

ARTICLE I – SUBJECT PROPERTY

All numbered lots shown on the aforementioned plat of Fagans Creek, shall be held, transferred, sold, conveyed and occupied subject to the Declaration of Covenants and Restrictions contained herein.

ARTICLE II – USES PERMITTED AND PROHIBITED

2.1 Single Family. All parcels or tracts shall be used exclusively for single-family residential dwellings, and incidental residential uses. No modular or mobile homes or trailers shall be allowed on any lot, except on a temporary basis during construction of a conventional residence.

2.2 Recreational Vehicles. Any camping trailer, boat, motorcycle, motor bicycle and/or similar equipment used for the personal enjoyment of a resident of a lot shall at all times be parked to the rear of the dwelling or completely within the garage and shall not be parked in the front or side thereof. Such equipment shall at all times be neatly stored and positioned to be inconspicuous.

Any motor scooter, ATV, motorcycle, go-cart, or similar vehicle, must be operated on the owner's property. Roads shall be used only for purposes of ingress and egress, and no racing or recreational driving shall be permitted.

2.3 Disabled Vehicles, Etc. Any disabled or wrecked vehicle, and/or similar equipment or vehicles shall at all times be parked completely within a garage and shall at all times be neatly stored and positioned to be inconspicuous.

2.4 Tree Houses, Storage Sheds and Other Buildings. Tree houses, play houses, storage sheds, greenhouses, cabanas, swimming pools, barns or other outbuildings or structures shall be erected at the rear of the lot. The design, specifications (including construction materials) and location of such improvements must be approved in writing by Owners/Developers prior to the construction of such improvements.

2.5 Walls, Fences and Hedges.

(A) The design specifications (including construction materials) and location of any walls, fences or hedges must be approved in writing by Owner/Developer prior to the construction or making of such improvements.

(B) No wall, fence or hedge shall be erected closer to front of said lot than the rear wall of dwelling.

2.6 Signs Prohibited. No billboards or advertising signs of any kind shall be displayed or erected on the real property, with the exception of neatly displayed 18" x 24" real estate "For Sale" signs. No part of any structure shall be used for the purpose of

renting a room or rooms therein. No duplex residences, garage apartments, or apartment houses shall be erected or permitted to remain on any parcel.

2.7 Animals. Only common household pets in a reasonable number shall be allowed on any lot. No animals of any kind shall be bred, raised or housed for commercial purposes. No animal shall be allowed to become a nuisance to other residents.

2.8 Fuel Tanks. All fuel oil or containers shall be covered so as not to detract from the property, or buried underground consistent with normal safety precautions.

2.9 Refuse and Refuse Containers. No lot owner will engage in any activity which will result in the deposit or accumulation of trash, refuse, debris or other objectionable matter. Garbage, trash cans firewood and clothes drying lines must be so located that they will not be visible from the street.

2.10 Transmitting and Receiving Devices. No tower, television antenna or other antennas, including satellite dishes, shall be erected on the front portion of a lot and must be located at the rear of the dwelling in a manner which will afford maximum screening from traffic on the street.

2.11 Parking. Residents of lots shall not be allowed to park vehicles on the streets or roads except in emergencies. Unless otherwise posted, on-street parking shall be allowed to visitors and guest of the owners of lots for short durations.

2.12 Re-cutting of Lots. No lots shall be re-cut to a smaller size, except that nothing herein shall be constructed to prohibit the use of one lot and a portion of another lot as a single residential building site, provided that said tracts, when so formed, would otherwise meet the requirements as contained herein as to lot size and setback limitations.

2.13 Setback Lines. No building or residence shall be erected on any lot nearer than the set back lines, front, side, rear and corner, as specified on the subdivision plat.

2.14 Minimum Areas. The residences in this subdivision must have a minimum heated floor space of 1600 square feet.

2.15 Quality and Approval of Improvements. All buildings shall be constructed with high quality materials and workmanship to insure that no dwelling shall present an unsightly appearance. The design, specifications (including construction materials) and location of such improvements must be approved in writing by Owner/Developer prior to the construction of such improvements.

2.16 Garages. To protect and enhance the appearance of the community, all garage doors will be kept closed except for in use or moving automobiles and other items to and from the garage.

2.17 Concrete Blocks. No concrete blocks shall be used in the construction of any building or structure on any numbered tract which may be visible from the exterior after grading has been complete.

2.18 Maintenance of Property. Lot owners shall maintain his or her lot and improvements thereon so that such lot continues to have a neat and attractive appearance. Such maintenance to include, but is not limited to, routinely mowing/cutting grass on such lot, landscaping such lot and maintaining such landscaping, and making necessary repairs to and preserving the appearance of any improvements located on such lot.

ARTICLE III – EASEMENTS

The Owners/Developers reserve easements for themselves and for the benefit of any public authorities and utility companies to which they may choose to grant such easements, over and through all areas designated as roads, streets, walkways, and such additional portions of the property as may be necessary in order to provide water, sewerage, power, gas, television cable, surface water drainage and other utility and common services to Owners or any portion of the property including, without limitation, all areas designated as such by broken lines on the initial plat. All numbered lots within the property are also subject to an access, drainage, and utility easement five feet in width along and inside all property lines.

The easements reserved to Owners/Developers above, and the easements which they have granted and shall grant to appropriate public authorities and utilities, shall include the right to go upon, over, across, and under any area of the property for ingress, egress, erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains, gas lines, and other suitable equipment, television cable, gas, water, sewer and other public conveniences and utilities. Said easement shall also allow Owners/Developers or any appropriate utility or other authority to cut drain ways for surface water wherever and whenever such action may be necessary in order to maintain reasonable standards of health, safety and appearance. Said easements include right to cut any trees, bushes, or shrubbery, and to make any grading of the soil or take similar actions reasonably necessary to provide safe and effective utility installation and maintenance.

The easements and right-of-ways granted in this Section may be enjoyed and utilized by all parties to whom such easements and right-of ways are granted, and to their assignees, lessees, guests, invitees, and licenses. Nothing contained herein shall prevent Owners/Developers from dedicating to any public authorities said areas which shall be governed by applicable laws and regulations, and they shall have no further

responsibility for maintenance or upkeep of the areas so dedicated, except as may be required by such applicable law.

ARTICLE IV - PROPERTY RIGHTS IN THE COMMON PROPERTIES

The developer may retain ownership to the Common Properties until such time as, in the Developer's sole discretion, the Association is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey all of its right, title and interest in the Common Properties to the Association not later than December 31, 2009.

ARTICLE V - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

5.1 Membership. Every person or entity who is a recorded owner of a fee or undivided fee interest of any lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

5.2 Voting Rights. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A members shall be all those Owners of lots in the Subdivision other than Niemitalo, Inc. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Paragraph 1. When more than one person holds such interest of interests 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 Niemitalo, Inc. 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 of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or

(b) January 1, 2010.

ARTICLE VI - COVENANTS FOR MAINTENANCE ASSESSMENTS,

6.1 Creation of Lien and Personal Obligation of Assessments. Each owner of any lot by acceptance of a deed to a lot within Fagans Creek Subdivision, 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) An Initiation Fee of \$100.00; and
- (2) Annual assessments or charges beginning at \$150.00 per year;

and

(3) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection of the person who was the owner of such property at the time when the assessment fell due.

6.2 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 Fagans Creek Subdivision and in particular shall be used for the payment of Costs and expenses, including, but not limited to, the following:

- (1) For the payment of expenses related to the upkeep, maintenance and replacement of signs within Fagans Creek identifying the subdivision, containing street names or other safety signs, if any.
- (2) For the payment of services for any street lighting undertaken and accepted by the Association.
- (3) Expenses for the maintenance and upkeep of the common drive easement and landscape areas, including areas designated for sign easements.
- (4) For any other purpose, cost or expense reasonably 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.

6.3 Basis and Maximum of Annual Assessments. For the year beginning January 1, 2010, the annual assessment may be adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after consideration of current maintenance cost and future needs of the Association, fix the actual assessment for any year at a lesser amount. Lots owned by Niemitalo, Inc. shall be exempt from annual assessments. Lots owned by Builders shall be exempt until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developer's voting rights in the Association.

6.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or a described capital improvement, provided that any such assessment shall have the

consent of three-fourths (3/4) 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 forth the purpose of the meeting.

6.5. Change in Basis and Maximum of Annual Assessments.

Subject to the limitations in Article 6.3 above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Article 6.3 hereof prospectively for any such period provided they any such change shall have the assent of three fourths (3/4) 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 forth purpose of the meeting.

6.6 Quorum for Any Action Authorized Under Articles 6.4 and 6.5

The quorum required for any action respecting assessments authorized by Articles 6.4 and 6.5 hereof shall be the number of Members present at a meeting duly called and convened pursuant to Paragraphs 6.4 and 6.5 hereof.

6.7 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, 2008, and on January 1 of each year thereafter. Annual Assessments are to be prorated as between an owner and the Association. Prior to January 1, 2008, the Developer agrees to maintain the Common Properties in a good state of repair and operation. The due date of any special assessment under Article 6.4 hereof shall be fixed in the resolution authorizing such assessment.

6.8 Duties of the Board of Directors.

The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

6.9 Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association.

If the assessments are not paid on the date when due (being the date specified in Paragraph 6.7 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 his 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 of one and one-half percent (1.5%) per month (ANNUAL PERCENTAGE RATE – 18%) from the delinquency date. The 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 cost of the action.

6.10 Lien of Assessments is Subordinate to Recorded Mortgages. The lien of assessment 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, however, the sale or transfer of any Lot pursuant to mortgage foreclosures or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became 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.

ARTICLE VII – ENFORCEMENT

7.1 Enforcement. If Owners/Developers, their successors and assigns, or any person owning any real property subject to the within covenants, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person owning any parcel to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any of such covenants and either to prevent him or them from doing so or to recover damages and other dues for such violation. Invalidation of any one or more of these covenants by a judgment or court order shall in no wise affect any of the provisions which shall remain in full force and effect.

ARTICLE VIII – DURATION OF COVENANTS

These covenants shall run with the land and be fully binding on all persons claiming under then until August 1, 2027, at which time they shall be automatically renewed indefinitely for successive periods of ten years each, except that such covenants may be modified by an instrument executed in writing by the Owners of 75% of the total number of lots.

SEE 396 PG 26

EXHIBIT A

All those certain pieces, parcels or lots of land, being shown and designated as **Lots Nos. 1 through 20, inclusive**, on a plat entitled **Fagans Creek Subdivision, Phase 1**, prepared by Souther Land Surveying dated September 21, 2006 and revised November 28, 2006 and recorded December 1, 2006 in the Register of Deeds Office for Spartanburg County in Plat Book 160 at Page 797.