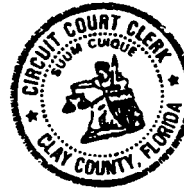


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O. P. BRANCH



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File# 200313653  
James B. Jett  
Clerk Of Courts  
Clay County, FL  
FEE: \$96.00

8 MIN. RETURN

DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, AND EASEMENTS

FOR

HIGHLAND GROVE

*a planned community by*

***N & N Development, Inc.***

*692 Camp Johnson Road  
Orange Park, Florida 32065*

PREPARED BY & RETURN TO:

Barry B. Ansbacher, Esquire  
Ansbacher & McKeel, P.A.  
2450 Riverplace Tower  
1301 Riverplace Boulevard  
Jacksonville, Florida 32207

Note: This instrument establishes lien rights and easements. This instrument does not contain any reverter provisions.

**Notice of all sales must be furnished to the Association  
within 5 days of date of closing to avoid penalties.**

THIS DECLARATION is made as of the 17<sup>th</sup> day of February, 2003 by N & N Development, Inc., a Florida Corporation (the "Developer").

*STATEMENT OF FACTS:*

A. The Developer is the owner of all lots within HIGHLAND GROVE, a subdivision, according to plat thereof recorded in Plat Book 39, pages 33 through 35, inclusive of the public records of Clay County, Florida. All of such Lots are referred to as the "Lots".

B. The Developer has caused or will cause to be created *Highland Grove Planned Community Homeowners Association, Inc.*, a not for profit Florida corporation (the "Association").

D. In order to develop and maintain HIGHLAND GROVE as a residential community and to preserve, protect and enhance the values and amenities thereof, it is necessary to declare, commit and subject each of such Lots (a "Lot") and the improvements now and hereafter constructed thereon to covenants, conditions, restrictions, regulations and easements and to delegate and assign to the Association certain powers and duties of ownership, administration, management, operation, maintenance and enforcement, all as set forth and provided in this Declaration.

NOW THEREFORE, for and in consideration of the above premises and for other good and valuable consideration, the Developer, for itself and its successors and assigns, hereby (i) establishes this Declaration of Covenants, Conditions Restrictions and Easements for HIGHLAND GROVE (this "Declaration"), (ii) declares that the properties as described on the Plat shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which will run with the title, and the grantee of any deed conveying any Lot will be deemed by the acceptance of such deed to have agreed to all such covenants, conditions, restrictions and easements and to have covenanted to observe, comply with and be bound by all such covenants, conditions, restrictions and easements and (iii) imposes the easements referred to and described which will be perpetual in duration.

**ARTICLE I**

**DEFINITIONS**

As used in this Declaration, the following terms have the following meanings:

1. "Association" means the entity known as *Highland Grove Planned Community Homeowners Association, Inc.*, a Florida non-profit corporation. Unless otherwise specified herein, any actions required of the Association herein may be taken by its Board of Directors.

2. "Board" means the Board of Directors of the Association, which has been duly elected and qualified in accordance with the Articles of Incorporation and Bylaws of the Association.

3. "Articles" means the Articles of Incorporation of the Association.

4. "Bylaws" means the Bylaws of the Association.

5. "Common Property" means those tracts of land (i) which are labeled as Tract "A" on the Plat, (ii) any other property designated as "Retention Pond" "Common Area", "Common Property" or similar terms in any future plats or replats for HIGHLAND GROVE or in any plats of additional property later made subject to this Declaration, or (iii) are deeded to the Association and designated in the deed as Common Property and any and all improvements which may be constructed thereon, from time to time. The term "Common Property" also includes any easements, licenses, personal property appurtenant to any real property owned by the Association or acquired by the Association, if the personal property is designated as such in the bill of sale or other instrument conveying such personal property. Common Property also includes the subdivision entrance sign and easement to maintain the same.

6. "Declaration" means (i) this Declaration of Covenants, Conditions, Restrictions and Easements for HIGHLAND GROVE and any amendments to this Declaration, and (ii) all exhibits attached to this Declaration, and any amendments to such exhibits.

7. "Developer" means N & N Development, Inc. a Florida corporation, and its successors together with its assigns, upon a specific assignment to such assignees of the rights of Developer under the Declaration in an instrument recorded in the current public records of Clay County, Florida.

8. "Institutional Mortgagee" means (a) any (i) commercial bank, (ii) savings bank, (iii) savings and loan association, (iv) life insurance company, (v) real estate investment trust, (vi) mortgage banking or lending corporation, association or trust, owning or servicing at least 100 mortgages, (vii) any federal agency, corporation or association including, without limiting the generality of the foregoing, Federal Housing Administration ("FHA"), Veterans Administration ("VA"), Federal National Mortgage Association, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation and (viii) any affiliate, subsidiary, successor or assignees of any of the foregoing, holding a mortgage on a Lot, and (b) Developer if and so long as Developer holds a mortgage on a Lot.

9. "Lot" means one of the Lots as shown and numbered on the Plat.

10. "Owner" means the record owner of a Lot. Owner does not include any party having an interest in a Lot merely as security for the performance of an obligation. In the event that there is a contract for deed covering any Lot, the Owner of such Lot will be the purchaser under said contract and not the fee simple title holder.

11. "Plat" means the Plat of HIGHLAND GROVE, recorded in Plat Book 39, pages 33 through 35, inclusive of the public records of Clay County, Florida. If any additional property

is later made subject to this Declaration, "Plat" will also refer to the plats of such additional property.

12. "Speculative Builder" means any persons or entities which are within the State of Florida or licensed contractors within Clay County, Florida, owning one or more Lots which are held for resale by such person or entities in the ordinary course of business.

13. "Stormwater Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to (i) collect, convey, store, absorb, inhibit, treat, use or reuse, water; (ii) prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

## ARTICLE II

### COMMON ROADS, COMMON PROPERTY, MAINTAINANCE EASEMENTS AND LIMITATIONS

2.1 The Lots. Each of the Lots shall be developed and used solely for single-family residential use in accordance with this Declaration. No business, commercial, religious, charitable or other enterprise of any kind may be maintained upon or in connection with the use of any Lot. No residence or part thereof on any Lot may be rented separately from the rental of the entire Lot; however, the Developer, and Speculative Builders with the prior approval of the Developer, will have the right to maintain facilities on the Lots owned by the Developer for sales and promotional purposes, and for maintenance purposes.

2.2 Easements Reserved to Developer & Association on Lots. Developer reserves for itself, the Association, its successors and assigns, its successors and assigns, a perpetual, non-exclusive, alienable and releasable easement, privilege and right on, over, and under a strip of land extending the full length of the rear, front, and side lines of each Lot. The width of said easement shall be 7.5 feet along such Lot lines measured at a 90 degree angle from the respective Lot lines. Such easement will be for the following purposes: (i) for the ordinary and reasonable maintenance and upkeep of the Stormwater Management System, (ii) for the installation, maintenance and use of water drainage facilities and storm sewers, and (iii) for encroachment of utilities and conveniences, including the routine repair, replacement, servicing and inspection of the same. The placement of fences and driveways within such easement will be permitted; however, the location of such fences and gates must afford access to the easement.

2.3 Easement for Access and Drainage. Developer reserves for itself, the Association, its successors and assigns, its successors and assigns, a perpetual, non-exclusive, easement over all areas of the Retention Pond, and Stormwater Management System, as shown on the Plat, and all areas identified as "Drainage Easement", or "Private Drainage Easement", as shown of the Plat for access to operate, maintain or repair the Stormwater Management System. Such easement includes the right to at a reasonable time and in a reasonable manner to operate, maintain or repair the Stormwater Management System as required by the St. Johns River Water Management District permit #42-019-81726-1 ERP, as same may be amended from time to time.

Developer reserves for itself, the Association, its successors and assigns, its successors and assigns, a perpetual, non-exclusive, alienable and releasable easement over all areas of the Stormwater Management System, as shown on the Plat, for drainage. No Owner shall alter the drainage flow of the Stormwater Management System, (including buffer areas, if any are identified as such on the Plat) or swales, without the prior written consent of the St. Johns River Water Management District or its successors.

2.4 Vegetative Natural Buffer. Developer reserves for itself, the Association, its successors and assigns, its successors and assigns, a perpetual, non-exclusive, easement over that portion of HIGHLAND GROVE, if any, identified on the Plat as and referred to in this Declaration as "Buffer Area". The Buffer Areas is part of the Stormwater Management System. The purpose of the Buffer Area is to detain and treat stormwater prior to drainage offsite by the maintenance of a dense vegetative cover. Filling and placement of impervious surface (other than fence posts) within the Buffer Area is prohibited. If no portion of HIGHLAND GROVE is so designated on the Plat as "Buffer Area" the provision of this Section 2.4 will not apply.

2.5 Common Property. The Developer shall convey to the Association all of the Common Property, identified on the Plat, free and clear of all liens and encumbrances, except taxes for the current year. With the prior approval of the FHA or VA, Developer may convey additional real property to the Association, from time to time, as Common Property, and the Association shall accept such conveyances. Any such conveyances will be subject to covenants, conditions, restrictions and easements of record and taxes. Developer may reserve certain rights and easements, not inconsistent with the with the use of the same by the Owners, to itself or to third parties in any of the Common Property so conveyed. In addition, the Association may acquire Common Property, either personal or real.

2.6 Confirmation of Easements adopted in Plat. Developer reserves for itself, the Association, its successors and assigns, a perpetual, non-exclusive, alienable and releasable easement, privilege and right on, over, and under and upon Tract "A" as shown on the Plat and the easements as shown on the Plat identified either as "Drainage Easement", "Private Drainage Easement", "Easement to Clay Electric Cooperative & Clay County Utility Authority" or "Utility Easement" (the "Easements"). For the purposes of the preceding definition of "Easements", any additional verbiage shown on the Plat (ie: 10', 20') in conjunction with the specified terms may be ignored. The Easements will be for the following purposes: (i) for the ordinary and reasonable maintenance and upkeep of the Stormwater Management System, (ii) for the installation, maintenance and use of water drainage facilities and storm sewers, (iii) for encroachment of utilities and conveniences, including the routine repair, replacement, servicing and inspection of the same, and (iv) for the placement and maintenance of subdivision, and road identification signage and monuments, and landscaping except where prohibited by applicable permits or regulations. The placement of fences and driveways within the Easements will be permitted; however, the location of fences and gates must not block access to the Easements. The Developer confirms and clarifies that the Association identified in the Plat is the *Highland Grove Planned Community Homeowners Association, Inc.*, a not for profit Florida corporation.

## ARTICLE III

### THE ASSOCIATION

3.1 General. The Association has been organized, among other things, to the extent set forth in this Declaration, to preserve the beauty and value of HIGHLAND GROVE, to own the Common Areas and to maintain the Stormwater Management System, and perform such other duties and services as provided in the Plat, Articles and Bylaws of the Association or in this Declaration. The Association shall act in accordance with the terms and provisions of this Declaration, the Articles of Incorporation and the Bylaws.

3.2 Membership. Each and every Owner (including Developer when an Owner) of a Lot will be a member of the Association.

3.3 Classes. Membership will be divided into two classes as follows:

(1) Class A members will be all Owners (other than the Developer, so long as Class B membership exists) owning Lots.

(2) The Class B member will be the Developer.

Class A memberships will be appurtenant to ownership of a Lot and may not be separated from such ownership. Class B membership will not be so appurtenant, but will remain with the Developer or its assigns as herein provided regardless of the conveyance of Lots to others. The Class B membership will terminate at the sooner of: (i) the Developer so elects and records an instrument to such effect in the Public Records, (ii) three months after 90% or more of both Lots and lots contemplated to be added to this Declaration as subsequent phases have been conveyed to owners other than the Developer, the Developer's successors or assigns, speculative builders, contractors, or parties purchasing Lots for the purpose of constructing improvements thereon for resale, or (iii) as required under applicable law. The Class B membership is assignable.

3.4 Voting Rights. The Class B member will have 8 votes for every Lot owned and the Class A members will have 1 vote for each Lot owned all as further provided in the Articles and Bylaws.

3.5 Insurance and Indemnity. The Association shall carry and maintain insurance as may be provided or permitted in the Bylaws of the Association. In particular, at all times after the termination of the Class B membership, and as material consideration for Developer conveying the Common Property to the Association, the Association shall hold the Developer, its successors and assigns, employees, agents and officers, harmless from any and all liability, losses, or casualties arising from the ownership, use, maintenance, construction, development of the Common Property, and of the Stormwater Management System, and shall at all times name the Developer and Lawrence D. Nichols as additional insureds on all liability insurance policies kept in force by the Association and shall request that the underwriter of said policies waive its right of subrogation with respect to the Developer and said persons.

3.6 Stormwater Management System. The Association will be responsible for the maintenance, operation, and repair of the Stormwater Management System. Maintenance of the Stormwater Management System(s) means the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association will be responsible for such maintenance and operation. Any repair or reconstruction of the Stormwater Management System must be as permitted, or if modified as approved by the St. Johns River Water Management District. The Association shall accept the assignment of any and all St. Johns River Water Management District permits from the Developer relating to the Stormwater Management System upon demand of the Developer, and promptly execute any instruments as may be necessary to effect such assignment.

3.7 Notice of Sales. Notice of all sales of a Lot other than a sale from the Developer must be given to the Association together with a photocopy of the deed of conveyance within 5 days of the closing of the sale. If notice is not so given, the Association may impose a fine of up to \$100.00 (or such other amount as permissible under applicable law) which shall be both a personal obligation of the seller and purchaser of the Lot and a lien upon the Lot which may be enforced in the same manner as an Assessment.

#### **ARTICLE IV**

##### **APPROVAL OF ALL STRUCTURES - RIGHT OF DEVELOPER TO DESIGNATE SUBSTITUTE**

4.1 All Structures To Be Approved By Developer. The Developer reserves the exclusive power and discretion to control and approve all of the buildings, structures and other improvements on each Lot in the manner and to the extent set forth in this Declaration. No residence or other building, fence, wall, driveway, dock, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the residence, may be commenced, placed, erected or allowed to remain on any Lot, nor may any additions to or exterior change or alteration be made, unless and until building plans and specifications covering same have been submitted to and approved by the Developer in writing. The building plans and specifications submitted to the Developer must show the nature, kind, shape, height, size, materials, floor plans, exterior color schemes, location and orientation on the Lot, including the location of all trees, the approximate square footage, construction schedule and other such information as the Developer may require, including plans for the grading and landscaping of the Lot showing any changes proposed to be made in the elevation or surface contours of the land. The Developer will have the absolute and exclusive right to refuse to approve any such building plans and specifications, including location and orientation on the Lot, and Lot grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons. In passing upon such building plans and specifications and site location and grading and landscaping plans, the Developer may take into consideration the suitability and desirability of proposed construction and materials to be used. In the event Developer fails to approve or disapprove the plans, specifications, and other matters required to be approved under the terms of this paragraph within thirty (30) days after receipt thereof by Developer, the approval of the Developer of such plans and specifications will not be required; however the

Developer's failure to so approve or disapprove will not waive the Developer's right to approve or disapprove any amendments to any submitted plans or specifications or the Developer's right to approve or disapprove any other plans or specifications required to be submitted to the Developer. The Developer may require changes in the location and orientation of the structures in order to save trees. No clearing of a Lot or any part thereof may be commenced unless and until the building plans and specifications (as described in this Section 4.1) have been approved by the Developer in writing. The Developer its successors or assigns may charge a architectural review fee in order to review and approve submitted plans not to exceed \$200.00 per application. The generality of the provisions of this Section 4.1 shall not be limited by the enumeration of specific requirements in Article V.

4.2 Developer May Designate Substitute. The Developer will have the sole and exclusive right at any time to transfer and assign to such persons or entities as it shall elect any and all rights, powers, privileges, authorities and reservations given to or reserved by Developer in this Declaration. If at any time after the recording of this Declaration there is no entity or person(s) entitled to exercise the rights, powers, privileges, authorities and reservations given to or reserved by the Developer by this Declaration, the same will be vested in and exercised by the Board.

## ARTICLE V

### ARCHITECTURAL CRITERIA AND BUILDING RESTRICTIONS

5.1 Residential Building. No building shall be erected, placed or permitted to remain on any Lot other than one (1) single-family dwelling and optional attached garage. Notwithstanding the foregoing buildings and structures accessory to the use of the family occupying the dwelling may be erected on the Lot upon approval by the Developer provided that any such accessory buildings do not furnish residential accommodations for an additional family.

5.2 Minimum Floor Space. Each dwelling located on a Lot must contain not less than 1,200 square feet of livable, enclosed floor area (exclusive of garages, carports and open or screened porches, terraces or patios).

#### 5.3 Recreation Facilities.

(a) All recreation facilities constructed or erected on a Lot, including, without limitation, swimming pools and any other play or recreation structures, basketball backboards, platforms, playhouses, dog houses or other structures of a similar kind or nature (collectively "Recreation Facilities") must be adequately walled, fenced or landscaped in a manner specifically approved by the Developer prior to the construction or erection of same.

(b) No lighting of a Recreation Facility will, in any event, be permitted unless otherwise specifically approved by the Developer.

5.4 Non-Interference With Easements. No structure, planting or other material may be placed or permitted to remain on a Lot which may damage or interfere with the installation and maintenance by the Association of any entry way, hedge, planting, tree, grass, fence, or other

improvement or landscaping located within an area to be maintained by the Association. Any easement area located upon a Lot and all improvements upon an easement area shall be maintained by the Owner of the Lot whereon said easement area lies except for those easement areas the maintenance of which is the responsibility of a public authority, utility or the Association. Drainage easements located on and constituting part of a Lot shall be maintained by the Owner of such Lot (i) so as to conform to all requirements of the St. Johns River Water Management District and (ii) so as not to interfere in any way with drainage of HIGHLAND GROVE or any portion thereof.

5.5 Utility Connections. Connections for all utilities, including, but not limited to, water, sewage, electricity, telephone and television must be run underground from the connecting point therefore to the building structure in such a manner as is acceptable to the respective utility authority or company and the Developer. No wells shall be permitted excepted for use in sprinkler systems and air conditioning systems.

5.6 Air Conditioning Units. No window or wall air conditioning units will be permitted on any Lot.

5.7 Mailboxes. All mailboxes, paper boxes or other receptacles of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or permitted only in the location approved by the Developer and must be constructed according to a size, design and material approved by the Developer. In the event the United States Postal Service makes available delivery service of mail to individual dwellings located on Lots, the Developer may require that all mailboxes, paper boxes or other such receptacles previously utilized by Owners be removed and replaced by mailboxes, paper boxes and similar receptacles attached to dwellings.

5.8 Antennae and Aerials - Satellite Dishes. No antennae or aerial may be placed upon any Lot or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building may extend or protrude beyond the exterior of such building or in any way be visible from outside the building without the prior written approval of the Developer. No satellite dishes may be placed on any Lot or affixed to the exterior of any building without the prior written approval of the Developer except that a satellite dish of 19 inches in diameter or less may be installed and maintained if the same (i) is located below the lowest portion of the roof of the dwelling, and (ii) is located on the rear of the dwelling.

5.9 Clothes Drying Area. Except where such restriction is prohibited by law, no clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot unless the same is located where the same is not visible to a person standing outside of the subject Lot.

5.10 Signs. The size and design of all signs located on a Lot will be subject to the approval of the Developer. No sign of any kind shall be displayed to general view on any Lot except under any of the following circumstances:

(a) Directional or traffic signs may be installed by the appropriate governmental authority, by Developer or by the Board and entrance or other identification sign may be installed by or with the consent of the Developer or the Board;

(b) Developer and any Speculative Builder may display signs on Lots owned by the Developer or Speculative Builder;

(c) One "For Sale" sign not more than 2 square feet (when measured on one side thereof) may be displayed on a Lot by the Owner or the agent for such Owner,

(d) A name plate and address plate in size and design approved by the Developer.

5.11 Fences. No fences, except as may be required by law or government regulations may be erected without prior written approval of the Developer except for fences which (i) comply with applicable zoning, (ii) do not interfere with Easements, (iii) are 6 feet in height measured from the surface of the ground, (iv) made of natural wood, (v) unpainted or painted with the same color as the exterior of the dwelling located on the same Lot as the fence, and (vi) are not located closer to the front of the subject Lot than the dwelling measured from the front boundary line of the Lot to the nearest portion of the dwelling. With respect to corner lots only, the restriction in §5.11(vi) will not apply; however fences may not be constructed closer than 20 feet to any property boundary line.

5.12 Temporary Structures. No structure of a temporary character, whether a trailer, tent, shack, garage, barn or any other such building, may be placed on any Lot; provided, however, the Developer may permit, a temporary storage or out-building for materials and supplies used in connection with and during the construction of a dwelling provided that it shall be removed immediately from the Lot upon the completion of such construction.

5.13 Completion of Construction and Repairs. The construction of any new building or the repair of the exterior of any building damaged by fire or otherwise shall be diligently and continuously effected and completed with reasonable promptness.

5.14 Sales Office of Developer & Speculative Builders Notwithstanding anything in this Declaration to the contrary, the Developer and Speculative Builders with the consent of the Developer may construct and maintain sales offices and sales trailers, together with a sign or signs relating thereto, on a Lot or Lots or upon any other property within HIGHLAND GROVE until such time as all of the Lots and Additional Property owned by the Developer and by Speculative Builders are sold. Any signs or sales trailers permitted by the Developer must be removed and any sales offices must be converted to use as dwellings only, within 5 days after Developer demand to do so.

5.15 Destruction Or Damage to Subdivision Improvements. Lot owners will be responsible for any and all damage caused to subdivision improvements, including but not limited to curbs and gutters, water hydrants, sidewalks erected by anyone, power poles and fences, whether the such damage is caused by the Lot Owner or the Lot Owner's employees, agents, invitees, guests, contractors or subcontractors.

5.16 Conversion of Lots to Other Uses. Notwithstanding anything herein otherwise provided, Developer reserves the right (i) to use any Lot owned by it for the purpose of ingress and egress to any adjoining property owned by Developer or subsequently acquired by Developer, or which Developer deems advantageous to be joined with any of the Lots and (ii) to cause any Lot to be platted as right-of-way. Developer reserves the right to impose easements for drainage and maintenance thereof on any Lot owned by it.

5.17 Garages. Unless the Developer, or other party exercising the rights under Article IV of this Declaration, gives its prior written consent, any garage, carport or similar structure once constructed upon a Lot may not be converted or used for other purposes. This provision will not apply to sales offices or model homes.

## ARTICLE VI

### USE RESTRICTIONS AND COVENANTS

6.1 Residential Use. No business or commercial building may be erected on any Lot and no business or commercial activity may be conducted on any Lot except for a sales and marketing program of the Lots by Developer and the construction and sale by Speculative Builders of speculative homes on Lots in accordance with the terms and provisions of this Declaration.

6.2 Further Subdivision. Developer reserves the right to re-subdivide the Lots provided, however, no residence shall be erected upon or allowed to occupy such re-subdivided Lot if the same has an area less than that which is required by the zoning ordinance for the Clay County, Florida. In the event of such re-subdivision all provisions hereof shall apply to each such re-subdivided Lot as if each re-subdivided Lot had been a Lot as shown on the Plat.

6.3 Maintenance of Exteriors. Each Owner shall at all times maintain the exterior of all structures on his Lot and any and all fixtures attached thereto in a sightly manner. The Developer or the Board may provide repairs or maintenance upon any residence or other improvements located upon a Lot which in the opinion of the Developer or the Board require repair or maintenance in order to preserve the beauty, quality and value of the neighborhood. The Developer or the Board as the case may be may not undertake such repairs or maintenance unless and until the affected Lot Owner is provided written notice of the intent to undertake such repairs or maintenance and a minimum of 5 days to cause such repairs or maintenance to be effected. Permissible repairs and maintenance under this Section 6.3 include without limitation (i) the repair or replacement of the roof, (ii) painting, (iii) gutter downspouts, and (iv) yard cleanup and maintenance. Each Owner grants the Developer, the Board, and their respective contractors, employees, and agents and easement to enter upon their Lot, to carry out the foregoing.

6.4 Noxious Vegetation. No Owner shall permit the growth of noxious weeds or vegetation upon his Lot or upon the land lying between the street pavement and the front lot line

of his Lot. All unimproved areas of a Lot on which a dwelling is erected must be maintained in an attractive landscaped and sightly manner.

6.5 Litter, Trash, Garbage. No garbage, trash, refuse or rubbish may be deposited, dumped or kept on any Lot except in closed sanitary containers approved by the Developer. Such containers shall be kept in a sanitary condition in (i) an enclosed area attached to the dwelling and constructed in a manner approved by the Developer or (ii) an underground container. Such containers may be placed on the Lot for pick up at the times and in accordance with the requirements of the franchised or governmental entity providing garbage removal utility service for HIGHLAND GROVE; however, such containers shall be returned to and kept in the enclosed area or underground, as the case may be, promptly after pick up. If curbside service is not available to the Lots, then garbage collection shall be placed in facilities designated by the Association and private collection shall if available at competitive rates.

6.6 Nuisances. No Owner shall cause or permit to emanate from his Lot any unreasonable noises or odors. No Owner shall commit on his Lot or permit to be maintained on his Lot any nuisance, any immoral or illegal activity or anything which may be an annoyance or a noxious or offensive activity to the neighborhood.

6.7 Parking of Wheeled Vehicles, Boats. Except as below provided no wheeled vehicles of any kind, boats, or any offensive objects as determined by rules enacted by the Board, may be kept or parked on any roads shown on the Plat or upon any Lot, except completely inside a garage attached to the residential dwelling, or completely enclosed by fencing approved by the Developer or Association so as not to be visible from adjacent lots or streets. Notwithstanding the foregoing, (i) private automobiles or trucks (excluding recreational vehicles, travel trailers, trailers and campers) of the occupants of a residential dwelling constructed on a Lot and those of their guests may be parked in such driveways provided they bear no commercial signs, (ii), commercial vehicles (including, without limitation, all vehicles with tradenames, logos or advertising exclusive of the name of the automobile manufacturer and/or dealer) may be parked in such driveways during the times necessary for pickup and delivery service and solely for the purpose of such services, and (iii) recreational vehicles, travel trailers, trailers and campers may be parked in the driveway of Lot for up to a total of 12 hours per week, provided the same are not connected to any water well and/or septic tank or used as a place of residence by anyone on any of the Lots.

6.8 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, birds (other than parrots), cats and other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose and that they do not cause an unreasonable nuisance or annoyance to other Owners. In no event may more than a total of 4 dogs and/or cats be kept on any Lot. The determination of the Board as to what constitutes a household pet will be conclusive.

6.9 Vehicles and Repair. No inoperative cars, trucks or trailers or other type of vehicles will be allowed to remain on or adjacent to any Lot; however, this provision will not apply to any such vehicle which is kept within an enclosed garage. No cars, trucks or trailers or other type of vehicles may be repaired or maintained on or adjacent to a Lot, except within a garage.

## ARTICLE VII

### ASSOCIATION EXPENSES, ASSESSMENTS AND LIENS

7.1 Creation of Lien and Personal Obligations for Assessments. All assessments in this Article ("Assessments") together with interest and costs of collection when delinquent, will be a charge on the land and will be a continuing lien upon the Lot against which the Assessments are made, and will also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the Assessments were levied. Developer covenants for each Lot and each Owner of any Lot, by acceptance of a deed or other transfer instrument, whether or not expressed in such deed or instrument, is deemed to covenant and agree to pay both as a personal obligation and as a lien against the Lot to the Association the following (to be known collectively as "Assessments"):

- (a) General Assessment for expenses included in the budget.
- (b) Special Assessments for the purposes provided in this Declaration, and
- (c) Capital Contribution Assessment particular to that Lot.

The Assessment shall be assessed among all Lots as follows:

- (a) Exempt Lots will not be subject to assessment.
- (b) Capital Contribution Assessment will be payable by the Owners of the respective Lot only.

(c) The General Assessment and Special Assessment will be payable by class. It is the intent that Vacant Lots be assessed significantly less than Improved Lots. The classes will be "Improved Lots" and "Vacant Lots" respectively. Lots unimproved by dwelling other than a model home (not occupied as a dwelling) will constitute the "Vacant Lots" class and all other Lots will constitute the "Improved Lots" class. Exempts Lots are not considered Improved Lots or Vacant Lots. 90% of each General Assessment and Special Assessment will be assessed to the Vacant Lots. Within each class, the assessments will be the same for each Lot. Notwithstanding the preceding, if the assessments applicable to each Lot within the Vacant Lots class equal or exceed the assessments applicable to each Lot within the Improved Lots class then such assessment (whether General or Special) shall be assessed equally without regard to class. Each Lot within a class will be assessed an amount equal to [portion of respective Annual General Assessment or Special Assessment allocated to the Class] divided by [number of Lots within the class].

7.2 Capital Contribution Assessment. Upon the conveyance of a Lot (i) from the Developer to any person(s) or entity other than to an entity affiliated with the Developer or to a Speculative Builder or (ii) upon the conveyance of a Lot by a Speculative Builder to any person(s) or entity other than another Speculative Builder, the Developer, or an entity affiliated with the Developer there will be, at the option of the Developer, due upon the closing of the sale

of the lot by the Speculative Builder a Capital Contribution Assessment of not more than \$50.00. Each Lot will be subject to the Capital Contribution Assessment only once, all future conveyances of any such Lot being exempt. The Capital Contribution Assessment may be used to pay for any expense properly payable by the Association under section 7.3.

**7.3 Annual General Assessment.** Except as otherwise provided in this Article 7, each Lot is subject to Annual General Assessments by the Association for (i) the maintenance and contributions required above, (ii) the management and administration of the Association; (iii) the maintenance, improvement repair and replacement of the Common Property and to establish reserves for the same; (iv) the maintenance and repair of the Stormwater Management System, including but not limited to work within retention areas, drainage structures and drainage easements; and (v) the furnishing of such other services as set forth in this Declaration. Each such Annual General Assessment will be assessed for and will cover a calendar year (except as to the initial Annual General Assessment which will cover the period from the Commencement Date as provided in Section 7.5 to the expiration of the calendar year in which such "Commencement Date" occurs. Except as further described in this Article, the Board by majority vote will set the Annual General Assessments in an amount sufficient to meet the Association's obligations. The Board will have the right, power and authority, to establish, increase or decrease the Annual General Assessment for the purpose of meeting its expenses and operating costs on a current basis subject to the following restriction. Unless the approval of 2/3 of each class of member voting in person or proxy at meeting called for such purpose, the maximum Annual General Assessment shall not exceed the following: (i) for the initial fiscal year – One Hundred Dollars (\$100.00) (ii) for each subsequent fiscal year - 200% of the maximum Annual General Assessment applicable to the previous fiscal year. The Board will set the date or dates that assessments shall become due. Assessments will be collected annually provided, however, the Board may provide for collection of assessments in monthly, quarterly or semi-annually installments. Upon default in the payment of any one or more installments, the entire balance of the assessment may be accelerated at the option of the Board and be declared due and payable in full.

**7.4 Special Assessment.** In addition to the Annual General Assessments authorized above, the Association may levy in any assessment year a Special Assessment applicable to that year and not more than the next four succeeding years for the purpose of the maintenance, operation and repair of the Stormwater Management System, or defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement provided that any such assessment shall have the assent of at least 2/3 of the members of each class of the Association in attendance in person or proxy at a meeting called for such purpose.

**7.5 Commencement of Annual Assessments.** The Annual General Assessments provided for herein will commence on the day of conveyance (the "Commencement Date") of the first Lot to an Owner who is neither Developer nor a Speculative Builder. Except as provided in Section 7.6, the initial assessment on each Lot will be collected at the time title to such first Lot is conveyed to the Owner who is neither Developer nor a speculative builder.

**7.6 Exempt Lots.** Each Lot owned by the Developer or a Speculative Builder will be exempt from all assessments (Capital Contribution and Annual General Assessment and Special Assessment) until the sooner of (i) such time as such exemption is terminated by the Developer as to all Lots (the "Exempt Lots") or as to particular Lots; (ii) such time as Developer or

Speculative Builder has sold such Lot to a person, persons or entity other than to (a) an entity affiliated with the Developer or (b) to a Speculative Builder. At such time as an Exempt Lot loses its exempt status, such Lot will be subject to the Annual General Assessment assessed for that year on a pro-rata basis. In consideration of said exemption, Developer agrees to be responsible for any Association expenses (exclusive of expenses pursuant to Section 7.7) incurred in excess of the Association's income until the sooner of (a) the expiration of the Class B membership, or (b) the termination of such exemption by voluntary election of the Developer.

7.7 Assessments on Account of Real Property Taxes. In the event that Tax Collector assesses more than one Lot as a single parcel, the Association may, but will not be obligated to pay the real property taxes for said parcel whereupon each Lot comprising said parcel will be assessed an amount equal to a sum determined by dividing the taxes assessed upon said parcel by the number of Lots comprising said parcel. Said assessment shall be paid by the Owner of each Lot to the Association no later than 7 days after evidence of payment of said taxes is sent to each effected Owner. If said assessment is not so paid the defaulting Owner shall pay interest upon the amount due at the then highest lawful rate until paid. Failure to pay said assessment will deemed for enforcement purposes as a failure to pay any other assessment permitted by this Declaration.

#### 7.8 Effect of Nonpayment of Assessment; Remedies of the Association.

(a) Interest. Any Assessments not paid within ten (10) days after the due date shall bear interest at the highest lawful rate.

(b) Lien. All Assessments against any Lot pursuant to this Declaration, together with such interest thereon, and cost of collection thereof (including reasonable attorney's fees, whether suit is filed or not), shall become a lien on such Lot effective upon recording a Claim of Lien against such Lot by the Association. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Lot, or both. Costs and reasonable attorney's fees (through appeal if necessary) incurred in any such action shall be awarded to the prevailing party. The lien provided for in this Section shall be in favor of the Association. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Lot foreclosed at such foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(c) Owner's Obligations. Each Owner, by acquisition of an interest in a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such Assessments as a debt and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosures, by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with such lien. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his Lot.

(d) Priority and Subordination of the Lien to Mortgages. Subject to the subordination provisions set forth below, all liens will relate back to the date of recording of this Declaration. The lien of the Assessments provided for herein shall be inferior and subordinate to

the lien of a mortgage held by an Institutional Mortgagee now or hereafter placed upon any Lot subject to assessment so long as such mortgage lien is recorded prior to any Claim of Lien filed by the Association. Sale or transfer of any Lot shall not affect the Assessments lien; however, the sale or transfer of any Lot pursuant to foreclosure of such Mortgage to an Institutional Mortgagee shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer.

7.9 Certificate of Payment. The Treasurer, or other officer designated by the Board, of the Association, upon demand of any Owner liable for Assessments, shall furnish to such Owner a certificate in writing signed by such Treasurer setting forth whether such Assessments have been paid. The Association shall be entitled to make a reasonable charge for such certificate in an amount as shall be determined by the Association provided.

#### 7.10 Budget.

(a) Fiscal Year. The fiscal year of the Association shall consist of the twelve month period commencing on January 1 of each year and terminating on December 31 of that year.

(b) Initial Budget. Developer shall determine the Association budget for the fiscal year in which a Lot is first conveyed to an Owner who is not developer or a Speculative Builder to whom the rights of the Developer have been assigned as to such Lot.

(c) Preparation and Approval of Annual Budget. Commencing with December 1 of the year in which a Lot is first conveyed to an Owner who is not Developer or a Speculative Builder to whom the rights of the Developer have been assigned as to such Lot and each year thereafter, on or before December 1, the Board shall adopt a budget for the coming year containing an estimate of the total amount which they consider necessary to pay the cost of all expenses to be incurred by the Association to carry out its responsibilities and obligations including, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses needed to render the services specified hereunder. Such budget shall also include such reasonable amounts as the Board considers necessary to provide working capital and to provide for a general operating reserve and reserves for contingencies and replacements. The Board shall send each of its Members a copy of the budget, in a reasonably itemized form which sets forth the amount of the assessments payable by each Member, on or before December 20 preceding the fiscal year to which the budget applies. Each budget shall constitute the basis for determining each Owner's General Assessment as provided herein; provided, however, that the budget for any fiscal year subsequent to the first full fiscal year may not exceed 125 percent of the budget for the preceding year without the approval of a majority of the votes of the Members voting in person or by proxy at a regular meeting or special meeting of the Association called for that purpose.

(d) Reserves. The Board may build up and maintain a reserve for working capital and contingencies, and a reserve for replacements which shall be collected as part of the Annual General Assessments as provided herein. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against the appropriate reserves. Reserves accumulated for one purpose may not be expended for

any other purpose unless approved by a majority of the Members of the Association, or, in the event of emergency, if directed by the Board. If the reserves are inadequate for any reason, including nonpayment of any Owner's assessment, a further assessment may be levied in accordance with the provisions of Section 7.3 of this Article. The further assessment may be payable in a lump sum or in installments as the Board may determine.

(e) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board to prepare or adopt the annual budget or adjusted budget for any fiscal year shall not constitute a waiver or release in any manner of any Owner's obligation to pay his assessment as herein provided, whenever the same shall be determined. In the absence of an annual budget or adjusted budget, each Owner shall continue to pay the assessment at the then existing rate established for the previous fiscal period in the manner such payment was previously due until notified otherwise.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Incorporation of the Land Use Documents. Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

8.2 Release From Minor Violations. Where a building has been erected on a Lot or the construction thereof substantially advanced, in such manner that the same constitutes a violation or violations of the covenants either the Developer or the Board may and each of them shall have the right, by written instrument, at any time to release such Lot from such violation(s), provided, however, that the Developer or the Board determines such violations to be minor. The Developer will also have the right to release any other minor violations of this Declaration.

8.3 Disputes. In the event there is any dispute as to whether the use of any Lot or other property within HIGHLAND GROVE complies with the covenants and restrictions contained in this Declaration, such dispute shall be referred to the Developer, and the determination rendered by the Developer with respect to such dispute shall be final and binding on all parties thereto. Upon the conveyance of the last Lot to a person other than the Developer, the Developer's successor or to a Speculative Builder, such disputes shall be submitted to the Board instead of the Developer.

8.4 Enforcement. The covenants and restrictions contained in this Declaration may be enforced by Developer, the Association, any Owner or Owners, and any Institutional Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or suit seeking damages, injunction, specific performance or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels. The St. Johns River Water Management District will have the right to enforce, by a proceeding at law or

in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Stormwater Management System. The Association may in addition to all other remedies impose fines for violation of the provisions of this Declaration in accordance with the provisions of §617.305 Florida Statutes, as amended, from time to time.

8.5 Assignment. The Developer shall have the right, from time to time, to assign jointly or severally any of its rights pursuant hereto as to any of the Lots sold by the Developer as such Lots shall be designated in such assignment; provided specific reference is made in such assignment to this Section 8.5.

8.6 Notices to Owners. Any notice or other communication required or permitted to be given or delivered under this Declaration to any Owner shall be deemed properly given and delivered upon (i) the mailing thereof by United States mail, postage prepaid, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing, (ii) posted upon the dwelling located upon such Owner's Lot, unless such Owner has furnished the Association with a mailing address other than the address of such Lot. or (iii) as required or permitted by applicable law.

8.7 Notices to Association. Any notice or other communication required or permitted to be given or delivered under this Declaration to the Association shall be deemed properly given and delivered upon the delivery thereof or upon the mailing thereof by certified United States mail, postage prepaid to the corporate address of the Association or at such other address as the Board may hereafter designate by notice to Owners in the manner provided in Section 8.6 or announce at a regular or special meeting of the Association.

#### 8.8 Amendment.

(a) Subject to the provisions of Section 8.9 Developer specifically reserves the absolute and unconditional right, so long as it owns any of the Lots (including any lots which are made subject to this Declaration from time to time), to amend this Declaration without the consent or joinder of any party to (i) conform to the requirements of the St. Johns River Water Management District, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veteran Administration, Department of Housing and Urban Development or any other generally recognized institution involved in the purchase and sale of home loan mortgages or (ii) to conform to the requirements of Institutional Mortgagee lender(s) or title insurance company(s) or (iii) to perfect, clarify or make internally consistent the provisions herein;

(b) Subject to the provisions of Sections 8.8(a) and 8.9 this Declaration may be amended at a duly called meeting of the Association whereat a quorum is present if the amendment resolution is adopted by a 75% of all Class A Members and the Class B Member, if any. An amendment so adopted shall be effective upon the recordation in the public records of Clay County of a copy of the amendment resolution, signed by the President of the Association and certified by the Secretary of the Association. So long as there remains a Class B Member, the approval to such amendment must be obtained from the VA or Department of Housing and Urban Development. Any such amendment shall also require the consent of the Developer until such time as the Developer, its successors and Speculative Builders own no Lots.

(c) Any amendment to the Declaration which would alter the Storm Water Management System, including the water management portions of the Common Areas, must have the prior approval of the St. Johns River Water Management District.

(d) So long as there remains a Class B Member and for one year after the termination of the Class B Membership, the Developer may without the consent of any party, bring within the scheme of this Declaration any additional property provided that (i) such additional land is contiguous to HIGHLAND GROVE, (ii) the addition of such property will not alter the common scheme for development provided in this Declaration, and (iii) the additional properties and the owners of the same will upon their addition to HIGHLAND GROVE be subject to all assessments assessed by the Association. Said addition of lands may be made by supplementary declaration and will be effective upon the recording of the same in the public records of Clay County Florida. Any lots shown on any plat of such additional land will be deemed "Lots" under this Declaration.

8.9 Consents. This Declaration contains provisions concerning various rights, priorities, remedies and interests of the Institutional Mortgagees. Such provisions are to be construed as covenants for the protection of the Institutional Mortgagees on which they may rely in making loans secured by mortgages on the Lots. Accordingly, no amendment or modification of this Declaration impairing such rights, priorities, remedies or interest of an Institutional Mortgagee shall be adopted without the prior written consent of all Institutional Mortgagees holding liens on eighty percent (80%) or more of the Lots encumbered by Mortgages to Institutional Mortgagees. Any such consent requested by Developer of such Institutional Mortgagees shall be given prompt consideration and shall not be unreasonably withheld. This Section shall not apply or be construed as a limitation upon those rights of Developer, the Association or the Owners under this Declaration to make amendments which do not adversely affect the Institutional Mortgagees.

8.10 Legal Fees. Any and all legal fees, including but not limited to attorney's fees and court costs, including any appeals, which may be incurred by the Association in the lawful enforcement of any of the provisions of this Declaration, regardless of whether such enforcement requires judicial action, shall be assessed against and collectible from the unsuccessful party to the action, and if an Owner, shall be a lien against such Owner's Lot in favor of the Association.

8.11 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of Florida.

8.12 Captions. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms or provisions of this Declaration.

8.13 Context. Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any noun or pronoun herein may be deemed to mean the corresponding plural form thereof and vice versa.

8.14 Severability. In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or a reduction in the term of the same by reason of the legal rule against perpetuities shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

8.15 Term. This Declaration (but excluding the easements herein created which are perpetual) and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein, including, without limitation, the provisions for assessment of Lots, shall run with and bind the all of HIGHLAND GROVE and inure to the benefit of Developer, the Association, Owners and their respective legal representatives, heirs, successors and assigns for a term of ninety (90) years from the date hereof, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such ninety year time or to each such ten-year extension, as the case may be, there is recorded in the Public Records of Clay County, Florida, an instrument agreeing to terminate this Declaration signed by two-thirds (2/3) of all Owners and two-thirds (2/3) of all Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the ninety-year term or the ten-year extension during which such instrument was recorded, as the case may be.

8.16 Waiver of Jury Trial and Release. As material consideration for the Developer's sale of a Lot to an Owner, or the Owner's predecessor in title to a Lot, and for the mutual consideration of the covenants contained in this Section 8.16 (i) each party to this Declaration, whether Developer, Owner, or mortgagee agrees that in any litigation arising from or out of this Declaration, or from or out of the respective Lot or other property within HIGHLAND GROVE or dealings therewith, each party waives their respective right to a trial by jury and agrees that the judge shall act as the sole determiner of facts; and (ii) to the full extent permitted by law, Developer will not be liable to any party for consequential or special damages and the Association and each Owner accepts the Common Areas, HIGHLAND GROVE and all appurtenances in their "AS IS" condition and without any warranty.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed the day and year first above written.

**N & N Development, Inc.**

a Florida corporation

(Corporate Seal)

By:

  
Lawrence D. Nichols, President

"DEVELOPER"

Address:

692 Camp Johnson Road  
Orange Park, Florida 32065

**WITNESSES:** (2 REQUIRED, NOTARY CAN ALSO SIGN AS A WITNESS)

1 Lori J. Stokes  
First Witness Signature

1 Lori J. Stokes  
First Witness Printed Name

2 Sharon Emerson  
Second Witness Signature

2 Sharon Emerson  
Second Witness Printed Name

**NOTARY ACKNOWLEDGEMENT:**

**State of Florida**

**County of Clay**

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of February, 2003 by **Lawrence D. Nichols**, as **President**, for **N & N Development, Inc.**, a Florida Corporation.

Lori J. Stokes  
Notary Public, State of Florida

Print Name:

Notary No.:



Lori J. Stokes  
MY COMMISSION # CC848685 EXPIRES  
July 19, 2003  
BONDED THRU TROY FAIR INSURANCE, INC.

☒ Personally Known

☐ Produced \_\_\_\_\_ as identification