

## COVENANTS AND RESTRICTIONS OF EVENTIDE

*RE-TYPED FOR INCLUSION IN  
EVENTIDE HOMEOWNERS ASSOCIATION PACKETS – OCTOBER, 1998  
ORIGINAL PHOTOCOPY ON FILE IN SECRETARY'S RECORDS  
AS COPIED FROM THE PUBLIC RECORDS OF CLAY COUNTY*

KNOW ALL MEN BY THESE PRESENT:

WHEREAS, Stephen D. Gay and Carol A. Gay, and Loren B. Brashear and Deanna L. Brashear hereinafter called the "Developer," are now the owners of that certain parcel of land in fee simple of the unrecorded subdivision known as EVENTIDE the legal description which is more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof as recorded in Plat Book 872, Pages 681 thru 696, of the public records of Clay County, Florida: and

WHEREAS, Developer is developing said parcel of land to be known as EVENTIDE, and the Developer is desirous of placing certain covenants and restrictions upon the use of said parcels and is desirous that said covenants and restrictions shall run with the title to the land hereby restricted;

NOW THEREFORE, for and in consideration of the premises and for other good and valuable consideration, does hereby restrict the use, as hereinafter provided, of all of the land, such property being referred to as "said land," and the developer does hereby place upon said land the following covenants and restrictions, to run with the title to said land, and the grantee of any deed conveying any of said land or any parts of portions thereof shall be deemed by the acceptance of such deed to have agreed to all such covenants and restrictions, and to have covenants to observe, comply with and be bound by all such covenants and restrictions, as follows:

1. The term "lots" as used herein shall refer to the lands described in Exhibit "A" as subdivided by metes and bounds. Said lands shall be used for residential purposes only. Except as herein otherwise specifically provided, no structure shall be erected or permitted to remain on any lot or building plot on said land other than one single family residence. Without the prior approval of the Developer, the height of the main residence on each building plot shall not be more than two full stories above the normal surface of the ground. No building at any time situate on any lot or building plot shall be used for any business, commercial, amusement, hospital, sanitarium, school, clubhouse, religious, charitable, philanthropic or manufacturing purposes, or as a professional office, and no billboards or advertising signs of any kind shall be erected or displayed thereon, except such signs as are permitted elsewhere in these Covenants and Restrictions. No building situate on any lot or building plot shall be rented or leased separately from the rental or lease of the entire property and no part of any such building shall be used for the purposes of renting rooms therein or as a boardinghouse, hotel, motel, tourist or motor court or other transient accommodation. No duplex residence, garage apartment or apartment house shall be erected or allowed to remain on any lot or building plot at any time shall be converted into a duplex residence, garage apartment or apartment house. No guesthouse shall contain any cooking facilities or equipment.

2. A building plot shall refer to all or parts of a lot and may consist of one or more contiguous lots. In no event shall a building plot contain less square footage than the smallest lot originally deeded as part of "Exhibit A."
3. No one story residence, no one and one-half story residence, no split-level residence and no two-story residence shall be erected or allowed to remain on any building plot unless the total floor area of all floors and all levels of such residence, exclusive of screened or unscreened porches, garages and carports, shall equal or exceed an aggregate of 1,700 square feet. Each house must contain a minimum of a two-car garage.
  - a. In determining minimum set back, eaves and cornices of any residence shall not be considered.
4. The minimum set backs shall be 50 feet from the front lot line exclusive of easements of record and all other set backs shall meet requirements of "RA" zoning.
5. No detached outbuilding, as said term is defined herein, shall be erected or allowed to remain on any part of any building plot on said land without prior approval of the Developer. The term "detached outbuilding," as used in these covenants and restrictions, means any garage, carport, quarters for domestic servants, laundry room, tool or workshop, hothouse, greenhouse, guesthouse, children's playhouse, summerhouse, or any other structure of any kind which extends more than three feet above the normal surface of the ground, and which is detached from the single family residence located or to be located on such building plot.
6. For the purpose of further insuring the development of said land as a residential area of highest quality and standards, and in order that all improvements on each building plot shall present an attractive and pleasing appearance from all sides and from all points of view, the Developer reserves the exclusive power and discretion to control and approve all of the buildings, structures and other improvements on each building plot in the manner and to the extent set forth herein. No residence or other building, and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the main residence shall be commenced, placed, erected or allowed to remain on any building plot, nor shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same, showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the building plot and approximate square footage, construction schedule, and such other information as the Developer shall require, including, if so required, plans for the grading and landscaping of the building plot showing any changes proposed to be made in the elevation or surface contours of the land, have been submitted to and approved in writing by the Developer and until a copy of all such plans and specifications, as finally approved by the Developer, have been lodged permanently with the Developer. The Developer shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot-grading and landscaping plans which are not suitable or desirable in its opinion for any reason; including purely aesthetic reason and reasons connected with future development plans of the Developer of said land or contiguous

lands. In passing upon such building plans and specifications and lot grading and landscaping plans, the Developer may take into consideration the suitability and desirability of the proposed constructions and of the materials of which the same are proposed to be built to, the building plot upon which it is proposed to erect the same, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from neighboring properties. In the event the Developer fails to approve or disapprove such building plans and specifications within 30 days after the same have been submitted to it as required above, the approval of the Developer shall be presumed and provisions of this paragraph 6 shall be deemed to have been complied with. However, no residence or other building, structure, or improvement which violates any of the covenants and restrictions herein contained or which is not in harmony with the surrounding neighborhood and the existing structures therein shall be erected or allowed to remain on any part of a building plot on said land.

7. No wheeled vehicles of any kind and no boats may be kept or parked on the building plot unless same are completely inside a garage attached to the main residence, except that private automobiles of the occupants bearing no commercial signs may be parked in the driveway on the building plot from the commencement of use thereof in the morning to the cessation of use thereof in the evening, and except that private automobiles of guests of the occupants may be parked in such driveway, and except that other vehicles may be parked in such driveway during the times necessary for pick-up and delivery service and solely for the purposes of such service. No wheeled vehicle or boat by reason of its size would not be substantially obscured from view from the outside of a utility yard shall be kept or parked in any such utility yard.

8. Unless prior approval of the Developer has been obtained, no window air-conditioning units shall be installed in any side of a building which faces an access way.

9. All telephone, electric and other utilities lines and connections between the main utilities lines and the residence and other buildings located on each building plot shall be concealed and located underground so as not to be visible. Electric service is provided by the Jacksonville Electric Authority through primary service lines.

10. When the construction of any building is once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. The main residence and related structures shown on the plans and specifications approved by the Developer pursuant to paragraph 6 hereof must be completed in accordance with said plans and specifications within 6 months after the start of the first construction upon said building plot unless such completion is rendered impossible as the direct result of strikes, fires, natural emergencies or natural calamities.

Prior to completion of construction, the property owner shall install at his expense a suitable paved driveway from the paved portion of the abutting access way to his from garage access way. The design and material for such driveway shall first be approved by the Developer. During construction on any building plot, all vehicles involved in such construction, including those delivering material and supplies, shall enter upon such

building plot from the access way only at such location as shall be approved by the Developer, and such vehicles shall not be parked at any time on the access way or ways or upon any property other than the building plot on which the construction is proceeding.

11. No picnic areas and no detached outbuildings as defined in paragraph 5 hereof shall be erected or permitted to remain on any building plot prior to the start of construction of a permanent residence thereon.

12. No shed, shack, trailer, tent or other temporary or movable building or structure of any kind shall be erected or permitted to remain on any building plot. However, this paragraph shall not prevent the use of a temporary construction shed during the period of actual construction of the main residence and other buildings permitted hereunder, nor the use of adequate sanitary toilet facilities for workmen during the course of such construction.

13. No trailer, basement, garage, or any outbuildings of any kind other than a guest house or servants' quarters, even if otherwise permitted, hereunder, to be or remain on a building plot, shall at any time be used as a residence either temporarily or permanently.

14. Except as otherwise permitted herein, no sign of any character shall be displayed or placed upon any building plot except "For Rent" or "For Sale" signs, which signs may refer only to the particular premises on which displayed, shall not exceed to the particular premises on which displayed, shall not exceed two square feet in size, shall not extend more than four feet above the surface of the ground, shall be fastened only to a stake in the ground and shall be limited to one sign to a property. The Developer may enter upon any building plot and summarily remove and destroy signs which do not meet the provisions of this paragraph.

15. Nothing contained in these covenants and restrictions shall prevent the Developer or any person designated by the Developer from erecting or maintaining such commercial and display signs and such temporary dwellings, model houses and other structures as the Developer may deem advisable for development purposes.

16. No radio or television aerial or antenna nor any other exterior electronic or electric equipment or outside clothes lines or poles or devices of any kind shall be installed or maintained on the exterior of any structure located on a building plot or on any portion of any building plot not occupied by a building or other structure unless and until the location, size and design thereof shall have been approved by the Developer.

17. No garbage or trash incinerator shall be placed or permitted to remain on a building plot or any part thereof. Garbage, trash and rubbish shall be removed from the building plots in said subdivision by the owner of a franchise acceptable to Clay County or by a duly constituted governmental agency or authority. After the erection of any building plot, the owner shall keep and maintain on said plot covered garbage containers in which

all garbage shall be kept at all times, at the option of the building plot owner, either within the building or within a utility yard or within underground garbage receptacles located on the building plot or on the access way at such location as shall be approved by the developer.

18. No mail box or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located on any building plot unless and until the size, location, design and type of material for said boxes or receptacles shall have been approved by the Developer.

19. No horses, mules, ponies, donkeys, burros, cattle, sheep, goats, swine, rodents, reptiles, pigeons, pheasants, game birds, game fowl or poultry or guineas shall be kept, permitted, raised or maintained on any building plot on said land. No other animals, birds, or fowl shall be kept, permitted, raised or maintained on any such building plot except as permitted in this paragraph 19.

Not more than two dogs, not more than two cats, not more than four birds (excluding parrots) and not more than four rabbits may be kept on a single building plot for the pleasure and use of the occupants but not for any commercial or breeding use or purpose, except that if any of such permitted animals or birds shall, in the sole opinion of the Developer, become dangerous or any annoyance or nuisance in the neighborhood or nearby property or destructive of wild life, they may not thereafter be kept on the building plot. Birds and rabbits shall be kept caged at all times.

20. No illegal, noxious or offensive activity shall be permitted or carried on on any part of said land, nor shall anything be permitted or done thereon which is or may become a nuisance or a source of embarrassment, discomfort or annoyance to the neighborhood. No trash, garbage, rubbish, debris, waste material, or other refuse shall be deposited or allowed to accumulate or remain on any part of said land, nor upon any land or lands contiguous thereto. No fires for burning trash, leaves, clippings, or other debris or refuse shall be permitted on any part of said land.

21. No owner of a building plot shall plant or place shrubbery, hedges, trees or other plantings on any part of said land lying outside the owner's building plot. No living tree having a diameter greater than ten inches, breast high, may be cut on any of said land without first obtaining the written consent of the Developer, except such trees as shall be growing within twenty feet of the residence to be erected on the building plot. The Developer, for itself and its successors and assigns, hereby reserves and is given a perpetual, alienable, and releasable easement, privilege and right on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, drainage lines or ditches, sewers and other suitable equipment for drainage and sewage disposal purposes or for the installation, maintenance, transmission and use of electricity, telephone, gas lighting, heating, water, drainage, sewage and other convenience or utilities on, in, over and under all of the easements located on said land (whether such easements are to be for drainage, utilities, or other purposes) and any other recorded easements and the Developer shall have the unrestricted and sole right and power of

alienating and releasing the privileges, easements and rights referred to in this paragraph 21. The owners of the lot or lots subject to the privileges, rights and easements referred to in this paragraph 21 shall acquire right, title or interest in or to any poles, wires, cables, conduits, pipes, mains, lines or other equipment of facilities placed on, over or under the property which is subject to said privileges, rights and easements.

22. The owner of each building plot whether such is plot is improved or unimproved, shall keep such plot free of tall grass, undergrowth, dead trees, dangerous dead tree limbs, weeds, trash and rubbish, and shall keep plot at all times in a neat and attractive condition. In the event the owner of any building plot fails to comply with the preceding sentence of this paragraph 22, the Developer shall have the right, but no obligation, to go upon such building plot and to cut and remove tall grass, undergrowth and weeds and to remove rubbish or any unsightly or undesirable things and objects therefrom, and to do any other things and perform and furnish any labor necessary or desirable in its judgement to maintain the property in a neat and attractive condition, all at the expense of the owner of such building plot, which expense shall be payable by such owner to the Developer on demand.

23. Whenever there shall have been built or there shall exist on any building plot any structure, building, thing or condition which is in violation of these covenants and restrictions the Developer shall have the right, but not the obligation, to enter upon the property where such violation exists and summarily to abate and remove the same, all at the expense of the owner of such property, which expense shall be payable by such owner to the Developer on demand, and such entry and abatement or removal shall not be deemed a trespass or make the Developer liable in anyway for any damages on account thereof.

24. Wherever in these covenants and restrictions the consent or approval of the Developer is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to and approved in writing by the Developer. In the event the Developer fails to act on any such written request within 30 days after the same has been submitted to the Developer as required above, the consent or approval of the Developer to the particular action sought in such written request shall be presumed; however, no action shall be taken by or on behalf of the person or person submitting such written request which violates any of the covenants or restrictions herein contained.

25. The Developer shall have the sole and exclusive right at any time and from time to time to transfer and assign to, and to withdraw from such person, firm or corporation as it shall select, any or all rights, powers, privileges, authorities and reservations given to or reserved by the Developer by any part or paragraph of these covenants and restrictions or under the provisions of said plot. If at any time hereafter there shall be no person, firm or corporation entitled to exercise the rights, powers, privileges, authorities and reservations given to or reserved by the Developer under the provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the owners of a majority of the lots shown on said plot. Nothing herein contained, however, shall be

construed as conferring any rights, powers, privileges, authorities or reservations in said committee except in the event aforesaid.

26. The Developer reserves and shall have the sole right (a) to amend these covenants and restrictions, but all such amendments shall conform to the general purposes and standards of the covenants and restrictions herein contained, (b) to amend these covenants and restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein, (c) to include in any contract or deed or other instrument here after made any additional covenants and restrictions applicable to the said land which do not lower the standards of the covenants and restrictions contained, and which have been violated (including, without limiting the foregoing, violations of building restriction lines and provisions hereof relating thereto) if the Developer, in its sole judgement, determines such violation to be an insubstantial violation.

27. In addition to the rights of the Developer provided for in paragraph 29 hereof, the Developer reserves and shall have the right, with the consent of the person owning 75 per cent or more of the said lands to amend or alter these covenants and restrictions and any parts thereof in any other respects.

28. No property owner, without the prior written approval of the Developer, may impose any additional covenants or restrictions on any part of the said parcels to be known as EVENTIDE.

29. The covenants and restrictions numbered 1 through 28, above, as amended and added to from time to time as provided for herein, shall, subject to the provisions hereof and unless released as herein provided, be deemed to be covenants running with the title to said land and shall remain in full force and effect until the first day of January, A.D., 2010, and thereafter, the said covenants and restrictions shall be automatically extended for successive periods of 25 years each, unless within six months prior to the first day of January, A.D. 2010, or within six months preceding the end of any such successive 25 year period, as the case may be, a written agreement executed by the then owners of a majority of the lands known as EVENTIDE shall be placed on record in the office of the Clerk of the Circuit Court of Clay County, Florida, in which written agreement any of the covenants and restrictions provided for herein may be changed, modified, waived or extinguished in whole or in part of the property then subject thereto, in the manner and to the extent provided in such written agreement. In the event that any such written agreement shall be executed and recorded as provided for above in this paragraph 29, these original covenants and restrictions, as therein modified, shall continue in force for successive periods of 25 years each, unless and until further changed, modified, waived or extinguished in the manner provided in this paragraph 29.

30. If any person, firm or corporation, or other entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for the Developer or any person or persons owning any lot on said land (a) to prosecute proceedings at law for the recovery of damages against those so violating or attempting to violate any such

covenants or restrictions, or (b) to maintain a proceeding in equity against those violating or attempting to violate any such covenants or restrictions, for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this paragraph 30 shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Developer, its successors or assigns, to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto.

31. The invalidation of any provision or provisions of the covenants and restrictions set forth herein by judgement or court order shall not affect or modify any of the other provisions of said covenants and restriction which remain in full force and effect.

IN WITNESS WHEREOF, STEPHEN D. GAY AND CAROL A. GAY AND LOREN G. BRASHEAR AND DEANNA L. BRASHEAR have caused this instrument to be executed this 14 day of June 1985.

**FILE NO. 85-16272**  
**OFFICIAL RECORD NO. 886**  
**PAGE 62**  
**AUG 9 11:52 AM '85**

**(AFFIXED WITH THE SEAL OF THE CIRCUIT COURT CLERK)**

Signed in the presence of:

(signature) Judy L. Padgett  
(signature) Laura Crews

(signature)  
Stephen D. Gay

(signature)  
Carol A. Gay

(signature)  
Loren G. Brashear

(signature)  
Deanna L. Brashear

STATE OF FLORIDA  
COUNTY OF CLAY

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of June, 1985 by Stephen D. Gay and Carol A. Gay and Loren G. Brashear and Deanna L. Brashear.

(signed with Notary Seal) Gina Kim Jackson

Prepared by:  
Eugene F. Shaw  
Attorney at Law  
925-E North Temple Avenue  
Starke, Florida 32091

**DECLARATION OF COVENANTS, CONDITIONS AND  
PROVISIONS FOR REPAIR AND MAINTENANCE  
OF EASEMENTS**

*RE-TYPED FOR INCLUSION IN  
EVENTIDE HOMEOWNERS ASSOCIATION PACKETS – OCTOBER, 1998  
ORIGINAL PHOTOCOPY ON FILE IN SECRETARY'S RECORDS  
AS COPIED FROM THE PUBLIC RECORDS OF CLAY COUNTY*

THIS DECLARATION

MADE on the date hereinafter set forth by STEPHEN D. GAY and CAROL A. GAY, his Wife, and LOREN G. BRASHEAR and DEANNA L. BRASHEAR, his Wife, herein referred to as “Declarants” state and declare as follows:

WITNESSETH:

WHEREAS, Declarants are the owners of certain real property, hereafter referred to as the “Subject Property” situated in Clay County, Florida, and

WHEREAS, ROBERT T. LANGSTON and CHERRIE GAY LANGSTON, his Wife, are the owners of a certain parcel of land lying within subject property which they previously purchased from Declarants, and, by their execution hereof, join in these covenants, conditions and provisions for the purpose of subjecting their property thereto, and

WHEREAS, Declarants intend to develop the Subject Property as a residential subdivision and to divide the subject property into Lots as hereinafter defined.

NOW THEREFORE, Declarants hereby declare that all of the subject property shall be held, sold and conveyed subject to the following limitations, easements, reservations, covenants and conditions. These easements, covenants, and conditions shall run with the land and shall bind all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I**  
**DEFINITIONS**

Section 1: “Association” shall mean and refer to all owners as defined in Section 4 of this Article I.

Section 2: “Subject Property” shall mean and refer to that certain real property described in Schedule A attached hereto and made a part hereof.

Section 3: "Lot" shall mean and refer to each numbered parcel shown on schedule B hereof or any amendments thereto.

Section 4: "Owner" shall mean and refer to the record owner whether one or more persons or entities, of the fee simple title to any Lot which is part of the Subject Property, including contract sellers, but excluding those having such interest merely as a security for the performance of any obligation.

Section 5: "Declarant" shall mean and refer to STEPHEN D. GAY and CAROL A. GAY, his Wife, and LOREN G. BRASHEAR and DEANNA L. BRASHEAR, his Wife, their heirs, successors and assigns.

Section 6: "Eventide Drive" shall mean and refer to that certain road or street constructed on subject property for the common benefit of the Owners of all Lots and as to which a joint obligation as to repair and maintenance shall be applicable as hereinafter more particularly set forth.

Section 7: "Lender" shall be defined as a Federal Savings and Loan Association, a State Savings and Loan Association, Commercial Bank, Insurance Company, FHA/VA approved mortgage lender, a Real Estate Investment Trust and Declarants.

## ARTICLE II VOTING RIGHTS

The Association shall have as members all those Owners who own lots including Declarants. Members shall be entitled to one vote for each Lot in which they hold the interest required. When more than one person holds such interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as they, among themselves, determine but not more than one vote may be cast with respect to payment of any charge or assessment hereunder.

## ARTICLE III EASEMENTS

A. Easements: Declarants hereby grant a perpetual non-exclusive easement over, across and under subject property to all present and future owners of Lots and to the Association for the following purposes:

- (1) Ingress – Egress.
- (2) Parking.
- (3) Utilities and drainage.

Such easement shall be for the use, benefit and enjoyment of the owners, their lessees, guest, invitees and licensees and shall be subject to such rules and regulations as may from time to time be adopted by the "Association". Declarants reserve the exclusive

right to determine the exact locations and design of Eventide Drive, driveways, utility and drainage lines and other improvements within this easement. After the installation of such improvements, no structures, or other material shall be placed or permitted to remain which may damage or interfere with the intended use of such easement or with the maintenance of previously installed improvements in and on said easement or which may change the direction of or obstruct the flow of water through any drainage system in the easement. The association shall at all times maintain the easement and all improvements therein and thereon easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of he Lot, except for those improvements for which a public authority or utility company is responsible.

B. Other Easements: In addition to the above easements, Declarants expressly reserve the right to create and establish additional easements for utilities and drainage as is from time to time determines is necessary or desirable. Said easements may be located on, over or under the subject property, provided any damage caused to the surface in installing said easements shall be repaired by Declarants or their successors and assigns.

C. Electric Easement: The Declarants have granted to Jacksonville Electric Authority an easement for electric service by easement date \_\_\_\_\_ and recorded in O.R. Book \_\_\_\_\_, page \_\_\_\_\_, of the public records of Clay County, Florida.

#### ARTICLE IV PROVISIONS FOR REPAIR AND MAINTENANCE OF EASEMENTS

Section 1: Each Owner acknowledges that his Lot lies along and contiguous to the easements herein above granted, and accordingly consents to any encroachment caused by the same and agrees to the continuous right to use, maintain, rebuild and repair the same as herein set forth.

Section 2: Each Owner recognizes the benefits and burdens of the easements.

Section 3: By taking title to a Lot, it is covenanted and agreed by each Owner and his respective heir, administrators and assigns, that should any improvements constructed on the easements at any time be injured by cause other than act or negligence of any Owner, the same shall be repaired or rebuilt at the joint expense of each Owner through the Association; provided that any sum received from insurance against such injury or destruction shall be first applied to such restoration; and, whenever such improvement or any portion thereof shall be rebuilt it shall be erected on the same spot where it Ws first built and of the same size and of the same or similar materials, unless the association by 2/3rds vote agree otherwise. In the event such improvements are injured by the act or negligence of any Owner, then in that event that Owner shall be sole responsible for the repair and rebuilding of the improvement. In the event an owner fails to maintain a driveway, drainage pipe, or other similar encroachment into said easements, that Owner shall be responsible for damages to all the other Owners.

Section 4: In the event that some portion of joint expense is not paid or contributed by one of the Owners or, in the event that damage shall occur by reason of the failure on the part of an Owner to maintain or repair a driveway, drainage pipe or other similar encroachment into the easement, then, in that event, the Owner who has incurred the expense or advanced the contribution or who shall have paid for the needed maintenance and repair work to be done shall have a lien of the property of the defaulting Owner for such sums as may be incurred, together with reasonable attorney's fees and costs of collection and said lien shall be enforced as set forth in Article V, hereof.

Section 5: by taking title to a Lot, it is covenanted and agreed by each Owner, and his respective heirs, administrators and assigns, that this instrument shall be perpetual and that the covenants and conditions herein contained shall run with the Lots affected hereby.

## ARTICLE V COVENANT FOR ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. Declarants, their heirs, successors or assigns for so long as they own property contiguous to subject property, and no longer, hereto covenant and each owner by acceptance of a deed therefore, whether or not so expressed in such deed or provided hereafter, is deemed to covenant, which covenant shall run with the land and be binding on every Owner, agrees to pay to the Association: (1) annual assessments or charges which may be prorated and due monthly or quarterly and (2) special assessments for capital improvements, both such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereof from the due date, at the highest rate allowed by law, and the costs of collection thereof, including reasonable attorney's fees, as hereinafter provided, shall be a charge against the land and shall be a continuing lien upon the property against which each such assessment is made, and said lien may be enforced in the same manner in which mortgages are enforced; provided, however, that all such annual and special assessments shall not constitute an lien until a claim of lien is recorded in the public records of Clay County, Florida, and all such liens are automatically subordinate and inferior to a lien in favor of an institutional lender. A copy of said claim of lien shall be sent to any lender holding a mortgage on the property in question but failure to send such copy shall not affect the validity of the lien. Each such assessment or portion thereof, together with such interest costs, and reasonable attorney's fees, shall also be each Owner's personal obligation when the assessment fall due. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the subject property.

Section 2: Purpose of Assessments: The annual and special assessments levied by the Association shall be used exclusively for the purpose of the repair, improvement, and maintenance of all improvements located in, on, or under subject property, including, but not limited to, the cost of taxes, insurance, labor, equipment, material, attorneys fees,

bookkeeping, maintenance and supervision thereof, as well as such other purposes as the Association by 2/3rds vote shall authorize.

Section 3: Amount of Assessments: The Association shall fix the assessments, which shall be in amounts determined in accordance with the needs of the Association.

Section 4: Uniform Rate of Assessments: Both annual and special assessments must be fixed at a uniform rate for all Owners.

Section 5: Date of Commencement of Annual Assessments:

A. The assessments provided for herein shall commence on the date or dates (which shall be the first day of each month) fixed by the Association to be the date of commencement. The due date of any assessment shall be fixed in the resolution authorizing such assessment. The assessment shall be payable in advance in one payment or in monthly or quarterly installments if so determined by the Association. The Association shall fix the date of commencement and the amount of the assessment against each Owner for each assessment period at least thirty (30) days in advance of such date or period; and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept by the secretary of the Association and which shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof.

B. The Association shall upon demand at any time furnish to any Owner liable for assessment a certificate, in writing, signed by an officer of the Association, setting forth whether said assessment had been paid. Such certificate shall be conclusive evidence of payment therein stated to have been paid.

Section 6: Effect on lien of mortgage foreclosure or deed in lieu of foreclosure. The lender as defined herein that acquires title by foreclosure of its mortgage or by deed in lieu of foreclosure shall not be obligated to pay any delinquent liens but shall be obligated to pay any portion of any annual or special assessment coming due following acquisition of title to a lot.

## ARTICLE VI GENERAL PROVISIONS

Section 1. Enforcement. Declarants, the Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any action brought to enforce any of the provisions, restrictions or covenants contained in this Declaration shall be entitled to reasonable attorney's fees and costs.

Section 2. Duration. The covenants, conditions and provisions for the easement herein provided for shall be binding upon the subject property and Declarants' property contiguous to subject property, their successors and assigns.

Section 3. Notice. Any notice required to be sent under provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address or the person whose name appears as the Owner of a Lot or record according to the records of the Clerk of the Circuit Court of Clay County, Florida.

Section 4. Amendment. This Declaration may be amended at any time upon execution and recordation of an instrument executed by the then Owners of two-thirds (2/3) of all Lots, provided that so long as Declarants are the Owners of any property contiguous to subject property the Declarants', their successors and assigns consent must be obtained. The Declarants shall have the right at any time with five (5) years from the date hereof to amend this Declaration to correct scrivener's errors or to clarify ambiguities that exist herein. Declarants shall have the right at any time to amend this Declaration to add additional land to the subject property. No amendment shall be made to this Declaration without express written consent of all mortgagees affected thereby.

Section 5. Resubdividing. Further Declarants, their successors or assigns, have the express authority and unconditioned right to at anytime resubdivide any one or more Lot or lots so that such lot or lots may have a greater or lesser area, width or depth than as show on Schedule B hereof.

Section 6. Severability. Invalidation of any one or any portion of one of these covenants, conditions or provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and affect.

Section 7. Effect of Waiver of Violation. No waiver of a breach or violation of any of the terms, provisions and covenants in this Declaration shall be construed to be a waiver of any succeeding breach of the same term, provision or covenant of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto set their hands and seals this 21<sup>st</sup> day of August, 1985.

Signed, sealed and delivered  
in the presence of:

(signature) Gina Kim Jackson  
(signature) Billie Hayes  
As to Gay

(signature) Gina Kim Jackson  
(signature) Billie Hayes  
As to Brashear

(signature) Gina Kim Jackson  
(signature) Billie Hayes  
As to Langston

(signature) STEPHEN D. GAY  
(signature) CAROL A. GAY

(signature) LOREN G. BRASHEAR  
(signature) DEANNA L. BRASHEAR

(signature) ROBERT T. LANGSTON  
(signature) CHERRIE GAY LANGSTON

*(FOLLOWED WITH NOTARY STATEMENTS AND SEALS)*