



## NOTICE REGARDING COVENANTS AND/OR RESTRICTIONS

The following Covenants and/or Restrictions are added as a courtesy only and are NOT WARRANTED by the property owner, their broker or agent as to completeness, accuracy, currency, or enforceability. Any interested buyer prospect is urged as part of their due diligence to contact the relevant Community Association or developer to determine for themselves what covenants and/or restrictions currently apply, how long they may remain in force, and if any changes or amendments may be currently under consideration. Additionally, or alternatively, one may wish to consider hiring an attorney to conduct this search for them and provide advice as needed.



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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR

THE HEIGHTS

THIS DECLARATION is made this 20 day of NOVEMBER, 2012 by  
Cashas Valley Development, LLC (hereinafter called the "Developer");

WITNESSETH

WHEREAS, Developer owns all of the property known as The Heights as shown on that certain plat of survey recorded in Plat Book E-338 at pages 1 through 7, Fannin County, Georgia Records and Lots 1 through 42 of the The Heights (The "Subject Property"); and

WHEREAS, Developer desires to provide for the benefit of all of the residents of those portions of the Subject Property, as Common Areas (as hereinafter defined); and

WHEREAS, Developer deems it desirable to create the Association to own, maintain and administer the Common Areas, including roadways, easement areas, and well tracts, in accordance with the Covenants and Restrictions as hereinafter provided and to insure the enjoyment of such Common Areas by such residents; and

WHEREAS, Developer intends that every Owner (as hereinafter defined) of a Residential Unit (as hereinafter defined) which is made subject to this Declaration does automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Association and subject to its valid rules and regulations and subject to the assessment by the Association pursuant hereto;

NOW THEREFORE, the Developer declares that the properties which are made subject to this Declaration pursuant to Article 2 hereof are and shall be held transferred, sold, conveyed and occupied subject to the Covenants and Restrictions hereinafter set forth, all of which are for

the purpose of enhancing and protecting the value, desirability and attractiveness of such property. Such Covenants and Restrictions are and shall be binding on all parties having and acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

#### ARTICLE I

*Definitions.* The following terms when used in this Declaration of Covenants (unless the context shall clearly indicate to the contrary), shall have the following meaning:

(A) "Association" shall mean and refer to The Heights Property Owners' Association, Inc., a nonprofit corporation organized and existing on the laws of the State of Georgia, or such other Property Owners Association which may be formed by the developer.

(B) "Common Areas" shall mean and include all roads, easements, "Well Tracts" and right-of-ways depicted or described on the afore-referenced plat and the security gate and entrance area to the subject property.

(C) "Common Water System" shall mean and include the "Well Tracts" designated as WT-1, WT-2 and WT-3 as shown on the afore-referenced plat, as well as the piping, easements, water meters and utilities.

(C) "Covenants and Restrictions" shall mean and refer to all covenants, restrictions, easements and charges and liens set forth in this Declaration.

(D) "Developer" shall mean Cushes Valley Development, LLC

(E) "Development Documents" shall mean and refer to the Articles of Incorporation and By-Laws of the Association.

(F) "Manager" shall mean and refer to any person with whom the Association contracts for the administration and operation of the Common Areas.

(G) "Mortgage" shall mean and refer to any security instrument by means of which title to the Common Areas is conveyed or encumbered to secure a debt, including, without limiting the generality of the foregoing, security deeds, deeds to secure debt, mortgages and deeds of trust.

(H) "Owner" shall mean and refer to any Person or Persons (as hereinafter defined) who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or

undivided fee interest in a Residential Unit (as hereinafter defined) in portion of the Restricted Property (as hereinafter defined); provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

(I) "Person" shall mean and refer to any natural person, corporation, partnership, limited partnership, joint venture association or any other such entity.

(J) "Restricted Property" shall mean and refer to all real property as set forth in Article 2 of this Declaration and any additional real property added to the jurisdiction of the Association pursuant to Article 2, of this Declaration.

(K) "Residential Units" shall mean and refer to each single lot of subdivided property intended for a single family detached house or any other equivalent form of residential building as depicted in that certain plat of survey recorded in Plat Book E338, Page 1-7 of the Fannin County, Georgia Records, as well as any future lots of subdivided property which the developer wishes to subject to these covenants and restrictions.

(L) "Board" shall refer to the Developer while class B stock exists and the governing board of the Association once the Class B stock no longer exists.

## ARTICLE II

### Property Subject to Declaration; Effect Thereof

#### *Section 1. Property Hereby Subjected to This Declaration.*

This Declaration is hereby imposed upon the following described real property and the Developer hereby subjects the following described property to this Declaration, which shall hereafter be held, transferred, sold, conveyed, used, leased, occupied and mortgaged or otherwise encumbered subject to this Declaration:

ALL THAT TRACT or parcel of land lying and being in Land Lots 305 and 306 of the 9<sup>th</sup> District and 2nd Section of Fannin County, Georgia, and being Lots 1 through 42 as further described and depicted in that certain plat of survey made by Robert A. Johnston, Registered Land Surveyor # 2949, dated February 8, 2010, recorded in Plat Book E338, Page 1-7, Fannin County, Georgia Records.

*Section 2. All Restricted Property Bears the Burden, and Enjoys the Benefits, of This Declaration.*

Every person who is or shall be a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in any portion of the Restricted Property or later added Restricted Property does agree and shall be deemed by reason of taking such record title to agree to all of the terms and provisions of this Declaration.

*Section 3. The following protective covenants are herein declared as to all lots within the above-described property.*

(A) *Land Use and Building Type.* No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling unit not to exceed three (3) stories in height, and out buildings and garages which have been approved by the Architectural Committee and which meet all requirements set forth herein.

(B) *Architectural Control.*

(1) *Purpose.* The primary purpose of the architectural controls set forth herein is to protect and preserve property values in the subject property by maintaining architectural and aesthetic harmony and compatibility among the lots and the structures and improvements on the lots in the subdivision. The architectural standards may be designed and applied to reflect that lots within the subdivision and the dwellings constructed or to be constructed upon them are of varying sizes, values, topographies, and locations, and that improvements and modifications suitable for one lot may be inappropriate for another lot. Therefore, the Architectural Committee (as described below) is authorized to adopt as appropriate, varying standards, sizes, values and layouts of lots and improvements located thereon within the subdivision.

(2) *Architectural Committee.* The board shall have the authority to direct the Architectural Committee ("AC") and to appoint, remove, and replace members of the AC at will. Subject to the Board's right to establish or approve policies, regulations and /or guidelines and to review appeals hereunder, the AC shall have exclusive jurisdiction over:

(a) All original construction of all dwellings, outbuildings, docks, decks and other structures and improvements (both above and below grade), and related cleaning and grading on any lot or portion of the Common Properties;

(b) All other exterior and visible modifications, additions, or alterations on lots or portions of the Common Properties, including those made on or to existing structures on lots; and

(c) All maintenance, repair or replacement of exterior portions of

dwelling~~s~~ or other improvements on lot~~s~~ or the Common Properties, including but not limited to repainting in original colors or replacement of exterior building materials, to ensure that such materials, color and/or design continue to be in conformity with the standards set forth in this Declaration and the guidelines of the AC. Repairing of existing dwelling~~s~~ in exterior colors previously approved shall be permitted.

(3) *Architectural.* In an effort to protect the total community, no property owner, occupant, or any other person may commence, make, or maintain any exterior alteration, improvement, or construction to a lot or the Common Properties, without first obtaining the written approval of the AC. Exterior alteration, improvement or construction shall include, but not be limited to, exterior painting, replacement of damaged or destroyed exterior building materials, installation of lighting (except for reasonable reasonable decorations), paving, clearing or grading, the construction of a dwelling and other improvements.

In considering the request for approval of such improvements, the AC may, in addition to the other factors set forth in this Article, consider any factor it deems necessary, including but not limited to aesthetic considerations, material to be used, harmony with the external design of existing buildings, lots, and structures within any geographic locale in the subdivision deemed appropriate by the AC, the location in relation to surrounding lots and structures, and the surrounding topography. The AC may, subject to board approval, publish standards and guidelines governing all such alterations, improvements and construction, including setting application and/or impact fees.

(4) *Application for AC Approval.* Applications to engage in or conduct any activity for which approval of the AC is required shall be in writing and shall provide such information as the AC may reasonably require. The type of information required by the AC may include, without limitation, complete copies of any governmental permits applicable and final plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes, colors, and location of improvements, site plans (including a registered surveyor's plat showing topographical zones) and floor plans thereof, and detailed drawings showing front, side, and rear elevations thereof. Subject to the appeal rights in a Section F. below, the AC shall be the sole arbiter of such application, including aesthetic considerations.

(5) *Approval or Disapproval.* The AC or its designated representative shall approve or disapprove an application within Forty-Five (45) days after the application and all information as the AC may reasonably require have been submitted in full. However, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, or the rules and regulations of the subdivision.

(6) *Conditional Approval or Disapproval of Application by AC.* The AC may approve or disapprove any application to the AC either (1) outright or (2) subject to such conditions (restrictive or affirmative) as the AC may determine will enhance, preserve, and protect the Subdivision property values, be consistent with the spirit and integrity of these architectural controls, and minimize disturbances from such approved construction. Such conditions of approval and restrictions on approval shall run with the land and be binding upon successor Property Owners. Property Owners and contract purchasers may, upon at least five (5) days written request, review any letters of approval and/or plans and specifications for approved improvements maintained in the AC's records.

(7) *Appeal.* If the AC or its designated representative disapproves any application or part thereof for the construction of an original dwelling on a lot, the property owner shall have the right to appeal the AC's decision to the Board. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the property owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the property owner or the AC, including the decision of the AC and the application of the property owner to the AC. The Board shall have the final authority to approve, disapprove, or conditionally approve the application of the property owner. If the Board does not receive written notice by certified mail requesting an appeal within forty-five (45) days from the date of the AC's notice to the property owner of its decision, the decision of the AC shall become final and all rights of appeal shall terminate and thereafter be void.

(8) *Architectural Standards May Change Over Time.* Each property owner acknowledges that the membership on the Board and the AC and their views on how to best protect and enhance the subdivision may change over time. Accordingly, the type, nature, interpretation, application and enforcement of the architectural standards may vary over time. The approval of either the Board or the AC of any proposals, plans, specifications, or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board or the AC shall not be deemed to limit or constitute a waiver of any rights to withhold approval or consent as to any similar proposals, plans, specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(9) *Limitation of Liability Regarding Architectural Approval.* Review and approval of any application pursuant to this Article may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the AC shall bear any responsibility for ensuring the quality, design, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Subdivision, the Board, the AC, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction and modifications to any lot.

(10) *Resolution.* Any construction, alteration, or other work done in violation of this article shall be deemed to be nonconforming and shall authorize the Board to enjoin such violation and to recover damages therefrom, including attorney's fees incurred in enforcing the Declaration, in addition to such other remedies as provided herein. Upon written request from the Board, the Property Owner shall, at its own cost and expense, remove such construction, alteration, or other work and shall restore the lot to substantially the same condition as existed prior to the construction, alteration, or other work. All costs thereof, including reasonable attorney's fees may be assessed against such lot and collected as an assessment pursuant to this Declaration. Additionally, all costs incurred by the Board in compelling any Property owner to make required repairs or remove debris hereunder, or costs incurred by the Board in performing such work if the Property Owner fails to do so, shall be an assessment against such Property Owner and lot.

Any contractor, subcontractor, agent, employee, or other invitee of a Property Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines and standards issued by the AC may be excluded by the Board from entry to the Subdivision. In such event, the Board, officers, directors or agents shall not be held liable to any person for exercising the rights granted by this Article.

No property Owner, occupant, contractor, subcontractor, agent, employee, or other invitee shall make any exterior change, alteration, or construction upon the Common Properties in violation of this Article, and he or she does so at his or her sole risk and expense and may be required by the AC Board to remove and restore the property to its previous condition. The Board may require that the change, alteration, or construction remain on the Common Properties without reimbursement to the Property Owner or occupant for any he or she may have incurred in making the change, alteration, or construction, or, the Board may remove such construction at any time without notice to such Property Owner or occupant. The cost of repair of any damage caused by the Property Owner, its agents, contractors, subcontractors, employees or invitees in connection with construction hereunder and justifiable monetary damages as may be assessed against the Property Owner for violations hereof shall be an assessment and lien against the Property Owner and the Property Owner's Lot.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Subdivision, to impose monetary fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article and its decisions or those of the AC. A schedule of penalties as herein referred to shall be developed and approved by the Board.

(11) *Accessory Structures.* With the approval of the AC, detached accessory structures may be placed on a lot to be used for a playhouse, toolshed, garage, or other approved



use. A garage may also be an attached accessory structure, but must be built with a side entry (doors not facing the street) when topography allows. Such accessory structures shall conform in exterior design and quality to the dwelling on the lot. With the exception of a garage, an accessory structure placed on a lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such lot or in a location approved by the AC. Such accessory structures shall also be located within established setback lines.

*(12) Maintenance of Lots.*

*(a) Property Owner's Responsibility.* All maintenance of the lot and the structures on the lot, if any, shall be the responsibility of the Property Owner (s). Each Property Owner shall keep and maintain all portions of the lot and the exterior of any and all structures and improvements located on the lot in a neat, attractive and safe condition which is consistent with this Declaration and with any standards or guidelines established by the AC and/or Board.

This maintenance shall include, but shall not be limited to, painting of all exterior buildings surfaces, if applicable; repairing, replacing and caring for the roofs, gutters, downspout and exterior building surfaces of all structures on the lot; trees, shrubs, grass and all other landscaping and plant materials present on the lot (s) and preventing the accumulation of weeds, trash, downed trees and debris on any lot. Any maintenance that involves an exterior change, including, without limitation, repainting of the exterior of improvements shall require prior approval of the AC.

No trees, shrubs, bushes or other vegetation having a diameter of four inches or more shall be cut, destroyed or mutilated except with written approval of the AC; provided, however, that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any lot by the Property Owner thereof after such dead or diseased condition is first brought to the attention of the AC and AC approval has been obtained.

Trees that are in immediate danger of creating damage or harm to the lot owner or others may be removed without the prior written approval of the AC; however, written explanation must be submitted to the AC promptly thereafter. The AC shall have the Authority to require replanting of trees removed without written explanation or request for approval.

*(b) Failure to Maintain Abandoned Property.* If the Board or its designee determines that any property has been abandoned and the property owner has failed or refused to discharge properly his or her obligation with regard to the exterior maintenance, repair, or replacement of items for which he or she is responsible, the Board or its designee shall give the Property Owner written notice of the Property Owner's failure or refusal and of the Board's right to provide necessary maintenance, repair, or replacement at the Property Owner's cost and

expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board or its designee. A property shall be deemed abandoned if one or more of the following circumstances arise:

- 1) property owner fails to pay assessments, and said assessments become over 60 days past due.
- 2) property owner fails to pay county ad valorem property taxes and said taxes become more than 60 days past due.
- 3) property owner fails to answer written notice provided to the property owner regarding failure to maintain or other breaches of these covenants, after two attempts by the board to contact said person. Failure to answer shall mean failure to provide a written response within 60 days of the date of the last notice by the board.

Unless the Board or its designee determines that an emergency exists, the Property Owner shall have *Forty-five (45) days* within which to complete the maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within *forty-five (45) days*. If the Board or its designee determines that: (1) an emergency exists, or (2) that a Property Owner has not complied with the demand given by the Board, as herein provided, then the Board may provide any such maintenance, repair or replacement at the Property Owner's sole cost and expense, and such costs shall be an assessment and lien against the Property Owner and the lot.

If the Board determines that the need for maintenance or repair of any portion of the Common Properties is caused through the willful or negligent act of any Property Owner or occupant or their family, guests, or lessees, the Board may assess the cost of any such maintenance, repair, or replacement against the lot (s) and shall be collected as provided for the collection of assessments.

(C) *Dwelling, Quality and Size.* The area of the main structure, exclusive of open porches and garages, shall be not less than *Seventeen Hundred (1,700) sq ft* for one story and *Twenty-One Hundred (2100) sq ft* for a two story home, excluding basements and areas of the house below grade. The architectural control committee may waive this requirement if the quality of the home equals or exceeds homes of similar size and price in that market area.

(D) *Building Location.* No building shall be located on any setback lines shown on the Plat. In any event, no building shall be located on any Lot nearer than *thirty-five (35) feet* to the front line of the Lot, unless special waiver is granted by the AC for valid reasons, or nearer than *fifteen (15) feet* to any side street line. No building shall be located nearer than *fifteen (15) feet* to an interior line of a Lot. No dwelling shall be located on an interior Lot nearer than *fifteen (15) feet* from the rear line of the Lot.

(E) *Easements and Water System.* Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and over the rear fifteen (15) feet of each Lot. Drainage flow shall not be obstructed nor diverted from drainage or utility easements as designated above or on the recorded Plat.

Developer reserves for itself, its successors and assigns, and the Association a perpetual nonexclusive easement for ingress, egress and the placement of utilities across all roads, common areas and any lot(s) still owned by the Developer, as shown on plat of survey for The Heights, as referenced herein. Said easement shall be for any purpose, including, but not limited to, future development, including of adjacent properties, whether or not owned by the Developer.

Developer reserves for himself and the Association a perpetual nonexclusive 60 feet wide easement for ingress, egress and the placement of utilities across any and all other Lots in The Heights as long as said lot is owned by the Developer, and Developer herein reserves the right to utilize these easements to place access road and utilities in additional phases or sections of property.

Also reserved for the owners, Association and Developer is an easement in the Common Areas depicted on the Plat. The Board will have full authority to create rules and regulations to restrict the use of said common areas, including the right to prevent an owner from using said Common Areas for violating the rules or covenants.

Declarant herein grants to all owners of Lots within The Heights Subdivision, a permanent, perpetual non-exclusive 40 feet wide easement over and across all existing roads within the subdivision, as well as across all other yet unnamed future roads lying within the subdivision or any property added hereto by annexation, for the purpose of ingress, egress and the installation of utilities to access and serve the Lots of the owners.

A water system for The Heights shall be constructed and each lot owner in The Heights and any additional land added to The Heights shall have a perpetual non-exclusive easement to use, maintain and repair all of the common components of said water system that serves their individual lot. The water system shall be operated by the Developer, or any other entity which the Developer seeks to hire to manage said water system, and shall become the responsibility of The Heights Property Owners' Association, Inc., at the discretion of the Developer. There will be two wells and one storage tank serving the subdivision, and all property owners shall pay a prorated share of the cost for the maintenance and repair of the well, water lines, well pumps, storage tanks, and other common components of the entire water system. Also, a water meter shall be installed for each single-family dwelling, and shall be responsible for payment of the market rate for water usage and minimum fees, established by the Association. The costs associated with the water system not offset by usage and minimum fees shall be shared equally

among all property owners.

(F) *Nuisances.* No noxious or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the Subdivision neighborhood.

(G) *Temporary Structures.* No structure of a temporary character, motor home, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. Once a permanent residence has been erected, motor homes and other recreational vehicles shall be permitted on the lot. However, the storage of such vehicles must be such that the vehicle will not be visible from the street. No camper or RV can be used for occupancy, even for short periods of time.

(H) *Signs.* No sign of any kind shall be displayed to the public view on any Lot except for one (1) sign of not more than three and one half (3.5) square feet advertising such Lot for sale or real or signs used by a builder to advertise the Lot during the construction and sales period or to advertise an established model home.

(I) *Oil and Mining Operations.* No oil drilling, oil development operations, oil refining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

(J) *Livestock, Poultry and Pets.* No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. No pasture may be cleared unless it complies with the tree cutting restrictions stated herein. All domestic pets must be properly cared for and controlled by the Property Owners.

(K) *Garbage and Refuse Disposal.* No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers to be maintained out of view of the street. All containers, incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No burning of trash or yard waste shall be allowed in the subdivision.

(L) *Water Systems and Sewerage Disposal.* No private wells may be drilled or maintained on any residential or commercial lot, so long as the Developer, its licensee, agents, successors or assigns, plans a water distribution line within fifty feet (50') of such lot within the right-of-way of the abutting private road with an average daily water pressure in such line adequate for normal residential or commercial use respectively in the dwelling served by such

distribution line; provided, further, that such water distribution line must be completed within five (5) days from the date of completion of such residence or commercial building, or a private well may be drilled by the Owner of such Lot. No individual sewerage-disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Georgia Department of Public Health. Approval of such systems as installed shall be obtained from the appropriate governmental authorities.

(M) *Timber Curing.* Unless approved by the Architectural Control Committee, no tree having a diameter of four (4) inches may be cut, poisoned, trimmed or removed from any subject property.

(N) *Fencing.* All fencing, lawn decorations, lampposts, and non-natural landscaping must be submitted for approval by the Architectural Control Committee. No barbed wire fencing will be allowed.

(O) *General Provisions regarding Use of Property.*

1. No impervious cars, motorcycles, trucks or other type of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, that this provision shall not apply to any such vehicle being kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the subdivision. All vehicles shall have current license plates.
2. No mobile, modular, prefab home or homes constructed in whole or in part off of any Lot will be allowed on any Lot. No prefabricated outbuildings shall be allowed on any Lot. No structure of a temporary nature shall be used as a residence either temporarily or permanently (including but not limited to trailers, basements, tents, shacks, garages, or barns). The owner of a lot may erect an attached garage or outbuilding if the structure is fashioned in appearance and likeness in the design of the main residence. Any garage or outbuilding will be enclosed completely.
3. Trailers and Commercial Vehicles - No parking of any travel trailer, or motor home (unless, in the case of a travel trailer or motor home, said travel trailer or motor home is housed in a completely enclosed garage), truck (excluding pickup truck), camper, tent or other similar vehicle shall be placed on the property at any time for a period exceeding (48) hours. No industrial, commercial or farm equipment or vehicles, including without limitation dump trucks, moving vans, step vans, buses and lowboy trailers, shall be allowed to park or remain on the property, except for so long as necessary for use in connection with ongoing

construction.

4. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Large and/or potentially vicious breeds of dogs are specifically excluded and may not be raised, bred or kept on any lot. Any animals must be under the control of the owner at all times.
5. Except during the construction of permanent improvements thereon, no owner shall excavate or extract earth from any lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding lots unless approved by the Architectural Committee.
6. Garbage and trash – No trash, garbage, or other waste material or refuse shall be placed or stored on any Lot except in covered sanitary rodent and animal proof containers. All such sanitary containers must be stored in each home, or within an enclosure designed therefore, which must be at least five (5) feet from any Lot line.
7. All Lots shall be used for single-family residential purposes only and no business or business activity shall be carried on upon any Lot at any time, with the exception that rentals of homes in the submitted property shall be allowed. For any rentals made, there shall be an adult over the age of (25) onsite. The owner of the property shall remain responsible for conduct of guests and their compliance with these covenants. There shall also be an exception for home-based businesses involving no retail traffic or storage of inventory or equipment.
8. No utility trailer, junk nor household appliances shall be kept, stored or repaired in plain view on any lot, except that such may be kept, stored, or repaired in an enclosed building so as not to be subjected to view by lot owners or from subdivision roads.
9. Satellite Dishes/ Antennas- Satellite dishes thirty six (36") inches or less in diameter are permitted, but no satellite dish greater than thirty six (36") inches shall be allowed. No external antennas shall be permitted on any lot. No antenna or satellite dish may be visible from any subdivision street.
10. Outdoor lighting- All outdoor lighting shall be so shaded and directed such that the light there from is directed to fall only on the same premises where light sources are located.
11. Clotheslines- No garments, laundry, rugs or other articles may be aired or dried on any lot.
12. Personal recreational vehicles such as motorcycles or ATVs shall be operated in a safe manner at a moderate speed (not to exceed 15 m.p.h), and shall be operated

- In a fashion such that they are not a nuisance to the comfort, convenience and peaceful enjoyment of adjoining properties by their owners. Only licensed drivers may operate said personal recreational vehicles on the roadways of the subdivision. Use of personal recreational vehicles shall not be allowed where it appears that the use is creating trails, tracks, scarring of the land, erosion issues, or other aesthetic problems caused by repeated use.
13. No barbed wire or chain link fencing shall be allowed. Fences made of wood, brick or stone are permitted as long as they are done in earth tones and compliment the main residence. Fences shall be no higher than four (4) feet unless approved by the Architectural Committee. The only exception is the installation of a privacy fence around an in-ground pool.
  14. Playground equipment and/or children's toys shall be located behind the dwelling. Above ground swimming pools shall not erected, constructed, or installed on any lot.
  15. No lot owner may remove or top more than fifty (50%) percent of existing tree growth; said fifty percent to be distributed equally over the entire acreage of any lot, with the exception that clear cutting shall be permitted for purposes of construction of a permanent dwelling house to an area not to exceed fifteen (15) feet out (in all directions) from the foundation of the structure, plus any attached decking. Only the Architectural Committee may exceed these dimensions, with a fee due (an assessment) of \$1000.00 to the Property Owners Association for EACH tree cut or topped in excess of these dimensions. All cutting or topping of trees for any lot must be approved by the developer on site or the Architectural Committee.
  16. No lot shall be used in whole or in part for any illegal activity. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, or the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. No substance, thing or material shall be kept on any lot that will emit foul or obnoxious odors or that shall cause noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property.
  17. All fuel storage tanks, outdoor pools (which are subject to the Architectural Committee's review and only by approval of same), utility lines (including electrical, telephone, gas, water and cable television) or any wire or pipe shall be installed and maintained underground, this includes all propane tanks.
  18. No sign of any kind shall be displayed to the public view on any lot except such signs as comply with the provisions hereof. Builders may display such signs as are normally utilized to advertise the property during the construction and sales period. After an Owner closes his purchase on any lot in the subdivision, the only signs permitted on his lot will be: (a) a professionally prepared sign for

identification purposes (not more than one square foot in area); and (b) a single sign to sell said lot of a type used by Brokers in the area, with the usual wording, such sign to be no more than 3.5 square feet in size. In the event any such sign is unsatisfactory, the sign will be removed. These limitations shall apply to signs of all types, including banners, signs on cloth, paper, cardboard or other materials

*(Q) Alteration of Size or Configuration of Lot.*

No parcel, or its configuration, as originally sold and conveyed by Declarant, shall be thereafter altered in size or configuration, or subdivided, by any parcel owner or his successors and assigns, provided that, Declarant reserves the unconditional right to alter the size or configuration, subdivide, or create new parcels, and/or to replat any unsold parcel, prior to its original sale and transfer to a parcel owner, and in such case any such altered or newly created parcels shall be subject to these covenants.

*(R) Construction.*

1. *Construction Letter of Credit.* Prior to engaging in any activity described in Article II, Section 3(B)(2), the owner shall provide the Board with a \$5,000.00 non-revocable letter of credit from an FDIC insured institution with a fourteen (14) month expiration date. The Board will be able to draw on this letter of credit to complete the exterior of any improvements that are not completed within twelve (12) months of the beginning of construction (or to restore the property to its original pre-construction state), and/or to make repairs to roadways and utilities leading to and through the subdivision which may have been damaged during the construction process. The Board may dictate the addition of requirements concerning this.
2. Homeowners shall be responsible for the acts of their employees, subcontractors, suppliers and other persons or parties involved in construction or alteration of a home site. In this regard, homeowner shall be responsible for ensuring:
  - a. That the construction site is kept clean and free of debris and waste material.
  - b. That those stockpiles of unused materials are kept in a neat and orderly fashion.
  - c. That a freestanding, enclosed toilet (port-a-pot) be installed on the lot prior to beginning any type of land disturbance on the property, grading or construction of the primary residence and removed as soon as residence is completed.
  - d. That no lot clearing debris or waste material may be disposed of by burying on any lot.



- e. Any damage to subdivision roads or other common property during construction of a new home shall be the responsibility of the homeowner.
3. Construction- construction on any lot shall only be permitted during the hours of 6:30 a.m. and 8:00 p.m. every day. Exterior work on any building or structure shall only be permitted during the hours of 6:30 a.m. until 8 p.m. Monday through Friday, excluding legal holidays.
4. No structure shall draw power from a temporary pole except as necessary for the construction of a permanent home. Power shall be hooked up permanently, and all power must be run underground.
5. Driveways, landscaping and the general appearance of an owner's lot shall be maintained in good order. To prevent mud and other debris from being tracked onto the street, a construction drive must be installed prior to beginning construction on the foundation and maintained until the permanent drive is completed. All permanent drives must be surfaced in a fashion to minimize impact on subdivision roads at the point of intersection with said subdivision roads. Silt fencing to be installed and maintained for erosion control during construction.
6. All exposed portions of the dwelling's concrete foundation must be covered with a material approved by the Architectural Committee (i.e. stucco, stone, or brick.)
7. The Architectural Committee shall provide written Architectural Controls, Standards and Guidelines regarding all aspects of construction, site plans, building plans, and other items noted herein as being under the jurisdiction of the AC.

*Section 4. Acknowledgment of conveyance.*

Each owner must obtain and record in the deed records of Fannin County Superior Court, a statement from each person who agrees to purchase one or more residential units from an owner the following statement:

We the undersigned have agreed to purchase lot: \_\_\_\_\_ (state lot(s) number) in the The Heights Subdivision. We acknowledge that this property is governed by covenants and restrictions, which we have reviewed and agreed to. We understand that the roads are maintained by a private association of the owners of lots in The Heights Subdivision. These roads will not qualify for being deeded to or maintained by Fannin County, Georgia. We understand that all road maintenance is the responsibility of the community association and not Fannin County. Further, we expressly agree to the amendment process stated in the covenants and restrictions.

## ARTICLE III

### The Community Association; Automatic Membership and Voting Rights Therein.

#### *Section 1. The Association.*

There is currently in existence a property owners association incorporated under the laws of the State of Georgia known as The Heights Property Owners' Association, Inc., a nonprofit Georgia Corporation.

#### *Section 2. Membership.*

Every person who is an Owner is and shall be a member of the Association; provided, however, that any Person who owns such interest merely as security for the performance of an obligation shall not be a member of the Association.

#### *Section 3. Classes of Membership; Voting Rights.*

There shall be two classes of membership within the The Heights Property Owners' Association, Inc.,: Class A and Class B

(A) *Class A.* Class A members shall be those persons holding an interest required for membership as specified in Section 2 of this Article 3 with the exception of the Developer. Class A membership shall be a nonvoting membership except on such matters and in such events as hereinafter specified. Class A members shall be entitled to full voting privileges:

- (1) At such time as the Class B members shall so designate by notice in writing delivered to the Association, or
- (2) a total of ninety-five percent (95%) of lots have been sold to individuals; whichever shall first occur.

Before the earlier of these events, the Class A members shall be entitled to vote only on:

- (1) Any proposal or change of method of calculating the maximum amount of the annual assessment delivered by the Association;
- (2) Any proposal that is a special assessment levied by the

Association, except as otherwise specifically herein provided;

(3) Any proposal of merger, consolidation or dissolution;

(4) Any proposal to amend this Declaration of the Articles of Incorporation of the Association; and

(5) Any other matter for which it is herein specifically provided that approval of all classes of membership is required.

When entitled to vote, Class A members shall be entitled to one vote for each Residential Unit in which they hold any interest required for membership under Section 2 of this Article 3. When more than one person holds an interest or interest in a Residential Unit, the vote for such Residential Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Residential Unit. In the event of disagreement among such persons, and an account by two or more persons to cast a vote for such Residential Unit, such person shall not be recognized and the vote with respect to such Residential Units shall not be counted.

(B) *Class B.* The Developer shall be the sole Class B member. Class B membership shall be full voting membership, and, during its existence, the Class B member shall be entitled to vote on all matters and all events. The Class B member shall be entitled to one vote for each Residential Unit in which it holds any interest. At such time as the Class A members shall be entitled to full voting privileges, the Class B membership shall automatically terminate and cease to exist, in which event each Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership in Section 2 of this Article 3. From and after the date on which the Class B membership shall terminate in accordance with this Article 3 and cease to exist, such membership shall not be revived or reinstated.

#### *Section 4. Suspension of Membership Rights.*

The membership rights of any member, including the right to vote, may be suspended by the Association's Board of Directors pursuant to authority granted in the Association's By-Laws, as amended from time to time. Any such suspension shall not affect such members' obligations to pay assessments past due or coming due during the period of suspension and shall not affect the permanent charge and lien on the members' property in favor of the Association.

#### *Section 5. Meetings of the Membership.*

All matters concerning meetings of members of the Association, including the time in

which and the manner in which notice of any of said meetings shall be given to members of the quorum and percentage vote required for the transaction of business of any meetings, shall be specified in this Declaration, in the By-Laws of the Association as amended from time to time or by law

#### ARTICLE IV

##### Assessment

###### *Section 1. Creation of the Lien or Personal Obligation for Assessments.*

Each Class A member, by acceptance of a deed or other conveyance for any Residential Unit in the Restricted Property, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to covenant and agreed to pay the Association:

(a) Annual assessments and charges and (b) Special assessments: such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interests thereon on the land, shall be a continuing lien upon the property against which each such assessment is made and shall also be the personal obligation of the person who is the record owner of the property at the time the assessment fell due.

###### *Section 2. Purpose of Assessment.*

The assessments levied under this Article 5 shall be used exclusively for the purpose of promoting the common health, safety and welfare of the members and their tenants and, in particular, for the servicing, improvement and maintenance of the Common Areas and facilities related thereto devoted to such purposes and related to the use and enjoyment of the Common Areas, and for the maintenance of the entrance area or areas of The Heights Subdivision and any subsequent phase thereof created out of the Supplemental Property or any portion thereof, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof. Such portion of the annual assessments levied by the Association under this Article 5 as may be necessary for such purposes shall be devoted to promoting the recreation, health, safety and welfare of the members and their tenants and establishing and maintaining reserves for the maintenance, repair, replacement and operation of the Common Areas and facilities and the entrance area or areas.

###### *Section 3. Basis and Maximums of Annual Assessments.*

Until such time as the Class A member shall be entitled to full voting privileges in accordance with Article 3 of this Declaration:

(A) The initial annual assessment of Class A members shall be Six Hundred and Twenty-five dollars (\$625.00) per residential unit payable to the Association, and

(B) All Class A members shall be responsible for paying an impact fee as set and established by the Architectural Committee, which will be due and payable before residential construction can commence upon each lot. The impact fee shall be due when the construction process is initiated by submission of plans and applications to the Architectural Committee. The AC shall not approve any plans or applications until such impact fee is paid.

(C) The Class B members shall pay whatever amount, if any, in excess of the Class A member's assessment as, in the sole opinion of the Class B member, may be necessary to maintain and manage (and only to maintain and manage, including the payment of ad valorem taxes) all roads and improvements of the development.

From and after such time as the Class A member shall be entitled to full voting privileges and in accordance with Article 3 of this Declaration, the annual assessment shall be determined by the Board of Directors of the Association without regard to the initial annual assessment imposed prior to such time and shall be paid by all the members; provided, however, that any assessment after the initial assessment set by the Board of the Association shall not be increased (or decreased) in any one year by an amount in excess of fifteen percent (15%) of the assessment for the year immediately prior to the year for which the increase (or decrease) is to be effective.

#### *Section 4. Special Assessments.*

Upon the affirmative vote of the holders of seventy-five percent (75%) or more of the vote of those then entitled to vote of all classes of membership of the Association, the Association may levy and collect a specific special assessment so authorized for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or unexpected repair or replacement of a capital improvement upon the Common Areas, including any necessary fixtures or personal property related thereto; or for the purpose of increasing the annual assessment by an amount in excess of what is authorized by Section 3 of this Article.

#### *Section 5. Equality of Assessment among Residential Units.*

No Residential Unit within the Restricted Property shall bear a higher assessment than any other Residential Unit within the Restricted Property except that, until such time as the Class A members shall be entitled to full voting privilege in accordance with Article 3 of this

Declaration, the Class B members may bear a greater or lesser assessment burden than Class A member while the Class B member may be subsidizing the Association with this obligation pursuant to Section 3 of this Article.

*Section 6. Date of Commencement of Annual Assessments; Due Dates.*

(A) The Association's Board of Directors shall send written notice of the annual assessment and the amount of such assessment to every member subject thereto at least thirty (30) days in advance of each annual assessment. Unless otherwise provided by the Association's Board of Directors, the entire amount of the annual assessment for each Residential Unit shall become due and payable to the Association on the 1st day of July of each year and shall be paid to the Association without further notice from the Association; provided however that in the event the Board of Directors shall fail to send written notice of the annual assessment to members at least thirty (30) days prior to the annual assessment period the payment for the annual assessment shall not be due until thirty (30) days after such notice is given; the failure to notify thirty (30) days prior to the annual assessment period shall not however reduce the amount of the assessment due and payable.

The annual assessment shall be established on a Fiscal year basis and shall commence as to each member when he becomes a member pursuant to Section 2 of Article 3.

The first annual assessment payable to the Association with respect to a Residential Unit shall be adjusted according to the number of days remaining in the Fiscal year following the date a member becomes a member.

(B) The Association shall, upon demand at any time, furnish to any member liable for any assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. A reasonable charge, as determined by the Board of Directors may be made for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

*Section 7. Effective Nonpayment of Assessment: the Personal Obligation; the Lien; Remedies of the Association.*

(A) If an assessment is not paid on or before the date when due then such assessment shall become delinquent and shall, together with such interest thereon and the cost of the collection thereof if hereinafter, thereupon become a continuing lien on the delinquent members' property which shall bind such property in the hands of the then owner, his heirs, designees, personal representatives, successors and assigns. In addition to the lien rights, the personal obligation of the then owner to pay such assessments shall remain his personal

obligation and shall also pass to his successors in title. Such owners shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer and such owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such owners and successors in title creating any indemnification of the owner or any relationship of principal and surety as between themselves.

(B) If assessment is not paid within thirty (30) days after the due date, such assessment shall bear interest from the date of the delinquency at the lesser of the highest rate permitted by law or eighteen percent (18%) per annum, and the Association may bring legal action against the owner personally obligated to pay the same or foreclose its lien against such owner's property. In which event, interest, costs and attorney's fees equal to fifteen percent (15%) of the principal amount shall be added to the amount of such assessment as may then be due. Each owner by acceptance of a deed or other conveyance of his or her property, invests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of such charges as a debt and to foreclose the aforesaid lien in an appropriate proceeding and lower equity. The lien provided for in this Article 5 shall be in favor of the Association and shall be for the benefit of all other members. The Association acting on behalf of the other members shall have the power to bid in the owners' property at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No member may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Areas and facilities. The Association shall not waive any liens or rights it may have against any member or such members Residential Unit without the approval of holders of seventy-five percent (75%) or more of the vote of those then entitled to vote all classes of membership.

(C) If the assessment is not paid within thirty (30) days after the due date, the Association may also suspend the membership rights of the delinquent member, including the right to vote, the right of enjoyment in and to the Developments' improvements and facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such members obligation to pay assessments due during the period of such suspension and shall not effect the permanent charge and lien on such members property in favor of the Association.

*Section 8. Subordination of Charges and Liens to Mortgages.*

(A) The liens and permanent charges of all assessments and charges authorized herein (annual, special or otherwise) with respect to any restricted property is hereby made subordinate to the lien of any first mortgage placed on such property if, but only if, all assessments and charges with respect to such property authorized herein having a due date on or prior to the date of the mortgage as filed of record have been paid. The liens and permanent

charges hereby subordinated are only such liens or charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgage property pursuant to any proceeding in lieu of foreclosure or the sale of transfer of the mortgage property pursuant to a sale under power contained in such mortgage.

(B) Such subordination is merely a subordination and shall not relieve the owner of the mortgaged property of his personal obligation to pay all assessments and charges coming due at any time when he is the owner of such property; shall not relieve such property from the liens and permanent charges provided for herein (except to the extent a subordinated lien or permanent charge is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous owner of such property of any personal obligation or relieve such property or the then owner of such property from liability for any assessment or charges authorized hereunder become due after such sale and transfer.

## ARTICLE V

### Administration

#### *Section 1. Responsibility for Administration.*

The administration of the Association, the maintenance, repair and operation of the Development's improvements and facilities and the Entrance Areas shall be the responsibility of the Association.

#### *Section 2. Management and Maintenance Agreement.*

The Association may enter into such management and maintenance agreements as are necessary or desirable for the administration and maintenance of the Development's improvements and facilities and the Entrance Areas. Any management agreement which is to be entered into, after approval by a majority of the Board of Directors, shall provide for the compensation to be paid, the term thereof, which shall not exceed one year, in the manner in which and the terms upon which such agreement may be terminated, which shall include the right of termination fifteen (15) days after seventy-five percent (75%) of the members then entitled to vote, affirmatively vote to so terminate such contract at any time after the Class A members are entitled to the full voting privileges in accordance with Article 3.



*Section 3. Limitations of Liability; Indemnification.*

Notwithstanding the duties of the Association to maintain and operate the Common Areas and to maintain the Entrance Areas, the Association shall not be liable for injury or damage caused by the latent condition of the Common Areas nor for injury caused by the elements, members or other persons; nor shall any officer or director of the Association be liable to any person for injury or damage by such officer or director in performance of the duties hereunder unless due to willful misfeasance or malfeasance or gross negligence of such officer or director. Each officer and director of the Association shall be indemnified by the members against all expenses and liabilities, including attorney's fees, reasonably incurred or imposed upon him in connection with any proceeding in which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association, and any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer and director are adjudged guilty of willful misfeasance or malfeasance or gross negligence in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors and the Association approves of such settlement and reimbursement is being for and in the best interest of the Association.

**ARTICLE VI**

**Insurance and Casualty Losses**

*Section 1. Insurance.*

The Board of Directors of the Association or its duly authorized agent shall have the authority to and shall obtain insurance for all development improvements against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, in amounts sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard and shall also obtain a public liability policy covering the Common Areas and all damage or injury caused by negligence of the Association or any of its agents. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and all such policies shall be written by accompanied license to do business in the State of Georgia, and all policy shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear.

**ARTICLE VII**

**General Provisions**

*Section 1. Duration.*

The Covenants and Restrictions of this Declaration shall run with and bind the land, shall be and remain in effect, and shall inure to the benefit of and be enforceable by the Association or the owners of any of the Restricted Property, their respective legal representatives, as successors and assigns, for a term of 20 years from the day and year first above written. Said Covenants and

Restrictions shall be automatically renewed and extended beyond said 20-year period for successive periods not to exceed twenty years each if an agreement for termination is not signed by members of the Association then entitled to cast at least fifty percent (50%) of the votes of the Association. Said Termination must be filed for record in the Office of the Clerk of the Superior Court of Fannin County, Georgia, at least ten (10) days prior to the effective date of each renewal and extension; provided, however, that each such agreement shall specify which of the Covenants and Restrictions are so terminated. Every purchaser or grantee of any interest in any of the restricted property by acceptance of a deed or other conveyance thereof, thereby agrees that the Covenants and Restrictions of this Declaration shall be renewed and extended as provided herein.

*Section 2. Notices.*

Any notice required or permitted to be sent to any member pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or owner to whom it is intended at his last known place of residence, or to such other address as may be furnished to the secretary of the Association, and such service shall be deemed sufficient. The date of service shall be the date of mailing.

*Section 3. Severability.*

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


*Section 4. Amendment.*

The Covenants and Restrictions of this Declaration may be amended at any time during the first five (5) years following the day and year first above written by an instrument signed by members of the Association then entitled to cast at least seventy-five percent (75%) of the votes of all members of the Association and, thereafter, by an instrument signed by members of the Association then entitled to cast at least fifty percent (50%) of the votes of the Association; provided, however, that any such amendment of these Covenants and Restrictions must be in full compliance with all applicable laws and regulations, including the zoning ordinances applicable to the Restricted Property and any covenants affecting the Restricted Property recorded in Fannin County, Georgia Records, and shall not become effective until the instrument evidencing such change has been duly filed for record in the Office of the Clerk of the Superior Court of Fannin County, Georgia, and unless written notice of the proposed amendment is sent to every member at least fifteen (15) days in advance of any action taken. Every purchaser or grantee of any interest in the Restricted Property, by acceptance of a deed or other conveyance thereof, thereby agrees that the Covenants and Restrictions

of this Declaration may be amended as provided herein. All purchasers of property subject to these Declarations accept, by accepting a deed to a parcel subject to this Declaration, and consent to the amendment of these Declarations under this provision and expressly waive any objection to this Amendment process that may arise under O.C.G.A. § 44-5-60(d)(4).

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers and the appropriate corporate seals affixed hereto, the day and year first above written.

Cashes Valley Development, LLC



- Member, Manager

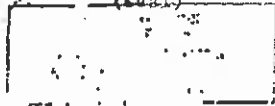
(Company Seal)

Signed this 20th day of  
November, 2012 in the  
presence of

Don M. Shinty  
Witness

Patricia A. Pope  
Notary Public

(seal)



Doc ID: 6015840004 Type: COVE  
Recorded: 08/06/2013 at 11:02:00 AM  
Fee Amt: \$12.00 Page 1 of 2  
Fannin Co., Clerk of Superior Court  
KARA CHRISTIAN Clerk of Courts  
1064 783-784

After recording, please return to  
Judge O. Kahn, T-4  
Michelle Kelley Geyses, P.C.  
Fulton Piedmont Center, Suite 400  
3443 Piedmont Road, NE  
Atlanta, Georgia 30343  
KKU File No. 46736 1

Please cross-reference  
Deed Book 1039, Page 196,  
Records of Fannin County, Georgia

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE HEIGHTS**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENTS (this "First Amendment") is made and entered into as of this 26 of July, 2011 (the  
"Effective Date") by Cashel Valley Development, LLC a Georgia limited liability company  
("Declarant").

WITNESSETH

WHEREAS, Declarant entered into this certain Declaration of Covenants, Conditions and  
Restrictions dated November 20, 2012, and recorded January 28, 2013, in Deed Book 1039, Page 196,  
Records of Fannin County, Georgia (the "Declaration"); and

WHEREAS, Declarant is the owner of all of real property described in, and burdened and  
benefited by, the Declaration, and

WHEREAS, Declarant wishes to amend the Declaration pursuant to the terms and conditions of  
this First Amendment

NOW, THEREFORE, for and in consideration of valuable consideration, the receipt and  
sufficiency of which is hereby acknowledged, Declarant intending to be legally bound, hereby sets forth  
the following information with respect to the Declaration

1. Recitals. The above recitals are incorporated by reference into this First Amendment and form a  
substantive part hereof. Except as otherwise set forth in this First Amendment, all defined terms and  
terms of art used and referred to in this First Amendment shall have the same meaning as and when such  
defined terms and terms of art are used and referred to in the Declaration

2. Rebath of Lot 41 and Addition of Lot 42

(a) All references to "Lots 1 through 42" contained within the Declaration are hereby  
deleted, and substituted with "Lots 1 through 41"

(b) All references to that certain plat of survey recorded in Plat Book 531R, Page 1 through  
7 Records of Fannin County, Georgia, are hereby deleted, and in their place and stead, reference shall be  
made to that certain plat of survey recorded in Plat Book 630J, Page 1-7, aforesaid Records

1. Miscellaneous.

(a) Ratification. The Declaration is hereby ratified and shall remain in full force and effect as amended by this First Amendment.

(b) Binding Effect. This First Amendment shall be binding upon and inure to the benefit of Declarant and its successors, successors-in-title, transferees and assigns. The covenants and other rights established hereby are expressly made, created and established as appurtenant covenants benefiting and burdening the Property as more particularly provided herein, as covenants which run with the land and shall not, at any time, merge with any other right, title or interest of any party in any portion of the Property, or in all of the Property. It being the intention and express effect hereof that each such right, title and interest shall remain separate, distinct and apart, and shall inure to the benefit of and be binding upon Declarant.

(c) Governing Law. This First Amendment and the Declaration shall be shall be governed by and interpreted in accordance with the laws of the State of Georgia without regard to that state's conflicts of law provisions.

(d) Captions. The captions used in this First Amendment are for convenience only and do not in any way limit or simplify the terms and provisions hereof.

IN WITNESS WHEREOF, Declarant has caused this First Amendment to be executed under seal by its authorized signatory as of the Effective Date.

Signed, sealed and delivered in my presence  
this 26 day of July, 2013.

**DECLARANT**

Cash at Valley Development, LLC

By [Signature] (SEAL)  
Name: SANDRA KAY FOX  
Title: MEMBER MANAGER

[Signature]  
Notary Public  
Sandra Kay Fox  
Notary Public

(NOTARY SEAL)



1027755-1





**After recording, please return to:**  
David F. Cooper, Esq.  
Kitchens Kelley Gaynes, P.C.  
Eleven Piedmont Center, Suite 900  
3495 Piedmont Road, NE  
Atlanta, Georgia 30305  
KKG File No. 46036.1

**Please cross-reference:**  
Deed Book 1039, Page 396,  
Deed Book 1064, Page 783  
Records of Fannin County, Georgia

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE HEIGHTS**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "*Second Amendment*") is made and entered into as of this \_\_\_ of \_\_\_\_\_, 2017 (the "*Effective Date*") by Cashew Valley Development, LLC, a Georgia limited liability company ("*Declarant*").

WITNESSETH:

WHEREAS, Declarant entered into that certain Declaration of Covenants, Conditions and Restrictions dated November 20, 2012, and recorded January 28, 2013, in Deed Book 1039, Page 396, Records of Fannin County, Georgia (the "*Original Declaration*"); and

WHEREAS, the Original Declaration was subsequently amended pursuant to that certain First Amendment to Declaration of Covenants, Conditions and Restrictions dated July 26, 2013, and recorded August 6, 2013 in Deed Book 1064, Page 783, Records of Fannin County, Georgia (the "*First Amendment*") (the Original Declaration and First Amendment are referred to, collectively, as the "*Declaration*"); and

WHEREAS, as of the Effective Date, Declarant continues to own more than 75% of the Residential Units or Lots at the Subject Property, and votes of members of the Association (as defined in the Declaration) are cast on a per Lot basis; and

WHEREAS, notice of this proposed Second Amendment was sent to all members in accordance with the declaration and applicable law;

NOW, THEREFORE, for and in consideration of valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant, intending to be legally bound, hereby sets forth the following information with respect to and amends the Declaration, as follows:

1. **Recitals.** The above recitals are incorporated by reference into this Second Amendment and form a substantive part hereof. Except as is otherwise set forth in this Second Amendment, all defined terms and terms of art used and referred to in this Second Amendment shall have the same meaning as and when such defined terms and terms of art are used and referred to in the Declaration.

2. **Ratification and Re-Adoption of First Amendment**

a) All matters set forth in the First Amendment are hereby ratified and adopted, the same as if the Original Declaration was re-amended hereby and herein on the same terms and provisions as are set forth in the First Amendment.

3. **Further Amendments**

a) Article II, Section 2(11) is hereby amended as follows: After the Effective Date, there shall no longer be any requirement that a garage, whether attached or detached, have a side entry (meaning that the garage doors must face the interior of the Lots and cannot face the street). All garages constructed before the Effective Date are hereby approved and shall be deemed compliant with all requirements of the Declaration.

b) Article II, Section 2(12)(C) is hereby amended as follows: After the Effective Date, the heated/cooled floor area of any dwelling built on a Lot shall be a minimum of 2,100 square feet, inclusive of any finished basement. All dwellings not meeting the requirements of said provision before the Effective Date are hereby approved and shall be deemed compliant with all square footage requirements of the Declaration.

c) Article II, Section 2(12)(K) is hereby amended by adding thereto the following: Anything to the contrary notwithstanding, in connection with the initial clearing and grading of a Lot for new construction of a dwelling, the contractor shall be permitted to burn on a Lot in a fire pit any debris (in the form of trees, shrubs and brush only) that is generated from the grading and clearing activities, in accordance with applicable laws and regulations.

d) Article II, Section 2(12)(R)(6) is hereby amended by removing the first word "All" and inserting in its place the following: "Except as heretofore or hereafter approved by the Board or Architectural Committee, all".

e) Article IV, Section 3(A) is hereby amended as follows: Beginning on and after the Effective Date, the initial annual assessment for each fiscal year is hereby increased to \$1,100 per year per Lot/Residential Unit, payable to the Association. The Board shall present to the members, in advance of each new fiscal year, a budget of the expected expenses to be incurred by the Association for the forthcoming fiscal year, inclusive of reasonable reserves. The regular annual assessment may be increased as the spending needs of the Association, as set forth in the annual budget, reasonably require according to the Board. This provision shall govern and control over any conflicting provision.

f) Article IV, Section 3(B) is hereby amended by adding thereto the following: After the Effective Date, the Impact fee shall be a flat fee of \$1,500, to defray the expense to the Association of hiring design professionals to conduct plan reviews. Under no circumstance, however, shall review of plans by the Association be deemed an approval by the Association of the substance of the plans other than for general aesthetic conformity of appearance and compliance with the specifications set forth in the Declaration and architectural standards therein or otherwise hereafter adopted. Under no circumstance shall an approval by the Association of plans create any liability on the part of the Association with respect to compliance or adequacy of construction with applicable laws or building codes.

g) Article IV, Section 4 is hereby amended by adding thereto the following: After the Effective Date, a special assessment may be implemented upon the vote of 51% of all members entitled and eligible to vote, for the purposes stated herein.

DS  
MF

**BYLAWS  
OF  
THE HEIGHTS PROPERTY OWNERS' ASSOCIATION, INC.**

DS  
AV

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is **The Heights Property Owners' Association, Inc.** (hereinafter referred to as the "**Association**"). The Initial principal office of the corporation shall be located at 5555 Glenridge Connector, Suite 800, Atlanta, Georgia, Fulton County, but meetings of members and directors of the Association may be held at such places within the State of Georgia as may be designated by the Board of Directors of the Association (the "**Board**"). The principal office may be changed by a vote of the Board.

For clarity:

a) These bylaws shall be effective and control as of the date of the Incorporation of the Association, which is January 17, 2017 ("**Effective Date**").

b) Pursuant to the Declaration of Covenants, Conditions and Restrictions for The Heights dated November 20, 2012, as amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions for The Heights dated July 26, 2013 (the original declaration and the amendment being called, collectively, the "**Declaration**"), there are two classes of voting rights in the Association – Class A and Class B. Class A members are owners of lots. Class B members are the Declarant. Pursuant to the Declaration, the Declarant or its representative shall serve as the sole member of the Board until the earlier to occur of: (i) the Declarant sells 95% of all lots in the subdivision known as The Heights (the "**Subdivision**"), or (ii) the Declarant issues written notice to all members that Declarant is relinquishing its Class B voting rights (each, a "**Turnover Event**"). Pursuant to Article V of the Articles of Incorporation of the Association (the "**Articles**"), the business of the Association shall be managed by the Board (and any officers and committees elected or appointed by the Board), and not the members in their capacities as members. After a Turnover Event, the members will elect the Board and the Board (and any officers and committees elected or appointed by the Board) will continue to manage the business of the Association.

**ARTICLE II  
DEFINITIONS**

The words used in these bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit. These bylaws shall be construed and interpreted in pari materia with the Declaration.

**ARTICLE III  
MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the Effective Date, and each subsequent regular annual meeting of the members shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year. The fiscal year begins July 1 and ends June 30 of the following year.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board or upon written request of one-fourth (1/4) of all members entitled and eligible to vote.



**Section 3. Notice of Meetings.** Written notice of each meeting of the members shall be given by, or at the direction of, any officer of the Association, or such other person as may be authorized, by mailing a copy of such notice, first class, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, set forth an agenda the purpose of the meeting. If the event that any member has furnished an address to receive notices via electronic mail, notices to such members may be sent by electronic mail.

**Section 4. Quorum.** The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10th) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented. For clarity, votes of members are cast and a quorum of members is determined on a per-Lot basis. In the event that any one member owns more than one Lot, that member will be entitled to one vote per Lot. All matters reserved for decision by members shall be decided on the basis of a majority of the quorum that is represented, with votes taken on a per Lot basis.

**Section 5. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable, and shall automatically cease upon conveyance by the member of his Lot.

**Section 6. Matters on Which Members Vote.** This provision shall not empower members, as members, to manage the business of the Association generally, only to set forth a protocol for members to vote on those matters which the Declaration and Articles reserve expressly for decision by members.

#### **ARTICLE IV BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE**

**Section 1. Governing Body: Composition.** The affairs of this Association shall be managed by a Board. Except as provided in Section 2 of this Article, all persons serving on the Board must reside in the Subdivision, and shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time.

**Section 2. Directors Appointed by Declarant.** Pursuant to the Declaration, the Declarant or its representative shall serve as the sole member of the Board until a Turnover Event.

**Section 3. Number of Directors.** After a Turnover Event, the Board shall consist of three (3) members.

**Section 4. Nomination of Directors.** After a Turnover Event, elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

**Section 5. Election and Term of Office.** After a Turnover Event, directors shall be elected and hold office as follows:

a) The President or Association or members shall call a special meeting to elect three (3) directors.

b) At annual meetings of the membership thereafter, directors shall be elected by secret ballot. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected. Cumulative voting is not permitted.

c) Initially, the term of one (1) director shall be fixed at one (1) year, the term of one (1) director shall be fixed at two (2) years, and the term of one (1) director shall be fixed at three (3) years. At the expiration of the initial term of office of each respective elected member of the Board, a successor shall be elected to serve for a term of two (2) years. The members of the Board shall hold office until their respective successors shall have been elected by the Association.

Section 6. Removal. After a Turnover Event, any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association at a special meeting called for that purpose.

Section 7. Compensation. No person serving as a director shall receive compensation for any service it may render to the Association in its capacity as a director. However, any director may be reimbursed for its actual expenses incurred in the performance of its duties.

Section 8. Vacancies. After a Turnover Event, a vacancy on the Board shall be filled by a majority vote of the members of the Association at a special meeting called for that purpose.

Section 9. Action Taken Without a Meeting. Before or after a Turnover Event, the Board shall have the right to take any action in the absence of a meeting which could be taken at a meeting of the Board by obtaining the written approval of all of the then directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### **ARTICLE V MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. After a Turnover Event, regular meetings of the Board shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. After a Turnover Event, special meetings of the Board shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. After a Turnover Event, a majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

#### **ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers. Before and after a Turnover Event, the Board shall have the power to:

a) adopt and publish rules and regulations governing the use of the Common Area as said term is defined in the Declaration, and the personal conduct of the members and their guests thereon, and to

establish penalties for the infraction thereof;

b) suspend the voting rights and right to use of any recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these bylaws, the Articles, or the Declaration;

d) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

e) employ a manager, an independent contractor, or such other employees as are deemed necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board to:

a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

b) reasonably supervise all officers, agents and employees of this Association, and to use reasonable efforts to see that their duties are properly performed;

c) as more fully provided or contemplated in the Declaration, to:

1. fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

2. send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

3. foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

4. issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payments;

5. procure and maintain adequate liability and hazard insurance on property owned by the Association;

6. cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

7. cause the Common Area as said term is defined in the Declaration and any other areas located within the Properties which are the maintenance responsibility of the Association to be maintained.

## ARTICLE VII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a President and Vice-President (who shall at all times be members of the Board), a Secretary, a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. After a Turnover Event, the election of officers shall take place at the first meeting of the Board following each annual meeting of the members.

Section 3. Term. After a Turnover Event, the officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless it shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. After a Turnover Event, the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

a) President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notices of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

d) Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association and keep proper books of account.

#### **ARTICLE VIII COMMITTEES**

The Board shall or may appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these bylaws. In addition, the Board shall or may appoint other committees as deemed appropriate in carrying out its purpose. Notwithstanding any provision to the contrary herein, the Board shall exercise all powers and duties of any committee which is contemplated but not appointed.

#### **ARTICLE IX BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles and the bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### **ARTICLE X CORPORATE SEAL**

The Association may have a seal in circular form having within its circumference the words: The Heights Property Owners' Association, Inc. However, the failure to affix a seal shall not invalidate any act of the Association if such act was otherwise authorized.

#### **ARTICLE XI AMENDMENTS**

After the Turnover Date, these bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

In the case of any conflict between the Articles and these bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these bylaws, the Declaration shall control.

#### **ARTICLE XII MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of July and end on the last day of the following June every year.

h) Article V, Section 2 is hereby amended by adding thereto the following: After the Effective Date, the required percentage shall be 51% of all members entitled and eligible to vote.

4. Miscellaneous.

a) Ratification. The Declaration is hereby ratified and shall remain in full force and effect as amended by this Second Amendment.

b) Binding Effect. This Second Amendment shall be binding upon and inure to the benefit of Declarant and its successors, successors-in-title, transfers and assigns. The easements and other rights established hereby are expressly made, created and established as appurtenant easements benefiting and burdening the Subject Property as more particularly provided herein, as covenants which run with the land and shall not, at any time, merge with any other right, title or interest of any party in any portion of the Property, or in all of the Property, it being the intention and express effect hereof that each such right, title and interest shall remain separate, distinct and apart, and shall inure to the benefit of and be binding upon Declarant.

c) Governing Law. This Second Amendment and the Declaration shall be shall be governed by and interpreted in accordance with the laws of the State of Georgia without regard to that state's conflicts of law provisions.

d) Captions. The captions used in this First Amendment are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

IN WITNESS WHEREOF, Declarant has caused this Second Amendment to be executed under seal by its authorized signatory as of the Effective Date.

Signed, sealed and delivered in my presence  
this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

DECLARANT

Cashes Valley Development, LLC

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**The Heights' Property Owner's Association, Inc.**  
**Annual Operating Budget**  
**2017-2018 Budget vs. Actual (YTD)**  
 For the period: July 1, 2017 - June 30, 2018

**PATHSTONE**  
 FEDERAL STREET

	Annual Budget	2017-18 Actual	Variance
<b>INCOME</b>			
Homeowner Assessments - \$1100	44,000	36,118	(5,882)
Special Assessments	0	0	0
HOA late payment interest charge - 18%	0	0	0
<b>TOTAL INCOME</b>	<b>44,000</b>	<b>36,118</b>	<b>(5,882)</b>
<b>GENERAL &amp; ADMINISTRATIVE EXPENSES</b>			
Insurance Expense	4,000	0	(4,000)
Management and Accounting Expense	1,500	0	(1,500)
Cerritos Area Property Tax	100	0	(100)
Website Expense	2,500	0	(2,500)
Association Events	500	0	(500)
<b>TOTAL GENERAL &amp; ADMINISTRATIVE EXPENSES</b>	<b>8,600</b>	<b>0</b>	<b>(8,600)</b>
<b>MAINTENANCE &amp; REPAIR EXPENSES</b>			
Landscaping	13,000	3,000	(10,000)
Waterfall Maintenance	700	885	185
Barroom/Septic Maintenance	500	0	(500)
General Repair and Maintenance	0	13,182	13,182
Pavilion/Mail Center Maintenance	5,000	0	(5,000)
Bridge Maintenance	2,500	0	(2,500)
Gate Repair	1,500	1,471	(29)
Road & Culvert Maintenance	5,000	240	(4,760)
<b>TOTAL MAINTENANCE &amp; REPAIR EXPENSES</b>	<b>28,200</b>	<b>18,559</b>	<b>(9,641)</b>
<b>UTILITY EXPENSES</b>			
Electric	3,500	1,383	(2,117)
Gate Access/Phone Una	700	172	(528)
Water/Sewer	3,000	1,040	(1,960)
<b>TOTAL UTILITY EXPENSES</b>	<b>7,200</b>	<b>2,555</b>	<b>(4,645)</b>
<b>RESERVE FUNDING</b>			
Reserves (recurring or unused budget to be applied here)	0	0	0
<b>TOTAL RESERVE FUNDING</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL OPERATING EXPENSE</b>	<b>84,000</b>	<b>21,154</b>	<b>-22,848</b>
<b>NET INCOME +/-</b>	<b>\$0</b>	<b>\$16,984</b>	<b>\$16,984</b>

Doc ID: 002228780008 Type: AGRE  
Recorded: 11/13/2017 at 03:30:00 PM  
Fee Amt: \$20.00 Page 1 of 8  
Fannin Co. Clerk of Superior Court  
DANA CHRISTIAN Clerk of Courts  
#1230 Pa 643-648

DS MF DS AV  
RETURN RECORDED DOCUMENT TO:  
Community Systems, Inc.  
P.O. Box 580  
Blairsville, GA 30514-0580

STATE OF GEORGIA  
COUNTY OF FANNIN

**WATER SERVICE PROVISION AND SYSTEM  
MAINTENANCE AND REPAIR AGREEMENT AND  
EASEMENT**

THIS AGREEMENT made as of the 1st day of October, 2017 is between User (defined below) and Provider (defined below).

**WITNESSETH**

WHEREAS, the User possesses ownership of a Water System (defined below) serving the following subdivision property (hereinafter called, the "Subdivision"):

All that tract or parcel of land lying and being in Land Lot Nos. 305 and 306 of the 9th District, 2nd Section, of Fannin County, Georgia, containing 41+- lots, and being known as The Heights subdivision, as shown on plat of survey for The Heights, dated January 17, 2011, prepared by Robert A. Johnston, G.R.L.S. # 2949, and recorded in Plat Book E361, Pages 1 - 7, Fannin County, Georgia Records, said plat being attached hereto as Exhibit A and incorporated herein by this reference (the "Plat").

WHEREAS, the User desires to have Provider accept full responsibility for the provision of Services (defined below) and Provider wishes to contractually obligate itself to provide such Services;

NOW, THEREFORE, for and in consideration of the sum or \$10.00 in hand paid, the premises set forth below, and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, User and Provider do hereby agree as follows:

**ITEM I. Definitions**

"Water System" means: all of the well(s), pipes, piping, pumps, tanks, reservoirs, pressure system tanks, pump houses, distribution lines, electrical panels and wires, entire water distribution system, equipment, conduit and facilities from the primary well(s), and all other components and everything else necessary, to furnish water to each individual Lot and Lot Owner in the Subdivision, and well as the irrigation for the Subdivision's common areas and amenities. The Water System includes, but is not limited to, all such parts of the Water System as are reflected in the Plats. The Water System excludes the Individual Water Lines.

"User" shall mean: Cashes Valley Development, LLC, and its successors and assigns.

"Provider" shall mean: Community Systems, Inc., and its permitted successors and assigns.



"Lots" shall mean: the individual parcels designated as lots on the Plat.

"Lot Owner" shall mean: each and all of the owners and residents, including tenants, of Lots in the Subdivision.

"Association" shall mean: the homeowner's association entity for the Subdivision, but only upon User's turnover of responsibility for the Water System to such association.

"Services" shall mean: the operation and maintenance of the Water System and the provision of the Allotment of water to Lots and Lot Owners, and to common areas/amenities in the Subdivision as needed, and all other services to be furnished by Provider as described below, in the manner provided in this instrument.

"Allotment" shall mean: 4,000 gallons per month per Lot/Lot Owner.

"Individual Water Lines" shall mean: those plumbing pipes, conduit and lines that carry water from the Water System to the dwelling on Lots, starting from the point where said water lines connect to the meter servicing the Lot and the Lot Owner's dwelling. The meter shall be part of the Water System.

#### **ITEM 2. Easement**

Subject to the terms and condition of this instrument, the User does hereby grant to Provider an easement for ingress and egress over and across those Lots in the Subdivision, and the utility easement areas of the Subdivision as depicted in the Plat, to the extent and for the sole purpose of Provider furnishing the Services. Said easement includes the right and ability to access surface and sub-surface areas as necessary to maintain, replace, upgrade, and add additional Water System components and to repair or replace, as necessary, component parts of said Water System.

Anything to the contrary notwithstanding, this easement is not assignable by Provider absent advance written approval of User, which may be given or withheld in User's sole discretion. Any attempted assignment without User's advance written consent shall be null and void.

#### **ITEM 3. Scope of Work and Responsibility**

Provider agrees at all times to provide the Services in a first class condition and at all time to keep the Water System and all parts thereof in good repair and condition.

Provider warrants that water is and shall be provided to all Lots and Lot Owners in a sufficient quantity and quality for normal residential household use in volumes (but in no event less than the Allotment), pressure and quality consistent with and at least as high as that supplied by the most reputable water utility systems and services providers furnishing water service in and around Fannin County, Georgia.

Provider further agrees that should there be any problems, defects or deficiencies or repair/replacement conditions with or affecting all or any part of the Water System, including but not limited to, well system, well pumping equipment, and distribution lines, Provider will immediately solve and remedy any and all such problems, including but not limited to repair or replacement of any Water System components, at Provider's sole expense. In addition, Provider agrees to pay all electricity and other utility costs and taxes associated with the operation and maintenance of the Water System.

Provider shall obtain and maintain throughout the term of this agreement all required state licenses as a provider or operator of water systems, and further agrees to comply with and furnish the Services in accordance with all state laws, codes, ordinances and regulations as they apply to the operation and maintenance of said Water System and the furnishing of the Services.

The Lot Owners, or the Association of which they are a part, shall be responsible for installation of any customary residential filtration to be used and located on their respective Lots, and each Lot Owner shall install a standard back-flow prevention device in its water line (to be located immediately after the meter).

Each Lot Owner shall be responsible for all repairs, and costs of repair, associated with its Individual Water Line.

In the event that repairs are required to any portions of the Water System located beneath paved surfaces located in a utility easement areas as described on the Plat, the costs of digging and re-paving shall be borne by the Association (or, if there is no Association, all Lot Owners rotably).

#### ITEM 4. Period of Performance

For so long as Provider complies strictly and fully with its obligations and is not in default of its obligations:

User covenants and agrees that water will be obtained by User and Lot Owners only from the Water System, and from no other source (excepting only from private wells that Lot Owners may establish for themselves from time to time).

The term of this agreement is perpetual and shall be non-terminable by either party.

If Provider defaults in any of its obligations, User or the Association may terminate this agreement and retake full control and possession of the Water System. Before declaring any default, User shall obtain the opinion of default (a breach, or inadequate or non-standard or inadequate pressure or quality of water) from a person with adequate qualifications in Georgia, or some other person designated by any agency of the State of Georgia having jurisdiction over the operation of water systems, and furnish same to Provider.

Upon sale of the last Lot in the Subdivision owned by User, all references in this contract to user shall change to the Association.

#### ITEM 5. Payment

Each individual Lot Owner who is connected to the Water System agree to be individually responsible for the following payments:

An annual fee of ~~\$480.00~~ as compensation to Provider for the Services. This fee includes the usage fees for the Allotments. Each subsequent year's annual fee shall be billed to the Lot Owner directly by Provider, payment for same to be due on or before January 1<sup>st</sup> of each year.

In addition, each Lot Owner shall pay a monthly fee of ~~\$5.00~~ per thousand gallons of water (rounded up to the nearest thousand) used by that Lot Owner over its Allotment. Such usage fees for excess water usage, as above, to be billed as reasonably determined by Provider.

Individual Lot Owners or those who subsequently connect to the Water System shall be responsible for payment of the entire annual fee in effect for the year of connection, said fee to be prorated. Payments shall be made to Provider within 10 days of connection to the Water System. Said fees may increase annually (with 30 thirty days notice to each Lot Owner), but never in excess of \$60.00 per Lot per annum. The increase requested by Provider must be attributable to actual increases in out of pocket expenses incurred by Provider by third parties, and backed up by adequate documentation provided to Lot Owners upon request. Increases must reflect actual increases in costs charged to Provider by unaffiliated third parties in order to operate and maintain the Water System to standards set by applicable authorities.

Provider shall have the sole right to change its billing structure to a monthly or quarterly billing system.

Interest on sums not paid within 30 days of notice of delinquency from Provider shall accrue on such unpaid sums at the rate of 1.5% per month.

respective successors and assigns (including the Lot Owners). Each party shall promptly notify the other of any such assignments and this Agreement shall promptly be amended, as specified in Paragraph 9 above to reflect such assignment.

**ITEM 11. No Waiver**

Either party's failure to exercise any right arising hereunder shall not constitute a waiver of that, or any similar right, or preclude that party from enforcing such rights.

**ITEM 12. Notice**

Any notice or communication pertaining to this Agreement shall be deemed to have been duly given by party hereto if personally served upon the other by hand delivery via third party courier, or if sent to the others by Federal Express for next business day delivery. The date upon which such notice or communication is served, or the date upon which it is received by the addressee, shall be deemed to be the effective date of such notice irrespective of any date appearing thereon.

**ITEM 13. Entire Agreement, Severability, Interpretation**

The parties hereto agree to these terms and conditions and intend and agree that these constitute the entire understanding of the parties concerning the subject matter hereof and supersede all prior or contemporaneous written or oral understanding or agreements of the parties concerning the subject matter hereof. The entire agreement is embodied in this writing and the obligations and remedies of each party are completely set forth herein. In the event any provision herein is unenforceable, such provision shall be deemed severable, and all other provisions of herein shall remain enforceable. In the event of a breach, the breaching party shall pay the attorneys' fees and expenses of litigation of the non-breaching party.

Any disputes shall be litigated in the court system of Fulton County, Georgia or the Northern District of Georgia (should litigation be brought in federal court).

This agreement shall bind the heirs, successors and assigns of all parties as well as those of all Lot Owners.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

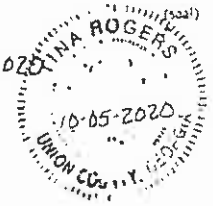
Signed, sealed and delivered in the presence of

[Signature]  
Witness

COMMUNITY SYSTEMS, INC.  
[Signature]  
By Tracy Diland, Secretary and Authorized Agent

[Signature]  
Notary Public  
My Commission Expires: 10-05-2020

MAILING ADDRESS OF PARTY  
P. O. Box 5821, Blainville, GA 30514  
Phone # - 706-745-8487  
Facsimile # - 706-745-9367



Signed, sealed and delivered  
in the presence of:

Adam M. Hinely  
Witness

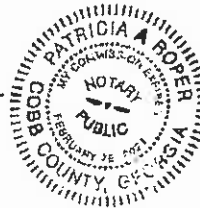
CASHES VALLEY DEVELOPMENT,  
LLC

By: S. Brian Graham  
S. Brian Graham, Manager

Patricia A. Roper  
Notary Public  
My Commission Expires: 2/26/21

MAILING ADDRESS OF PARTY

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# THE HEIGHTS PROPERTY OWNERS ASSOCIATION, INC.

## MINUTES OF ANNUAL MEETING

11/14/2017 @ 6:00 P.M. ET



The meeting was called to order at 6:00 p.m. ET on 11/14/2017.

### Roll Call:

The meeting began with Introductions of all persons present and their statement of their capacities, all as indicated below.

### Owners/Members Attending and Lots Represented:

- o Developer Lots (All Lots other than those sold): Cashes Valley Development, LLC via Brian Graham/Developer
- o Lot 4: Mike & Joellen Allman
- o Lot 6: Dave & Ashley Howington
- o Lot 22: Cecelia Acevedo
- o Lot 24: Shelly Draper (as proxy for Carol Young)
- o Lot 28: Nathan Fitts (as proxy for Lot 28)
- o Lot 31: Pam Roll
- o Lot 34: Ben Steele

### Others in Attendance:

- o Frank Moore (as counsel to Carol Young and Arthur Hiatt)
- o Joe Thompson (for Byers Well Drilling and Community Systems – Water System)
- o David Cooper (as counsel for Developer and taker of meeting minutes)

### Water System Discussion:

Following these Introductions, and to allow him to get home earlier, Joe Thompson was asked to proceed to offer comments and take questions about the water system. Mr. Thompson announced that he is the manager of Byers Well Drilling (BWD) and Community Systems (CS), that CS has recently taken over ownership of the water system, and that it is BWD that has been tasked to perform repairs and maintenance, test and sample the water and comply with EPD requirements. The system is a gravity flow system from two wells that sit towards the top of the subdivision. Mr. Thompson announced that papers are submitted to EPD for permitting, that water quality issues have been brought to his attention and are being addressed. He explained that redness in the water is not infrequent in well-water systems, and is attributable to EPD requirements that chlorine be infused into the system to sanitize the water, but he said that the chlorine amplifies the iron (red) content in the water and acts to oxidize – creating red colors. As for heavy content, he said that the iron content generally settles to the bottom of the main tank, but gets stirred up and during certain maintenance and repair efforts. Based on his review of the system, Mr. Thompson stated that it was his impression was that the system looked good from a construction standpoint, and he also stated that the prior system operator appeared to do a pretty good job. It was

explained that EPD permitting had been obtained through the former operator, but is required again for new operators when they take over a system and that new regulatory requirements are imposed – which are in process. These requirements consisted of installing two boosters for the whole system (in lieu of a booster for each lot). Owners requested a 24 hour “hot line” communication channel to report issues as and when they arise. The pressure in the system was tested and met the EPD peak demand requirements. Ben Steele indicated that use of Byers and CS was based on his recommendation – after he had had some visibility to their work on another project. Mr. Thompson said that rates will be flat rates initially, at \$40-\$45 per month for water usage, and he is to be sending an introduction letter to lot owners. He also is to be supplying his phone number. Mr. Thomson stated that BWD/CS responsibility stops at the water meter on the lots, and that issues after the meter are the responsibility of the lot owners, but BWD/CS are available to assist if requested. David Cooper stated that the water system agreement has been sent for recording in the public records in Fannin County and is or will be of public record and open made available. A copy is to be sent by Developer to the owners.

**ByLaws:**

Next on the agenda was the proposal to adopt the Bylaws, a copy of which had been included in the notice packet sent to the owners/members. David Cooper offered a general explanation of the purpose of the bylaws, as a procedural document to outline voting and meeting procedures. There was discussion concerning various community-related issues and questions and concerns expressed, mainly by Ms. Acevedo, about “turnover events” (a term defined in the proposed bylaws), and Mr. Cooper explained that the intent of the bylaws is to track the already allocated voting in the Declaration, which controls in the event of any conflict, and that the bylaws are not intended to address anything except for procedural matters in meetings, voting and officerships. Frank Moore mentioned that he is only representing and commenting on behalf of the Hiatts, but he confirmed bylaws are procedural in nature and, in response to Ms. Acevedo’s expressions of concern about development issue, stated that the bylaws are not intended to address development responsibilities of a developer. Voting rights were discussed and confirmed generally – one vote per lot.

Brian Graham made a motion to adopt the bylaws. The motion was seconded by Nathan Fitts. A brief discussion followed. No amendments to the motion were offered. After a call for the vote on the motion, the motion passed. Developer and Nathan Fitts voted in favor. There were three votes against (Acevedo, Steele, Draper). The rest of the owners abstained. A copy of the bylaws which were adopted at this meeting are attached hereto.

**Second Amendment to Declaration:**

Next on the agenda was the proposal to adopt the Second Amendment a copy of which had been included in the notice packet sent to the owners/members. Brian Graham explained that the purpose of the amendment was to enable the subdivision to generally meet the realities that he and Mr. Fitts, who is a broker for the Developer and marketing the lots in the community, in the market, and that the proposed changes (sizes of homes, finished basement provisions, siting of garages) address matters which were too restrictive. Other items, such as restriction on burning, were welcomed, particularly by Ms. Acevedo. The discussion generally meandered back and forth among various issues of concern. Mr. Graham explained that the Declaration is a governance document, and that the Developer needs owners to be eyes/ears and to report infractions so that the Developer can seek assistance from Mr. Fitts and others to address the issues when they arise. Particular issues discussed are addressed below.

Mr. Graham made a motion to adopt the second amendment, with corrections on the paragraph numbers noted in the earlier discussion. The motion was seconded by Jo Allman. A brief discussion followed. No further amendments/corrections to the motion were offered at that time. After a call for the vote on the motion, the motion passed unanimously.

**Budget – Second Amendment:**

Next on the agenda was the proposed budget, a copy of which had been sent with the agenda/notice of the meeting. A discussion of budgeting began. That discussion was interrupted by Mr. Cooper when it was noted that a further correction to the paragraph designations was required to ensure accuracy.

Mr. Graham made a motion to adopt the second amendment, with the additional corrections on the paragraph numbers noted in the discussion. The motion was seconded by Ms. Allman. A brief discussion followed. No further amendments/corrections to the motion were offered at that time. After a call for the vote on the motion, the motion passed unanimously.

A copy of the second amendment adopted at this meeting is attached hereto. It will be sent for recording and a copy will be sent to all lot owners.

**Budget:**

The discussion of the budget was recommenced. Mr. Graham led the discussion, explaining that the numbers set forth are an attempt to furnish transparency to the owners and set forth a good faith estimate of costs, while at the same time allowing for reserves for future expected maintenance and repairs. Mr. Graham explained that assessments have not historically been charged to lot purchasers even though they could have been charged, and that the Developer has funded these expenses alone to date. Ms. Acevedo stated that the owners also had not been paying for water. It was noted that the number of total lots was mis-stated in the budget as 44 lots. Mr. Graham had indicated earlier in the meeting on the discussion of the amendment to the Declaration that some lots might be consolidated to reduce density, create green space and make some lots more attractive to prospective purchasers. That comment was repeated in reply to a question from Mr. Howington. It was explained that actual expenditures would be furnished so that owners would have the ability to see actual versus projected expenses at the next annual meeting.

Mr. Graham made a motion to adopt the proposed budget, with the correction for lot numbers (correcting the indication of 44 lots). The motion was seconded by Ms. Allman. A brief discussion followed. No further amendments/corrections to the motion were offered at that time. After a call for the vote on the motion, the motion passed unanimously.

**Other Matters:**

In the course of the meeting, various items were discussed. They are generally set forth as follows:

Water System: See above. General discussion of Iron content/mud and pressures. Mr. Thompson also explained that filtration cleans the water, but also slows pressure. Mr. Steele inquired as to aquifer.

**Culverts:** General discussion about need to keep them open for drainage. Mr. Graham explained that culverts were cleaned out and rip-rap added in response to concerns from Hiatts, a culvert was added, and that he needs owners to report issues early so he can dispatch crews. Mr. Moore asked about engineering compliance and it was noted that licensed engineers performed the civil engineering and that the platted improvements were submitted to the County for review and approval pre-development. Mr. Cooper asked if there was any known non-compliance so that claims might be asserted timely against engineers, and no non-compliance was expressed. Mr. Steele asked that the drainage collection in front of his home be looked at. Developer to look at Lot 18 again. Ms. Acevedo noted that there had been substantial improvement after the culverts were cleaned out the last time.

**Roads:** Mr. Graham explained that patches have been done to roads. It was noted by owners that the plat calls for paved 18" roads in areas – per the plat. Developer to review.

**Entry Gates:** Have been closed when power goes out. Vendor reported that battery pack, designed to open the gates when power is out, was disconnected. Developer to look into issue. Solar power to be examined.

**Crest of Subdivision:** Ability of emergency vehicles to reach crest of subdivision to be examined. Noted that these issues were to have been reviewed and approved by public works departments on plat review and approval by County.

The meeting was adjourned.