

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
DECLARATION OF PROTECTIVE
COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS OF
SHAFTSBURY

W-I-T-N-E-S-S-E-T-H

WHEREAS, Developer is the owner of certain lots of land in Spartanburg County, South Carolina, located off of Bible Church Rd., Boiling springs, South Carolina 29316 and more particularly shown and described upon a plat entitled "SHAFTSBURY" prepared by SOUTHER SURVEYING dated _____ and recorded in Plat Book _____ in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the above referred to plan and record thereof, and

WHEREAS, SHAFTSBURY will be a residential community and the Developer desires to provide for the preservation of values and amenities of said community and, to these ends, desires to subject all of the lots in SHAFTSBURY as shown on the above plat to the within Protective Covenants, Conditions, Restrictions & Easements, (herein referred to as covenants and /or restrictions) for the benefit of each and every owner in SHAFTSBURY.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for an in consideration of the mutual benefits and advantages to the Developer and to future property owners of lots shown on the above plat, Developer does hereby impose upon SHAFTSBURY the following covenants, conditions, restrictions & easements, which shall bind the Developer, its successors and assigns, and all future owners of said lots, their respective heirs and assigns:

1. **DEFINITIONS:** The following words when used herein (unless he contest shall require a different meaning) shall have the following meanings:
 - A. "SHAFTSBURY" shall mean and refer to all of the lots and property shown upon the plat of SHAFTSBURY referred to above and upon any subsequent plat "SHAFTSBURY" prepared for the Developer and recorded in the Office of the Register of Deeds for Spartanburg County.
 - B. "Developer" shall mean and refer to B.A.C.T., LLC.
 - C. "Lot" shall mean and refer to any numbered parcel of land shown upon a plat of SHAFTSBURY, prepared for the developer and recorded n the Office of the Register of Deeds for Spartanburg county.
 - D. "Owner" shall mean and refer to the recorded owner, whether one or more persons or entities, of fee simple title to an Lot situated within SHAFTSBURY, but no withstanding any applicable theory of mortgage law, shall not mean or refer

to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

- 2) **SINGLE FAMILY RESIDENTIAL USE:** No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than on detached single-family dwelling, not to exceed 2-1/2 stores in height and, if approved in advance in writing, a private detached garage or hobby-type /storage building.
- 3) **SUBDIVISION OF LOTS:** Developer or any subsequent owner of a lot, with prior written consent of Developer or its nominee, may sell or convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plan and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as through they are originally platted as one lot. Notwithstanding any provision herein, Developer reserves the right to re-subdivide any portion of the property for the purpose of adjusting property lines or consolidating lots provided, however no such changes shall create any greater number of lots than that shown on the plat of **SHAFTSBURY**.
- 4) **MINIMUM HEATED AREAS:** No dwelling shall be erected on any lot having less than two (2) bathroom and no less than 1200 square feet of heated floor area, provided that the plan include an two car attached garage. If the plans do not include an attached garage, then the dwelling shall contain a minimum of thirteen hundred fifty square feet (1,350) of heated floor area with a single garage attached. If the dwelling has a second story, the first floor must have no less than seven hundred (700) square feet of heated floor area. The floor area required by this article shall not include basements, porches, verandahs, breeze ways, terraces garages, or hobby-type storage buildings. Said attached garage to have minimum of 400 square feet of area.
- 5) **BUILDING SETBACK LINES:** No building or portion of a building, including stoops, verandahs, steps and porches shall be located on a lot nearer the front property line or nearer the side street property line of the lot than the setback line(s) shown for such lot on the plat of **SHAFTSBURY** referred to in the deed from Developer. Nonetheless, Developer reserves the right and privilege, upon showing of special, unique or unusual circumstances, to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.
- 6) **APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS**
 - A. No building or structure, whether it be the dwelling house, garage, hobby-type building or drive way shall be erected, placed or altered on any lot until the building plans, elevations, locations, specifications and driveway have been approved in writing by Developer or its nominee. If such shall not be approved or

disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Any proposed hobby-type / storage building must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

- B. The completion of improvements upon a lot shall include the landscaping of the yard, including the grassing or sodding of the yard and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling.
 - C. The front elevation of the dwelling's foundation must be a minimum of twelve (12") above the finished grade of the yard.
 - D. No garage shall open to a street unless said garage is enclosed with a door(s). Developer reserves the right to grant a waiver of variance to this provision, but only in cases where compliance creates an undue hardship as a result of the configuration of terrain of a lot. Any such waiver from the Developer is required to be in writing to constitute a valid waiver.
- 7) **PROHIBITED BUILDING MATERIALS:** Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco or some other material approved by Developer or its nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any building or structure. Vinyl siding may be used on the siding of a house or garage.
- 8) **TRAILERS AND MOBILE HOMES PROHIBITED:** Trailers and mobile homes, including typical double wide mobile homes are absolutely prohibited. Manufactured homes or other factory-built homes may be erected or installed on a lot with the prior written approval of the Developer or its nominee. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot. Developer retains sole discretion and authority as to such approval or disapproval. Developer is exempt from this provision with respect to paragraph 31.
- 9) **REQUIREMENTS FOR DRIVEWAYS:** All driveways shall be constructed of concrete and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Developer reserves the right and privilege, upon showing of special, unique or unusual circumstances to approve or disapprove asphalt driveway, which must be submitted in writing to the developer or its nominee.

Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in fact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction/work is being done shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer.

- 11) **DEVELOPER'S DISCLAIMER:** DEVELOPER AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPERS, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED. FURTHERMORE, DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL FUTURE OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR CONSTRUCTION.
- 12) **GENERAL EASEMENTS:** Developer reserves an easement Five (5) feet inside each side and twenty (20) feet at rear lot line of each lot for the installation, maintenance and repair of utilities, and /storm draining facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of **SHAFTSBURY** . All utility service lines, including cable television, telephone, gas, electric or other utility, from existing streets shall be installed underground to any dwelling or other structure located upon a lot.
- 13) **SEWAGE:** Sewage disposal shall be by septic tank and constructed with the approval of the State Board of Health and appropriate county officials.
- 14) **FENCING:** No wire or metal fencing shall be erected on any lot from the rear corner of the residence erected thereon to the front of the lot. Wooden fencing shall be permitted from the rear corner of the house to the front of the lot; provide, however, that no such wooden fence shall exceed four (4) feet in height. Wire, metal or wooden fencing shall be permitted on any lot from the rear corner of the residence erected thereon to the rear of the lot; provided, however, that no such fence shall exceed six (6) feet in height. No fence post shall be erected upon any lot until it shall be first determined by the owner thereof that the same shall not interfere, damage or obstruct the installation of any utility. On corner lots, no fence shall be erected to extend beyond any building or setback line shown on the plat herein above referred to on the street side of such house.

- 15) **BUSINESS ACTIVITIES PROHIBITED:** no commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of this item shall not be construed to prohibit the making of handcrafted items for occasional off premises sale.
- 16) **NUISANCES AND OFFENSIVE ACTIVITIES:** no nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted upon any lot or allowed to exist on any lot or the adjoining street or streets.
- 17) **PARKING OF BOATS AND RECREATIONAL VEHICLE:** No camping trailer, boat, boat trailer or other similar recreational vehicle or other device or equipment shall be permitted to stand on the front portion (from any front corner of the home to the street) of any lot. No inoperable motor vehicle, wrecked vehicle or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot on the subdivision unless stored in an enclosed garage. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarter (3/4) ton in size, shall be parked on a lot or in the street right-of-way, except for loading and unloading. Furthermore, no portion of a lot shall be used for the operation of any motorized vehicles such as motorcycles, mini-bikes, go-carts, four wheeler or similar vehicles.
- 18) **PORTABLE OR METAL BUILDINGS PROHIBITED:** Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot, provided, however, that a hobby-type building or other storage building approval in writing by the Developer or its nominee, is permissible.
- 19) **SWING SETS:** Swing sets, sand boxes, gym sets and any other such similar devices or structures primarily for children's use and enjoyment must be located on the rear portion of a lot. Basketball goals are allowed on driveway areas or in the rear portion of any lot. No additional concrete or asphalt pad may be poured for ANY recreational use from any back corner of the home to the front property line.
- 20) **POOLS:** No above ground pools of any design may be constructed or placed on any lot. In ground pools are acceptable provided they are located on the rear portion of the lot, staying within all other guidelines and setback requirements herein stated. Any in ground pool MUST be enclosed with a fence (with locking gate) that complies with paragraph 13.
- 21) **NO TEMPORARY RESIDENCES:** No garage or hobby-type /storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- 22) **ANIMALS:** No domestic fowl, cows, hogs, mules, wild animals or any other farm animals shall be kept on any lot at any time, provided, however, household pets such as cats and dogs may be kept on a lot, provided such pets shall not exceed a total of two (2) in number and provided further that the owner thereof shall be responsible for

the control and conduct of such household pets so that they are not an annoyance, hindrance or nuisance to others.

- 23) **TRASH RECEPTACLES:** All receptacles for trash or garbage must be kept within a fence or enclosed area and hidden from view and the view from adjoining property.
- 24) **CLOTHESLINE:** All clotheslines and poles shall be installed on the rear portion (from any rear corner of the home to the rear property line) of a lot away from the street.
- 25) **SCREENING OF YARD EQUIPMENT:** Lawnmowers or other lawn maintenance equipments shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property.
- 26) **TELEVISION ANTENNA AND SATELLITE DISHES:** A standard roof-mounted or chimney-mounted television antenna or an 18" (or smaller) satellite dish is permissible, but no other type of antenna, satellite dish or similar device for the transmission of signals of any kind shall be erected or allowed to remain on any lot without the express written permission of the Developer or its nominee.
- 27) **COMPLETION OF IMPROVEMENTS:** All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other natural calamity.
- 28) **COVENANT OF GOOD APPEARANCE AND REPAIR :** Each lot owner shall maintain the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer, or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner. No work shall be done without due and proper notice to the owner and allowance of a least thirty (30) days to correct specified deficiencies.
- 29) **SIGNS:** No signboards or other of any kind shall be displayed on any lot except a single "For Sale" and a builder sign, or a single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall have the right to use additional signs for the development of the property. The Landscape easement area shall be exempt from this provision, due to the fact that the subdivision identification signs shall be located thereon.
- 30) **MAINTENANCE OF STREET RIGHT-OF-WAY:** The owner of a lot shall be responsible for the planting and maintaining of the area from the property line(s) to the edge of the pavement curb of the street or streets upon which said lot abuts.
- 31) **FUEL TANKS:** All fuel tanks or containers shall be buried underground, or enclosed in a structure in a manner consistent with normal safety precautions and in

accordance with the rule and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control, whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved by the Developer in accordance with its building approval procedure as above set forth.

- 32) **MAIL RECEPTACLES:** All mailboxes or other mail receptacles and their supporting structure, including the fixing of the location and eight thereof, shall conform to Developer's uniform requirements. All mail receptacles shall be of the same design and each lot owner is responsible for the cost of said mail receptacle. After the installation, each owner has the responsibility of keeping same in good repair and appearance.
- 33) **TEMPORARY SALES OFFICE:** The Developer shall have the right to place or erect temporary sales offices on any lot in the development for the purpose of marketing lots.
- 34) **TERMS OF ENFORCEMENT AND AMENDMENTS:** These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, upon all future owners, their respective heirs, successors and assigns, and all parties under them, until December 31, 2025, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning a least two-thirds (2/3) of the Lots in **SHAFTSBURY** agree in writing to terminate or change same. The terms and conditions of this instrument may be amended or changed only upon written agreement of the then Owners owning at least two-thirds (2/3) of the Lots in **SHAFTSBURY**. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change, in writing, any of the terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waive, modification or change shall substantially affect the overall plan of development.

EFFECT OF COVENANTS AND ENFORCEMENT:

Effect of Provisions of These Covenants: each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within **SHAFTSBURY** do promise, covenant and undertake to comply with each provision of these covenants, which provisions:

- 1) Shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot within **SHAFTSBURY**, is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- 2) Shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer, and all other owners, their respective heirs, successors and assigns;

- 3) Shall be deemed a real covenant by the Developer for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits, with and upon the title to each lot within **SHAFTSBURY**.
- B. Who May Enforce: The benefits and burdens of these covenants run with the land at law and in equity, and the Developer, their respective successors and assigns, and any owner, his heirs, successors, legal representatives, Personal Representative and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.
- C. Against Whom May the Covenants be Enforced: The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, or any other person whose activities bear a relation to the property, including guests and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent the terms thereof.
- D. Enforcement Remedies: In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, or any owner may institute appropriate legal proceedings or actions at law or in equity, including but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct, business, or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof, shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

34) MISCELLANEOUS:

- A. No Waiver: Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, or any owner, shall not be deemed a waiver of estoppel of the right to enforce same at any time thereafter.
- B. Captions: The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.
- C. Gender, Tense, Number and Applicability of Definitions: When necessary for proper construction, the masculine form of any word used herein shall include

feminine or neuter genre, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

- D. Savings Clause: If any provision or provisions of this instrument are found to be ineffective or unenforceable for any reason in the final judgment of any court having jurisdiction of the subject matter hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

35) HOMEOWNERS ASSOCIATION AND VOTING RIGHTS

A HOMEOWNERS ASSOCIATION SHALL BE ESTABLISHED BY THE DEVELOPER FOR THE PURPOSE OF ENFORCING THE WITHIN COVENANTS AT THE OPTION OF THE DEVELOPER. ASSESSMENTS TO SUPPORT PURPOSE OF THE ASSOCIATION MAY BE IMPOSED UPON THE LOT OWNERS BY VOTE OF ITS MEMBERS. THE ASSOCIATION SHALL HAVE (2) CLASSES OF VOTING MEMBERSHIP AS FOLLOWS:

CLASS A. CLASS A MEMBERS SHALL BE THOSE OWNERS DEFINED IN PARAGRAPH (E) WITH EXCEPTION OF THE DEVELOPER. CLASS A MEMBERS SHALL BE ENTITLED TO ONE (1) VOTE FOR EACH LOT IN WHICH THEY HOLD THE INTEREST REQUIRED FOR MEMBERSHIP BY PARAGRAPH 1. WHEN MORE THAN ONE PERSON HOLDS SUCH INTEREST OR IN ANY LOT, ALL SUCH PERSONS SHALL BE MEMBERS, AND THE VOTE FOR SUCH LOT SHALL BE EXERCISED AS THEY AMONG THEMSELVES DETERMINE, BUT IN NO EVENT SHALL MORE THAN ONE (1) VOTE BE CAST WITH RESPECT TO ANY SUCH LOT.

CLASS B. CLASS B MEMBERS SHALL BE THE DEVELOPER AND SHALL BE ENTITLED TO THREE (3) VOTES FOR EACH LOT OWNED. THE CLASS B MEMBERSHIP SHALL CEASE AND BE CONVERTED TO CLASS A MEMBERSHIP ON THE HAPPENING OF EITHER ONE OF THE FOLLOWING EVENTS, WHICHEVER OCCURS EARLIER:

A. WHEN TOTAL VOTES OUTSTANDING CLASS A MEMBERSHIP EQUALS OR EXCEEDS THE TOTAL VOTES OUTSTANDING IN CLASS B MEMBERSHIP, OR

B. JANUARY 1, 2010

HOMEOWNER'S DUES SHALL BE WAIVED FOR BUILDERS FOR A PERIOD OF 6 MONTHS AFTER SALE OF LOT BY THE DEVELOPER, THEREAFTER, MONTHLY HOMEOWNER'S ASSOCIATION DUES SHALL BE DUE AND PAYABLE BY THE LOT OWNER TO PAY FOR THE PERIODIC GRASS CUTTING AND COST OF OTHER AMENITIES AS PROVIDED FOR HEREIN.

36. **PROPERTY RIGHTS IN THE COMMON PROPERTIES.**

A. **Title to Common Prosperities.** The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the sole discretion of the Developer, the Association is able to maintain the same, but, and assigns, that it shall convey all of its rights, title and interest in the common properties to the Association not later than December 31, 2007.

B. **Restrictions on Common Areas.** The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas or for identification signs for Shaftsbury. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities, landscaping or maintenance.

C. **Right to Use Lake, Gazebo and Swimming Pool.** Notwithstanding the Covenants herein contained, the Homeowners of Shaftsbury shall have the right to use the lake, gazebo and swimming pool in the common area provided such use shall not result in an annoyance or nuisance to the neighborhood. Children must at all times be supervised by their parents or guardians. Such use shall be on a first come basis until the Homeowners Association assumes control. Thereafter, the Homeowners Association shall establish rules for its use. Failure to abide by the Association rules may result in suspension of privileges.

37. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

a. **Creation of Lien and Personal Obligation of Assessments.** The Developer for each lot owned by it within Shaftsbury hereby covenants and each owner of any lot by acceptance of a deed to a lot within Shaftsbury, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

(1) Annual or monthly assessments, charges or dues, and

(2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the lot owners in Shaftsbury and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

- (1) Expenses for the maintenance, upkeep and improvements of the Common Properties.
- (2) Payment for services in connection with the maintenance, upkeep and improvements to the Common Properties, including utilities, taxes, water usage and other related reasonable and necessary expenses, including expenses for yard maintenance of each finished dwelling.
- (3) Maintenance, upkeep, repair and/or replacement of the sprinkler systems within the Common Properties.
- (4) For the payment of services for any street lighting undertaken and accepted by the Association.
- (5) For the payment of expenses related to the upkeep, maintenance and replacement of signs within Shaftsbury identifying the subdivision, containing street names or other safety signs, if any.
- (6) For any other purpose, costs or expense reasonable related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the By-Laws and these restrictions.
- (7) Maintenance of yards within the subdivision including grass cutting as needed.

C. **Bases and Maximum of Annual Assessments.** There will be no annual assessments until the year beginning January 1, 2006. For the years following January 1, 2006, the developer shall establish the Homeowners Association dues until the Association assumes control and thereafter the annual assessment may be adjusted by vote of the homeowners as herein provided/ Lots owned by the Developer and/or lots with dwellings under construction shall be exempt from annual assessments until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developer' voting rights in the Association.

D. Change in Basis and Maximum of Annual Assessments.

Subject to the limitations in Paragraph 36.C above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Paragraph 36.C hereof prospectively for any such period provided that any such change shall have the assent of Fifty-Two percent (52%) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set for the purpose of the meeting.

E. Date of Commencement of Annual Assessments: Due Dates:

The annual assessments provided for herein shall commence on January 1 of each year. The annual assessments provided for herein shall begin and become due and payable January 1, 2006, and on January 1 of each year thereafter, provided, however, the Developer reserves the right to collect assessments on a monthly basis beginning January 1, 2006. Prior to January 1, 2006 the Developer agrees to maintain the Common Properties in a good state of repair and operation.

The due date of any special assessment under Paragraph 36 (A) hereof shall be fixed in the resolution authorizing such assessment.

F. Effect of Non-Payment of Assessments: the Personal Obligation of the Owner; the Lien; the Remedies of Association. If the assessments are not paid of the date when due (being the date specified in Paragraph 36.E above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to the successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate on one and one-half percent (1.5%) per month (ANNUAL PERCENTAGE RATE 18%) from the delinquency date. The Developer and/or Homeowners Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

G. Lien of Assessments is Subordinate to Recorded Mortgage.

The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the assessment lien, provided, the sale or transfer of any Lot pursuant to the mortgage foreclosure or any proceedings in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

38. **DELEGATION OF DEVELOPER'S RIGHTS.** All rights reserved upon the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or any part of such reserved rights to the Homeowners Association or an Architectural Committee.

39. **TERM OF ENFORCEMENT AND AMMENDMENTS.** These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2033, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Shaftsbury agree in writing to terminate or change same. The terms and conditions of this instrument may be amended or changed only upon written agreement of the then Owners owning at least two-thirds (2/3) of the Lots in Shaftsbury. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of the items hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver, modification or change shall substantially affect the overall plan of development.

40. **EFFECT OF COVENTANTS AND ENFORCEMENT.**

A. **Effect of Provisions of These Covenants.** Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Shaftsbury do promise, covenant and undertake to comply with each provision these Covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot within Shaftsbury is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer and all other owners, their respective heirs, successors, and assigns:

(3) shall be deemed a real covenant by the Developer for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot within Shaftsbury:

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot within Shaftsbury, which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

B. **Who May Enforce.** The benefits and burdens of these covenants run with the land at law and in equity, and the Developer, his respective successors, assigns, and any owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation to these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. **Against Whom May the Covenants be Enforced.** The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against the owner, his heirs, successors, and assigns, or any other person whose activities bear a relation to the property, including guest and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent the terms hereof.

D. **Enforcement Remedies.** In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including but not limited to, actions (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenant; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct business or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall", be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

Add to Enforcement Remedies

The Association shall have the further right to assess a daily penalty of \$25.00 against any property actively and knowingly violating the terms and conditions of the Covenants. The property owner will be notified in writing from the Association of the particular violation of the Covenants. The property owner will have ten (10) days from the date of such written notice to rectify the violation. Should the property owner not comply with the terms and conditions of the Covenants within the aforementioned ten day period, the daily \$25.00 penalty shall attach to the property on the eleventh day and property owner demonstrates full compliance with the terms and conditions of the Covenants. All monetary penalties assessed, if not assessed, if not satisfied, shall constitute a lien on the property in question. Any such monetary penalty shall be paid directly to the Association.

The assessment of a monetary penalty shall be an additional remedy, and the Association shall retain the use of any and all other enforcement rights noted in the Covenants. The utilization of any one particular enforcement remedy shall not constitute a waiver of any other available remedies.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this ____ day of _____

Owner: BACT., LLC

MEMBERS:



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

PROBATE

Personally appeared before me the undersigned witness who on oath states that he/she saw the above named BACT. LLC, Developer sign, seal and as his act and deed, deliver the within-written Protective Covenants, conditions, Restrictions and Easements of SHAFTSBURY, and he/she with the other witness subscribed above, witnessed the execution thereof.