

This FIRST AMENDMENT ("Amendment") to DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS is made this 30 day of April, 2005, by AVALON FOREST COMMUNITY ASSOCIATION.

305209

WHEREAS, Developer has recorded the DECLARATION OF PROTECTIVE COVENANTS AS THE FEE SIMPLE OWNER OF THE PROPERTY IN SUBDIVISION KNOWN AS AVALON FOREST IN GWINNETT, COUNTY, GEORGIA, AS SHOWN ON THE FINAL SUBDIVISION PLAT RECORDED IN PLAT BOOK 57, PAGE 171 OF THE GWINNETT COUNTY RECORDS ON THE 19TH DAY OF JANUARY, 1993

WHEREAS, pursuant to Appendix Two – Avalon Forest Community Association's Rights and Obligations of the Declaration, Avalon Forest Community Association has the right to amend and modify the Declaration; and

WHEREAS, Avalon Forest Community Association intends to amend the Declaration as more fully described below, by recording this Amendment in the Public Records of Gwinnett County Records.

NOW, THEREFORE, pursuant to the powers reserved by Avalon Forest Community Association under the Declaration and in consideration of the premises and covenants herein contained, Avalon Forest Community Association hereby records this Amendment to the Declaration which will run with the land, as follows:

Any conflict between the Declaration and this Amendment shall be resolved in favor of this Amendment. All references to "Sections" shall mean those described in the Declaration is hereby amended and modified to read as follows:

2. No obnoxious or offensive activities shall be carried on upon any lot and nothing shall be done thereon which may be or may become any annoyance to the neighborhood.
3. All fencing shall be limited to wood and vinyl materials and shall be located in the back or side yards only. All chain link type fences are prohibited, except in connection with community recreational facilities.
4. No advertising signs, billboards, and or high and unsightly structures shall be erected on any lot or displayed to the public on any lot, except that a sign may be used to advertise the property for sale (no more than one), garage sale, political campaigns, or providers of recent home services (example: house painting, door replacement, roofing, etc.). All signs must be removed within a reasonable amount of time. Signs depicting a property for rent are prohibited within the subdivision.

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.
05 MAY 11 PM 4:05
TOM LAWLER, CLERK

AVALON Forest Community Association
682 Loral Pines Court
Lawrenceville, GA 30044

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9. All clotheslines, garbage cans, woodpiles, solar equipment, swimming pool pumps, filters and related equipment and other similar items shall be located or screen so as to be concealed from view of neighboring streets and property. All construction debris, rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Garbage cans should not be placed on the street no more than 24 hours in advance and removed on the same day of pick up. No windows shall be covered by unsightly coverings, including but not limited to paper, foil or sheets.
11. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community. Notwithstanding the above, satellite dishes are allowed and may be placed and maintained on any lot. Prior to installation, written permission (satellite dish permission form) must be obtained from the Association. Failure to obtain permission could result in fines being imposed in accordance with the terms of the Declaration and By-Laws and additional installation fees at the cost of the Owner and/or occupant. Each owner and occupant of a lot acknowledges that this provision benefits all Owners and occupants of Lots and each Owner and occupant of a Lot agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

14.01 The following section is hereby added to the Declaration:

Purposes, Powers, and Duties of the Association. The Association shall be formed as a non-profit civic organization for the sole purpose of performing certain functions for the common good and general welfare of the people of Avalon Forest. The Association shall have no power or duty to do or perform any act or thing other than those acts and things which will promote in some way the common good and general welfare of the people of Avalon Forest.

To the extent, and only to the extent, necessary to carry out such purpose, the Association (a) shall have all of the powers of a corporation organized under the Georgia Nonprofit Corporation Code and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in this Declaration.

14.02 The following section is hereby added to the Declaration:

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

14.03 The following section is hereby added to the Declaration:

Voting Rights. Each Owner of a Residence shall be entitled to one (1) vote per Residence. Where such Owner is a group or entity other than one individual person, the vote on behalf of such Owner shall be exercised only by such individual person as shall be designated in a proxy instrument duly executed by or on behalf of such group or entity and delivered to the secretary of the Association.

14.04 The following section is hereby added to the Declaration:

Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors and the method to elect them shall be set forth in the By-Laws of the Association.

14.05 the following section is hereby added to the Declaration:

Suspension of Membership. The Board may suspend the voting rights of any Member who:

(a) shall be subject to the Right of Abatement, as defined in Section 17.02 by any reason of having failed to take the reasonable steps to remedy a violation of the declaration of protective covenants within thirty (30) days after having received notice of the same pursuant to the provisions of Section 16.02 or 17.02 hereof;

(b) shall be delinquent in the payment of any assessment levied by the Association pursuant to the provisions of Section 16 hereof; or

14.06 The following section is hereby added to the Declaration:

Termination of Membership. Membership shall cease only when a person ceases to be an Owner.

14.07 The following section is hereby added to the Declaration:

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

15.01 The following section is hereby added to the Declaration:

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

(a) to pay the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;

(b) to pay the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Residences owned by him;

(c) that there is hereby created a continuing charge and lien upon all Residences owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 15.09 hereof and cost of collection including reasonable attorney's fees;

(d) that such continuing charge and lien on such Residence binds such Residence in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as are by applicable law made superior, and (ii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Residence or Residences (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction or repair or alteration of Structures.

(e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Residence from liability for any assessment thereafter assessed;

(f) that all annual, special and specific assessments (together with interest thereon as provided in Section 15.09 of this Declaration and costs of collection including reasonable attorneys' fees) levied against any Residence owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Residence as provided in section 15.01 (c) of this Declaration) a personal obligation which will survive any sale or transfer of the Residence owned by him; provided, however, that such personal obligation for delinquent assessments shall not pass to Owner's successor in title unless expressly assumed by such successor.

15.02 The following section is hereby added to the Declaration:

Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of Avalon Forest, including but not limited to, the security, the acquisition, construction, improvement, and maintenance of subdivisions entrance and surrounding areas, the enforcement of the Restrictions contained in this Declaration, as the case may

be, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

15.03 The following section is hereby added to the Declaration:

Accumulation of Funds Permitted. The Association shall be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

15.04 The following section is hereby added to the Declaration:

Annual Assessment.

(a) Beginning on the Commencement Date and continuing thereafter until May 1 of the year immediately following the Commencement Date, each such Lot shall be subject to an annual assessment as established by the Board, which assessment shall initially be set at \$50.00 per Lot. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on May 1 of the year immediately following the Commencement Date.

(b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year at not more than thirty-three and one-third percent (33.33%) above the annual assessment for the previous Assessment Year without a vote of the Membership.

(c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than thirty-three and one-third percent (33.33%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

15.05 The following section is hereby added to the Declaration:

Special and Parcel Assessments.

(a) In addition to the annual assessments authorized by section 16, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement within the subdivision. Such special

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

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

15.06 The following section is hereby added to the Declaration:

Assessment Procedure.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of Section 16, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowed to be used for future projects and activities; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future project and activities, it being intended that portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for capital improvements which may be levied in accordance with the provisions of Section 15.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 15.04 (c) and Section 15.05. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members. Notwithstanding the required quorum requirements

stated herein, a minimum vote of fifty-one percent (51%) of all the votes of the Association shall be required to disapprove the Association's annual budget.

15.07 The following section is hereby added to the Declaration:

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

15.08 The following section is hereby added to the Declaration:

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

15.09 The following section is hereby added to the Declaration:

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

15.10 The following section is hereby added to the Declaration:

Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including any expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Residences, which may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received;
- (b) Expenses incurred by the Association pursuant to Section 16.02 hereof; and
- (c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

16.01 The following section is hereby added to the Declaration:

Application. The covenants and restrictions contained in Section 17 shall pertain and apply to all Lots and to all Structures erected or placed thereon.

16.02 The following section is hereby added to the Declaration:

Maintenance. Each Owner shall keep and maintain each Lot and Structure owned by him, as well as all landscaping located thereon and as well as all landscaping, grass and other Structures installed by such Owner within the dedicated rights-of-way, in good condition and repair, including, but not limited to (i) the repairing and painting (or other appropriate external care) of all Structures; (ii) the seeding, watering and mowing of all lawns; and (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. Notwithstanding the foregoing, the maintenance required hereunder shall also extend from the boundary of a Lot to the curbing of the right-of-way bordering said Lot. If in the opinion of the Association any Owner shall fail to perform the duties imposed by the Section, the Association shall give written notice to the Owner to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy such condition. If the Owner shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of said written notice by certified mail, return receipt requested, then the Association shall have the Right of Abatement as provided in Section 17.02 hereof.

16.03 The following section is hereby added to the Declaration:

Commercial, Passenger, and Recreational Vehicles and Trailers. No commercial vehicle, house trailer, mobile home, motor home, recreational vehicle, camper, truck with camper top, boat or boat trailer or like equipment shall be permitted on any Lot on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Passenger vehicles shall not be parked consistently on neighborhood streets, while ample parking remains available in the driveway. Absolutely no parking is allowed on lawns. Street parking shall not obstruct sidewalks or mailboxes. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept behind fenced enclosure behind front corners or existing homes or an enclosed space and is concealed from view by neighboring residences and streets.

16.04 The following section is hereby added to the Declaration:

Recreational Equipment. Recreational and playground equipment shall be placed or installed only upon the rear of a Lot. Basketball goals may be placed adjacent to the driveway Tennis courts, while permitted, are restricted to either the rear yard or, if to be located in the side yard, must be no closer to the street than the front plane of the Residence.

16.05 The following section is hereby added to the Declaration:

Animals. No agricultural animals may be kept on any Lot and no animals, including birds, insects and reptiles may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for said Structure have been approved by the Association. All dogs shall be leashed, fenced, or under the control of a responsible individual at all times. No loose dogs. Any dog found in violation will be reported to Gwinnett Animal Control Unit.

16.06 The following section is hereby added to the Declaration:

Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any property within the Avalon Forest Subdivision.

16.07 The following section is hereby added to the Declaration:

Solid Waste.

(a) No person shall dump or bury rubbish, garbage, or any other form of solid waste on any Lot. No burial of construction materials, waste or debris (including but not limited to trees, stumps or building materials) is permitted on any Lot.

(b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot.

(c) Except for building materials employed during the course of construction of any Structure approved by the Association or appropriate government authority, no lumber, metals bulk materials or solid waste of any kind shall be kept, stored or allowed to accumulate on any Lot unless screened or stored in the rear of the property.

(d) If rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on any day that pick-up is to made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or concealed in a manner from view

by neighboring residences and streets. Consult with the trash collection service for guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up.

16.08 The following section is hereby added to the Declaration:

Residential Use. All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on upon any Lot at any time except for those permitted by the appropriate government authority.

16.09 The following section is hereby added to the Declaration:

Painting. Prior to any external painting, color samples must be submitted, and written permission obtained from the Association. Failure to obtain permission could result in fines being imposed in accordance with the terms of the Declaration and By-Laws and/or additional fees at the cost of the Owner and/or occupant. Each owner and occupant of a lot acknowledges that this provision benefits all Owners and occupants of Lots.

16.10 The following section is hereby added to the Declaration:

Tree Topping. Trees increase property value by as much as 15%. They improve the quality of life and make neighborhoods attractive and desirable. Therefore, tree topping and other kind of severe pruning is absolutely prohibited. In addition, the removal of a tree in a property's front yard is prohibited unless the homeowner has the expressed written permission of the Board or the written determination of a certified arborist that the tree constitutes a hazard, presented to the Board prior to the tree's removal. Other reasons for tree removal may be accepted upon the expressed written permission of the Board or a written determination of a certified arborist, presented to the Board prior to the tree's removal. Guidelines for proper tree pruning, as well as a list of certified arborists, may be provided by the Board upon request of the homeowner.

16.11 The following section is hereby added to the Declaration:

Driveways and garage doors. No driveway should be altered or painted on any lot. Garage doors shall be kept in good conditions at all times and painted in just one solid color. All forms of newspapers and flyers shall be removed from driveways and surrounding areas on a daily basis.

16.12 The following section is hereby added to the Declaration:

Seasonal/holiday decorations. Decorations may be displayed up to 30 days before the holiday and must be removed no later than 30 days after the holiday.

17.01 The following section is hereby added to the Declaration:

Right of Enforcement. This Declaration and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Association and (ii) each Owner, his legal representatives, heirs, successors and assigns.

17.02 The following section is hereby added to the Declaration:

Right of Abatement.

(a) Except where different notice provisions are provided in this Declaration, in the event of a violation or breach of any Restriction contained in this Declaration, the Association shall give written notice by certified mail to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy such violation or breach within thirty (30) days after the mailing of said written notice, then the Association shall have the Right of Abatement.

(b) The Right of Abatement, as used in this Section and in Section 16.02 hereof, means the right of the Association, through its agents and employees, to enter at all reasonable times upon any Lot or Structure, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Section, and with the cost thereof including the costs of collection including reasonable attorney's fees, together with interest thereon at the lower of the highest rate permitted by law or 18%, to be a binding personal obligation of such Owner enforceable in law, as well as a lien on Owner's Lot, enforceable pursuant to the provisions of Section 17.04 hereof. Such lien shall be superior to any and all charges, liens or encumbrances which may in any manner arise or be imposed upon the Lot after such entry whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, excepting only (i) such liens for taxes or other public charges as are by applicable law made superior, (ii) the liens created by Section 15.01 hereof and (iii) all deeds to secure debt given to secure a loan the proceeds of which are used (1) to purchase a Lot or Lots (together with any and all Structures which may from time to time be placed or located thereon) and (2) to finance the construction, repair or alteration of Structures.

17.03 The following section is hereby added to the Declaration:

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

17.04 The following section is hereby added to the Declaration:

Collections of Assessments and Enforcement of Lien.

- (a) If any assessment, interest, cost or other charge is not paid as required by this Declaration, the Association may bring either an action at law against the Owner personally obligated to pay the same, or any action to foreclose any lien created by this Declaration against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.
- (b) As an additional remedy, but in no way as a limitation on the remedies, if any assessment, interest, cost or other charge is not paid as required by this Declaration, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual place for conducting sales at the Court House in Gwinnett County, Georgia, to the highest bidder for cash, after advertising this time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriffs' advertisements for Gwinnett County, Georgia are published, all other notice being hereby waived by each Owner; and the Association or any person on behalf of the Association, or assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and assigns, the agent and attorney in fact of each Owner to make such recitals, and hereby covenants and agrees that the recitals so to be made by the Association, or assigns, shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and that the conveyance to be made by the Association or assigns, shall be effectual to bar all equity or redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or assigns shall collect the proceeds of such sale, and after reserving there from the entire amount of assessments, interest, cost or other charge due, together with all costs and expenses of sale and fifteen percent of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.
- (c) WAIVER, EACH OWNER, BY ACCEPTANCE OF DEED CONVEYING A LOT SUBJECT TO THIS DECLARATION, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF GEORGIA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS DECLARATION, AND OWNER WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION ON THE GROUNDS (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE

VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.

17.05 The following section is hereby added to the Declaration:

Amendments by the Association. Amendments to this Declaration shall be proposed and adopted in the following manner:

- (a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each Member of the Association.
- (b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by Members of the Association. Such amendment should be approved by Members holding at least two-thirds (2/3) of the total votes in the Association (in attendance and by proxy), provided, however, that any amendment which materially and adversely affects the security title and interest of any mortgagee must be approved by such.
- (c) The agreement of the required percentage of the Owner and any mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President and any Vice-President or Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the Agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the Amendment itself.

18.01 The following sections, are hereby added when used in this Declaration of Protective Covenants and shall have the following meanings:

18.02 Association. "Association" means Avalon Forest Community Association, Inc. (a non-profit, nonstock, membership corporation organized or to be organized under the Georgia Nonprofit Corporation Code), its successor and assigns.

18.03 Board. "Board" means the Board of Directors of the Association.

18.04 By-Laws. "By-Laws" means the By-Laws of the Association.

18.05 Living Space. "Living Space" shall mean and refer to enclosed and covered areas within a Residence, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics, and basements.

18.06 Lot. "Lot" means any parcel of land shown upon a subdivision plat recorded in the Office of the Clerk of the Superior Court of Gwinnett County, covering any portion of the Property.

18.07 Member. "Member" means any member of the Association.

18.08 Membership. "Membership" means the collective total of all Members of the Association.

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

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

18.11 Parcel. "Parcel" shall mean and refer to separately designated residential areas comprised of various types of housing initially or by annexation made subject to this Declaration. If separate Parcel status is desired, the Declaring shall designate in an amendment to this Declaration subjecting the property to the terms and conditions of this Declaration that such property shall constitute a separate parcel or parcels. In the absence of specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same parcel. The Board may also grant Parcel status to any area if so requested in writing by the Owners holding at least seventy-five percent (75%) of the total vote entitled to vote thereon in such area.

18.12 Residence. "Residence" shall mean a structure situated upon a Lot intended for independent use and occupancy as a residence for a single family. A structure and the land owned as part thereof (the Lot) shall not become a Residence until a certificate of occupancy shall have been issued by the appropriate governmental authorities as a prerequisite to the occupancy of such Residence and until the Lot and structure located thereon shall have been conveyed to a third party other than the builder thereof. The Owner of a Residence shall notify the Association or its designee immediately upon issuance of a Certificate of Occupancy for the Residence.

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

18.14 Structure. "Structure" means:

(a) Any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including, by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, dock, fence, mailbox, deck, courtyard, tennis court, playhouse, awning, exterior lighting, guest or servants' quarters, curbing, paving wall, tree, shrub (and all other forms of landscaping and hardscaping), swing set, basketball goal, landscape statue, fountain, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alter the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

(c) Any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of Section 18.14 applies to such change.

18.15 Tree topping - To cut back a tree to buds, stubs, or lateral branches not large enough to maintain the tree's normal function and structure.

18.16 Severe pruning - Topping or other kind of excessive pruning that removes more than one fourth of a tree's crown.

19. Except as specifically modified herein, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, Avalon Forest Community Association has caused these presents to be signed this 30 day of April, 2005.

AVALON FOREST COMMUNITY ASSOCIATION

a Georgia nonprofit, nonstick, membership corporation

By: Alan Davis, President of Avalon Forest Community Association

STATE OF GEORGIA §

COUNTY OF GWINNETT §

The foregoing instrument was acknowledged before me this 11th day of May, 2005 by Alan Davis, as President of AVALON FOREST COMMUNITY ASSOCIATION, a Georgia nonprofit, nonstick, membership corporation, on behalf of the corporation. He is personally known to me or has produced GA ID as identification.

NOTARY PUBLIC

PRINT/STAMP/TYPE NAME:

COMMISSION EXPIRES:

COMMISSION NUMBER:

03/28/05

