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O.R. BOOK 537 PAGE 1428-1436  
REC. NICHOLAS THOMAS, CLERK  
GADSDEN COUNTY, FLORIDA

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
EBENEZER GARDENS**

THIS DECLARATION, made and executed this 11<sup>th</sup> day of December, 2001, by MAURICE EVANS and FELICIA EVANS, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Gadsden County, Florida, and more particularly described in Exhibit "A" attached hereto and by reference made a part hereof.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to Ebenezer Gardens Homeowners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area which will be owned by the Association at the time of the conveyance of the first Lot consists of the easements created by this Declaration. Additional real property may be conveyed to the Association for the common use and enjoyment of the owners as the Properties are developed.

Section 5. "Lot" shall mean and refer to each of the numbered lots described in Exhibit "B" attached hereto and by reference made a part hereof.

Section 6. "Declarant" shall mean and refer to the Declarant named above, and their successors and assigns.

ARTICLE II  
PROPERTY RIGHTS

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members (no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded).

Every Owner shall have a fractional ownership interest in Lot 10 in proportion to the number of Lots owned. Each Owner shall have a proportional responsibility for payment of ad valorem taxes, fees and assessments associated with the ownership of Lot 10. Lot 10 shall be maintained by the Association.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant 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 when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section I. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, 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 interest, costs,

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and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Area and of the homes situated upon the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$156.00 (\$13.00 per month).

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may increase the annual assessment at any time to an amount not in excess of the maximum.

Section 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, repair or replacement of a capital improvement upon a Common Area, including road paving or other road improvements, and fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 10 days nor more than 60 days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast majority of all the votes of each class of membership shall constitute a quorum.

Section 6. Uniform Rate of Assessment; Collection. Both annual and special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly or quarterly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following, the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject

thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum or at such other legal rate as may be established by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof or the bona fide conveyance to a mortgagee in satisfaction of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Florida shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V EASEMENT

The Declarant hereby reserves, excepts, imposes, grants and creates to and on behalf of the Declarant, the Association, the Owners, their grantees, heirs and successors in interest, a non-exclusive, perpetual easement for drainage and utility purposes and for ingress and egress, over, under and across that portion of the property described in Exhibit "B" attached hereto and by reference made a part hereof. This easement shall be maintained by the Association. Within this easement, no structure, planting or other material which may interfere with the use and purpose of the easement shall be placed or permitted to remain.

#### ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Restrictions. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans, exterior color scheme and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and

approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. An Architectural Control Committee (ACC) shall be formed of three members, two of which will be appointed by the Declarant and one from the general membership of the Association. The Declarant may delegate the right to appoint members of the ACC at any time. Appointments to the ACC will run for a term of one year.

## ARTICLE VII USE RESTRICTIONS

Section 1. Residential only. No lot shall be used except for residential purposes.

Section 2. Mobile homes shall not be allowed on the Properties.

Section 3. Dwelling Quantity and Size. The main structure, exclusive of porches, garages, carports, and patios shall be not less than 1100 square feet of heated and cooled living area.

Section 4. No lot may be subdivided.

Section 5. Building location. No building shall be located on any lot nearer than 40 feet to any roadway easement nor nearer than 20 feet to any interior lot line.

Section 6. Nuisances. No noxious or offensive activities shall be carried on upon any lot nor shall anything be done on it that may be or may become an annoyance or nuisance to property owners. There shall be no hogs or chickens raised or kept on any lot.

Section 7. Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder to advertise the property during construction and sales.

Section 8. Rubbish. No lot shall be maintained as a dumping ground for rubbish, trash, garbage or other waste. All incinerators or other equipment for the storage of such material shall be kept in a clean and sanitary condition.

Section 9. No Business Conducted. No business, other than arts, crafts or professions operated solely by family members occupying the residence shall be conducted.

Section 10. Minerals. No gas, oil, mineral, quarry or gravel operations shall be permitted on any lot.

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Section 11. Storm Drainage Facilities. No individual lot owner, or their guests or invitees shall in any manner interfere with the storm drainage facilities in the project. Specifically such facilities which are not to be interfered with shall include, but not be limited to, swales, ditches, culverts and retention ponds as well as any vegetative cover thereon, headwalls, energy absorption devices or other appurtenances to those storm drainage facilities.

Section 12. Compliance with Local Ordinances. All structures constructed on a lot shall conform to the Gadsden County Zoning Code as it exists at the time of construction and shall be placed on the lot in conformance with its requirements.

Section 13. Boats, trailers, campers and vehicles. No Owner of a Lot shall park, store or keep any motor vehicle, boat or recreational vehicle, except wholly within the driveway or attached garage or carport located on the Lot or to the rear of the dwelling located on the Lot. No owner of a Lot shall repair or restore any motor vehicle, boat, trailer, aircraft or other vehicle on any portion of any Lot, except wholly within a carport, garage or other enclosed structure and except for emergency repairs (and then only to the extent necessary to enable movement to a proper repair facility).

#### ARTICLE XIX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. No amendment shall prejudice the right of any holder of any first mortgage under the terms of this Declaration unless such holder joins in the amendment.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal day and year first above written.

WITNESSES:

martha A. Solis  
(Print Name) martha A. Solis  
Lori P. Hines  
(Print Name) Lori P. Hines

M. A. Evans  
Maurice Evans

martha A. Solis  
(Print Name) martha A. Solis  
Lori P. Hines  
(Print Name) Lori P. Hines

Felicia C. Evans  
Felicia Evans

STATE OF FLORIDA  
COUNTY OF ~~LEON~~ Godsden

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid, to take acknowledgments, personally appeared, Maurice Evans and Felicia Evans, ~~Bruce Reed~~, personally known to me or who has produced \_\_\_\_\_ as identification. E 152-545-69, 361-0 & E 152-243-68-850-0

WITNESS my hand and official seal in the County and State last aforesaid this 17th day of December 2001.



martha Arriaga Solis  
Notary Public  
(Print Name) martha Arriaga Solis  
Commission No: CC997915

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Exhibit "A"

Parcel Identification number: 2-18-3n-1w-0000-00233-0000

From the Southwest corner of the Northwest  $\frac{1}{4}$  of Section 18, Township 3 North, Range 1 West, run East 926.74 feet to a corner at a branch; thence run North 12 feet to a corner; thence run North  $13^{\circ}15'$  West 265 feet; thence run North  $38^{\circ}45'$  West 436 feet; thence run North  $11^{\circ}55'$  East 200 feet; thence run North  $55^{\circ}35'$  West 144 feet to a corner; thence run West 677 feet to the East side of a dirt road; thence run South 947 feet to an iron and the Point of Beginning. Containing 16 acres more or less. Said land situate, lying and being in the County of Gadsden and State of Florida.

