the consent of a specified percentage of mortgagors; provided, however, that such mortgagee or purchaser or insurer of such mortgage shall first file with the Association a written request that such notices be sent to a named agent or representative of the mortgagee at an address stated in such notice.

F. AMENDMENT. This Declaration may be amended unilaterally at any time and from time to time by Declarants so long as Class B memberships exist

(a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith,

(b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the units subject to this Declaration,

(c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser

[purchaser] to make or purchase mortgage loans on the units subject to this Declaration, or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance [insurance] company to insure mortgage loans on the units subject to this Declaration, provided any such amendment shall not adversely affect the title to any Owners unit unless any such unit Owner shall consent thereto in writing.

All amendments other than those specified above shall be adopted as follows:

(a) At least sixty-seven (67%) percent of the unit Owners shall be necessary to amend this Declaration. Notwithstanding anything to the contrary herein, it is expressly provided that any amendment which adversely affects the title to any unit must be approved by the Owner of such unit in writing.

[Book 757/Page 171]

(b) The amendment may be proposed by either the unit Owners or Declarants. The Declarants, or the Association after termination of the Class [Class] B membership, may call a meeting of the unit Owners to consider such an amendment and shall be required to call such a meeting upon a petition signed by at least twenty-five (25%) percent of the unit Owners. If a meeting of the unit Owners is called to consider such an amendment, the time within which and the manner by which notice of such meeting shall be given, the authorized use of proxies, and the quorum required for the transaction of business at such meeting shall correspond to the requirements for meetings of the Association.

(c) The consent of the unit Owners required to approve said amendments shall be obtained by affirmative vote, written consent, or a combination thereof. A meeting of the unit Owners shall not be

required in the event that the requisite approval of the unit Owners is obtained by written consent. The required consent of Declarants shall be in writing.

No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage affecting any unit unless such holder shall consent thereto in writing. The written consent thereto of any mortgage holder affected thereby shall be filed with such amendment. Every purchaser or grantee of any interest in any real property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this section. No amendment shall become effective until filed with the Clerk of the Superior Court of Clarke County, Georgia.

G. INTERPRETATION. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

H. GENDER AND GRAMMAR. The singular whenever used herein shall be construed to mean the plural when applicable and the use of the masculine pronoun shall include the neuter and feminine.

I. SEVERABILITY. Whenever possible, each provision of this Declaration shall be interpreted in such 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 herein. [Book 757/Page 172]

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have executed this instrument under seal this {8th} day of {April} 1987.

Signed and sealed in the presence of the undersigned on this {8th} day of {April} 1987:

\_\_\_\_\_ {signature} \_\_\_\_\_ Notary Public

\_\_\_\_\_ {signature} \_\_\_\_\_ Witness

For: SHOAL CREEK FARMS

\_\_\_\_\_ {signature} \_\_\_\_\_ Ronald M. North, Proprietor

\_\_\_\_\_ {signature} \_\_\_\_\_ North Development Company

\_\_\_\_\_{signature}\_\_\_\_\_ Carlton R. North, Partner  
\_\_\_\_\_{signature}\_\_\_\_\_ Roger R. North, Partner  
[Book 757/Page 173] EXHIBIT A

All that tract or parcel of land, containing 314.596 acres, more or less, situate, lying and being in the 218th G.M.D., Clarke County, Georgia, being designated Tract 1 on a plat thereof by Ben McLeroy and Associates, Surveyors, recorded in Plat Book 17, page 193, in the Office of Clerk of Superior Court of Clarke County, Georgia, which plat and the record thereof are incorporated herein and made a part hereof by reference.

CLERK'S OFFICE SUPERIOR COURT CLARKE COUNTY,  
GEORGIA File for the record at \_{12:07}\_\_\_\_\_ o'clock \_\_{P}\_ M. this  
\_{6}\_\_ day of \_{July}\_ 19 {87}\_\_\_\_ and recorded in the book \_{757}\_\_  
Folio \_{157}\_\_ this \_{7}\_ day of \_\_{July}\_\_\_\_\_ 19 {87}\_\_\_\_  
\_\_\_\_\_{signature}\_\_\_\_\_ Clerk S.C.C.C. GA