

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SHANNON VISTA

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This Declaration is made as of the **8th day of May 2006** by Eastwood Development Corporation, a North Carolina corporation, hereinafter referred to as "Declarant".

## WITNESSETH:

WHEREAS, Declarant is the owner of the real property which is described in Article II hereof, and desire to create thereon an exclusive residential community of single-family homes to be named Shannon Vista; and

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the entrances, landscaping easements and Common Area as hereinafter defined; and, to this end, desire to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the said subdivision and to provide for the maintenance and upkeep of landscaping easements and the Common Area, to create an organization to which will be delegated and assigned the powers of maintaining said entrances and landscaping easements and owning and administering the Common Area, enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

Drawn by and mail to:  
Eastwood Develomant  
2857 Westport Rd.  
Charlotte, NC 28208

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law SHANNON VISTA HOMEOWNERS' ASSOCIATION, as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

NOW, THEREFORE, Declarant by this Declaration of Covenants, Conditions, and Restrictions, do declare that all of the property described in Article II, Section 1, hereof is and shall be transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I - Definitions**

### **Section 1 - Act**

"Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

### **Section 2 - Additional Land**

"Additional Land" means the real property described on Exhibit A, if any shall be attached hereto, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article II hereof and which when subjected, shall become a part of the Project.

### **Section 2 - Association**

"Association" shall mean and refer to Shannon Vista Homeowners' Association, a North Carolina non-profit corporation, its successors and assigns.

### **Section 3 - Common Area**

"Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. Common Area shall also include any median or planting area and related signage, irrigation facilities and lighting constructed by the Declarant within rights-of-way within the Project.

### **Section 4 - Declarant**

"Declarant" shall mean and refer to Eastwood Development Corporation and shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two (2) or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Eastwood Development Corporation, including Builders, shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but not longer.

### **Section 5 - Entrance and Landscape Easement**

"Entrance and Landscape Easement" shall mean and refer to any easement so designated on any plat of Shannon Vista now or hereafter recorded in the Union County Public Registry.

**Section 6 - Lot**

"Lot" shall mean and refer to any numbered lot or plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Project which is not a private or dedicated right-of-way or Common Area.

**Section 7 - Map**

"Map" means a recorded subdivision plat of a portion of the Project recorded in the Union Public Registry.

**Section 8 - Member**

"Member" shall mean and refer to every person or entity who holds membership in the Homeowner's Association,

**Section 9 - Owner**

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

**Section 10 - Project**

"Project" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Association.

**Section 11 - Rules and Regulations**

"Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations have been given to Owners in accordance with the requirements of this Declaration.

**Section 12 - Special Declarant Rights**

"Special Declarant Rights" shall mean the rights as defined in Section 47F-1 103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising; to use easements through the Common Area for the purpose of making improvements with or within real estate which may be added to Shannon Vista and to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

**Section 13 - Supplemental Declaration**

"Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, to the Project and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration.

# ARTICLE II- PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF SHANNON VISTA HOMEOWNER'S ASSOCIATION

## **Section 1**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Union County, North Carolina, and is more particularly described on maps recorded in Map Book \_\_ at Page \_\_ of the Union Public Registry.

## **Section 2 - Additions to Existing Property**

Additional land may be brought within the scheme of this Declaration in the following manner:

*(a) Additional land within the area described on Exhibit "A" attached hereto and incorporated herein by reference may be annexed to the existing Project by Declarant or its assigns, in future stages of development, without the consent of the Association or its Members, provided that said annexations must occur within ten (10) years after the date of this instrument.*

*(b) Additional residential property (and common area), outside of the area described in the aforementioned EXHIBIT A maybe annexed to the Project and brought within the scheme of this Declaration and the Jurisdiction of the Association with the consent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to all Class A lots and at least two-thirds (2/3) of the votes appurtenant to all Class B lots, if any, as hereinafter defined in Article VI, Section 2, The Association may participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes as the Association, thereby adding to the Association, or to a surviving homeowners association, the properties, rights and obligations of the non-profit corporation with which it merges or consolidates. Any such merger or consolidation shall have the assent of the members provided above in this subsection (b), and no such merger or consolidation shall revoke, change or add to any of the provisions of this Declaration except as herein provided.*

*(c) The additions authorized under subsections (a) and (b) above shall be made by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties and thereby subject such additions to the benefits, agreements, restrictions, and obligations set forth herein, as may be amended by such supplementary declaration,*

# **ARTICLE III - COMPLIANCE WITH MANAGEMENT DOCUMENTS**

## **Section 1 - Compliance with Declaration and Other Documents**

Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

## **Section 2 - Resolution of Conflicts Between Documents**

Each Owner covenants and agrees that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws, and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of the Declaration shall prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Project is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Project, then the provisions of this Declaration shall prevail.

# **ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS**

## **Section 1 - Governing Body**

The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Project, as provided by this Declaration and the Bylaws.

## **Section 2 - Membership**

Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

## **Section 3 - Voting Rights**

The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of voting membership:

### *Class A Members*

Class A Members shall be all Owners with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and voting rights appurtenant to said Lot shall be exercised as they, among

themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.

*Class B Members*

Class B Members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (i) the conveyance by Declarant of eighty percent (80%) of all Lots in the Project, or (ii) ten (10) years after the first Lot is conveyed to an Owner for Use as a residence. Declarant can cast votes attributable to Lots owned by Declarant on all matters submitted to a vote of the Members.

## **ARTICLE V - Property Rights**

### **Section 1 Owner's Easement of Enjoyment:**

Except as limited by Section 2 of this Article V, every Owner shall have a right and easement of enjoyment in and to the Common Area established initially and in all future stages or sections of the development which right and easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions.

*(a) The right of the Homeowners Association to suspend the voting rights and rights to the use of the Common Area for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.*

*(b) The right of the Homeowners 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 the Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument, provided that this subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties;*

*(c) Except as provided in Subsection (b) hereinabove, conveyance or encumbrance of Common Area shall be governed by 47F-34-112 of the Act which provides that portions of the Common Area may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action.*

Proceeds of the sale or financing of Common Area shall be asset of the Association. The Association, on behalf of the Lot Owners, may contract to convey Common Area of subject Common Area to a security interest, but the contract is not enforceable against the Association until approved as hereinabove set forth. Thereafter the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, free and clear of any interest of any Lot owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support

*(d) The right of the Association to establish rules and regulations governing the use of the common area or portions thereof.*

## **Section 2 - Delegation of Use**

### *(a) Family*

The right and easement of enjoyment granted to every Owner in Section 1 of this Article V may be exercised by members of the Owners' family who occupy the residence of the Owner within the Project as their principal residence in Union County, North Carolina.

### *(b) Guests*

Common Area situated upon the Properties may be utilized by guests of owners, tenants, or contract purchasers subject to the Rules and Regulations of the Association, as may be established by its Board governing said use.

### *(c) Tenants*

Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy any common facilities on the Common Area during the period the Lot is occupied by such tenant.

## **Section 3 - Tenants**

*(a) No Owner shall lease or rent less than an entire lot and no more than one family shall live in any one lot. Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than one year. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.*

*(b) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.*

#### **Section 4 - Rules and Regulations**

The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Project, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or, the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations shall not be effective until written notice thereof has been given by mailing a copy of the Rules and Regulations, postage prepaid, at least ten (10) days before the effective date of the Rules and Regulations, to each Owner addressed to the Owner's address last appearing in the books of the Association.

#### **Section 5 - Enforcement**

The Association shall have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided

*(i) the member shall have been warned in writing of a previous infraction within the preceding one (1) year, and*

*(ii) the fine conforms to the provisions of Article VI, Section 8.*

#### **Section 6 - Ownership of Common Areas**

Declarant shall convey the Common Area to the Association. Notwithstanding the recordation of any Map or any other action by the Declarant or the Association, all Common Area shall remain private property and shall not be considered as dedicated to use and enjoyment of the public.

## **ARTICLE VI - Covenants For Maintenance Assessments**

#### **Section 1 - Creation of 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 therefore, 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. Any such assessment or charge, together with late fees, 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 late fees, interest, costs, and reasonable attorney's fees shall be a charge on the land and 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, but shall continue to be a lien upon the property.

### **Section 2 - Purposes of Assessments**

The assessments levied by the Homeowners Association shall be used exclusively to promote the health, safety and welfare of the residents of the Project, the enforcement of these covenants, and the rules of the Association, and in particular, for the improvement and maintenance of the Project and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and any improvements thereon and other areas maintained by the Association, including, but not limited to, the cost of repair, replacement and additions thereto, the cost of labor and equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purposes, the assessments levied by the Association may be used for the acquisition, construction and improvement (including landscaping and planting) and maintenance of the facilities located or to be located in the Common Area or easement area, entrance way, berms, and streetlight leases.

### **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 **\$400** per Lot (except that pursuant to *Section 5* of this Article, the maximum annual assessments for Lots owned by Declarant which are not occupied as a residence shall be **25%** of the aforesaid maximum annual assessment and shall be paid by Declarant at the end of each calendar quarter). The regular annual assessment (prorated for the number of months remaining in such assessment year) may be increased by the Board to an amount equal to the previous year's annual assessments times the greater of **(1)** ten percent (**10%**) or **(2)** the annual percentage increase in the CPI for the most recent twelve (12) month period for which the CPI is available without a vote of the Members,

The Board shall fix the amount and due date of the regular annual assessment on a yearly basis at least thirty (**30**) days in advance of each assessment year. The Board may not impose a regular annual assessment which is more than ten percent (**10%**) greater than the regular annual assessment for the immediately preceding fiscal year without approval by the members entitled to no less than two-thirds (**2/3**) of the votes (appurtenant to each class of Lots) represented in person or by proxy at a meeting duly called for this purpose.

### **Section 4 - Special Assessments for Capital Improvements**

In addition to regular assessments authorized above, the Homeowners 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, reconstruction, repair or replacement of a capital improvement upon the entrances and landscaping easements and the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the members as provided in *Section 3* of this Article.

### **Section 5 - Uniform Rate of Assessment**

Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected as determined by the Board. Provided, however, that the assessment for Lots owned by Declarant or Eastwood Construction Co., Inc. which are not occupied as a residence, shall at all times be twenty-five percent (25%) of the regular assessments for other Lots.

### **Section 6 - Notice and Quorum for Any Action Authorized Under Section 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 thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

### **Section 7 - Date of Commencement of Annual Assessments**

Due Dates, Certificate of Payment. The annual assessments provided for herein shall commence Declaration on the day of the closing of the first lot to an owner other than Declarant, and for new lots created thereafter on the first day of the month following the recording of a new map of the properties. Declarant shall be responsible for maintenance of easement areas and common area, if any until such time. From the date on which the Annual Assessments commence on a Lot until the date on which the Lot is sold by the Declarant to a purchaser, the Developer shall be liable for Annual Assessments at a rate which is one-fourth of the rate other that Declarant shall not be liable for Annual Assessments on any Lots if the Association is operating without a deficit.

At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board. 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.

Notwithstanding Sections 1 and 7 hereof, the Declarant may, at its election, postpone, in part, the date on which the assessment shall commence provided that the Declarant maintains the Common Areas for which no assessment is being collected during the period of such postponement.

### **Section 8 - Delinquent Assessments; Fines**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Article V, Section (d) shall not exceed the following rates computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

*(a) Ten percent (10% of any assessment installment unpaid; or*

*(b) If the late charge so computed is less than Twenty Dollars (\$20) for any month, Twenty Dollars (\$20) per month.*

No charge may be imposed more than once each month for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than more than thirty (30) days after the due date of the asse shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, management collection costs, and reasonable attorney's fees.

### **Section 9 - Assessment as Remedy**

After Notice and Opportunity for Hearing, the Board, without the vote or written consent of members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

### **Section 10 - Subordination of the Lien to Mortgages**

The liens provided for herein shall be subordinate to the lien of any first mortgage, mortgages, first deed of trust, or deeds of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust, or deeds of trust.

### **Section 11 - Working Capital Fund**

At the time of closing of each sale of a Lot upon which a home has been constructed as well as at the time of closing of each subsequent resale of such Lot, a sum equal to one-half of the current year's assessment for each Lot shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments and are not refundable.

### **Section 12 - Exempt Property**

All property 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 North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## **ARTICLE VII - Easements**

Easements for installation and maintenance of driveway, walkway, parking area, water line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat. Further, easements ten feet in width for such purposes are reserved over, under and through and along the rear lot lines of all lots shown on recorded plats, and easements five feet in width for such purposes are reserved, over under and through and along all side lot lines of all lots shown on recorded plats, as well as easements five feet in width along the front lot lines for sidewalk construction, maintenance and repair purposes. In the event it is determined that other and further easements are required over any lot or lots in locations not shown on the recorded plat and not along rear and side lot lines, such easements may be established by the Declarant, except that if such further easements are reserved or established after the conveyance of a lot or lots to be affected thereby, the written assent of the Owner or Owners of such lot or lots and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easement above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. Declarant may release any easements it determines is not needed. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

# **ARTICLE VIII - Architectural Control**

## **Section 1 - Architectural Control**

After the initial construction of the dwelling on a Lot has been completed by Declarant, no construction, reconstruction, removal or addition to any structure, building, fence, wall, driveway or walkway, or exterior color change, including but not limited to siding, shutters and trim, shall be commenced or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made after completion of construction of said dwelling, unless and until the plans and specifications showing the nature, kind, shape, height, color, material and location of the same, with the exception of general maintenance necessary for the upkeep of the dwelling, shall have been submitted to and approved in writing by the Board or an Architectural Control Committee which has been empowered by the Board to approve such applications and comprised of three (3) or more Members who have been appointed by the Declarant or by the Board. Prior to the formation of said Committee, Declarant shall have the responsibility of enforcing the restrictions set forth in this Article. Reference herein to the Architectural Control Committee shall mean the Declarant until such Committee is appointed. In the event said Committee fails to approve or disapprove such design and location within thirty (30) days after a homeowners obtains a signed receipt by the Association duly acknowledging said plans and specifications have been submitted to it, approval will not be required, and this Article will have been deemed to have been fully complied with. The Architectural Control Committee shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed **\$25.00**. The Architectural Control Committee shall not approve any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or appearance of any Lot or the Common Area. These restrictions herein contained shall have no application to the development, improvement, maintenance and repair of the Project by Declarant, and neither the Board nor the Architectural Control Committee shall have any power or authority to review or require modifications in plans and specifications for construction or installation of improvements by Declarant.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which in any dimension larger than prescribed by the Act or which is not installed in accordance with the advance notice requirements and location guidelines of the Act may be installed or maintained on any lot except with the prior written approval of the architectural control committee.

## **Section 2 - Reconstruction of Residences**

In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans and specifications thereof, provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the Board or duly authorized architectural control committee to reconstruct or repair his residence in accordance with revisions in the plans and

specifications. The Board or said committee shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Project in a manner generally consistent with the plan and development thereof.

## **ARTICLE IX - USE RESTRICTIONS**

### **Section 1 - Residential Use**

All Lots in the tract shall be known and described as residential Lots. No structure shall be erected, altered, placed, or permitted to remain on any residential building Lot other than one detached single-family dwelling, not to exceed two and one-half (2 1/2) stories in height. The foregoing notwithstanding, it shall be expressly permissible for Owners to conduct certain business or commercial activities within their residence which do not conflict with local zoning ordinance restrictions and regulations. No such activity shall be conducted which shall unduly burden traffic flows within the Property or cause the parking of non-resident vehicles upon the street for unreasonable or excessive periods of time. It shall be within the discretion of the Declarant or the Board to determine, on a case-by case basis, which commercial and business activities will be compatible with the residential nature of the subdivision. This restriction shall not apply to model homes, sales trailers, construction trailers used by Declarant and its agents and contractors in the conduct of their business for completion of sales

### **Section 2 - Building Setbacks**

No building shall be erected on any residential lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. With respect to corner lots the front lot lines shall be deemed the street line having the shorter frontage, and any residence erected on such corner lot shall face the front lot line. No building, garage, carport, or other accessory building and structure incidental to the residential use of the lots shall be located nearer to a side lot line than permitted by the City of Charlotte or the Union zoning ordinances as such ordinances change from time to time. For purposes of determining compliance or noncompliance with the foregoing building line requirements, porches, terraces, eaves, wing-walls, and steps extended beyond the outside wall of a structure shall not considered as part of the structure, provided, however, that this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

### **Section 3 - Exterior Dwelling Requirements**

All dwellings shall have exterior treatments of brick or vinyl siding.

#### **Section 4 - Unlawful Activity**

No unlawful activity shall be conducted on any Lot or in any other part of the Property. Nothing shall be done within the Project that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Project, or that unreasonably interferes with the quiet enjoyment of occupants of the Lots.

#### **Section 5. Parking**

No boat, trailer, recreational vehicles, camper, camper truck or commercial vehicle shall be parked, stored or left

*(a) on any part of the Common Area,*

*(b) in any driveway or*

*(c) on any other part of a Lot unless the same are fully enclosed within the garage located on the Lot or are kept behind the front line of the house on the Lot and behind a fence no less than six (6) feet in height and which screens them from view of the public walking by such Lot.*

This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to completion of sales. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Project. No unlicensed or inoperable vehicles will be allowed to remain on any lot outside an enclosed garage. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Project, except in the case of emergency and except as may be permitted by the Rules and Regulations.

#### **Section 6 - Signs and Curtains**

No Owner shall place on or about any window any metallic foil or other coating, substance or material which similarly acts as a reflector of light nor shall an Owner place newspapers or bed sheets in any window. No Owner shall display, hang, store or use any signs outside of a dwelling on any Lot or in any dwelling so as to be visible from outside the Lot, other than as may be permitted by the Rules and Regulations. Notwithstanding the foregoing, one sign of customary and reasonable dimensions, conforming to such reasonable standard as may be adopted by the Board, advertising a Lot for sale or rent may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Lots

#### **Section 7 - Antennas**

As provided in Article VIII, except for such as are covered by, and installed in strict compliance with the requirements of the Telecommunications Act of 1996, as amended, no Owner shall construct, install, erect or maintain any outside television or radio pole or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot, without the express written approval of the architectural control committee

## **Section 8. Laundry**

No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible within the Project from outside such Lot.

## **Section 9 - Fences**

No fence or wall shall be erected on any Lot closer to the street than the rear corner of house, the side street setback or twenty (20) feet from the front of the house. except for temporary decorative fencing installed by the builder on a model home. Perimeter fencing and privacy fencing around patios, decks or pools may not exceed six (6) feet in height. Perimeter fencing, unless constructed of brick or stone masonry, shall not have more than 80% of any of its surfaced closed as viewed from a point on a line of sight perpendicular to the line formed by the line of the fence. Chain link fencing is expressly prohibited, except that 2" x 4" mesh may be used with split rail fencing to contain animals within the yard. Fencing of a more solid or privacy nature may be used around patios, wood decks, or pools as privacy screens.

## **Section 10 - Pets**

*(a) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The total number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in number except for newborn offspring of such household pets which are under six (6) months of age. No animal shall be allowed in the Project if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal; constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Project.*

*(b) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any mess that a pet creates within the Property. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Project at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be moved as provided in paragraph (a) above.*

## **Section 11 - Trash and Vegetation**

No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened from view. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Project which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the occupants of any property in such vicinity. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Project shall be kept



trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed.

#### **Section 12 - Nuisance**

No noxious or offensive activity shall be carried on in or upon any Lot or the Common Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Project or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any

#### **Section 13 - Dwelling Size**

The minimal heated square footage of a dwelling may not be less than 900 square feet of improved heated living area.

#### **Section 14 - Metal Garages, Carports, Buildings, Accessory Structures and Above Ground Pools.**

No metal carport, metal garage, metal building or metal accessory structure of any kind shall be permitted on any Lot or attached to any residence building located on the Lot. All accessory buildings and/or structures must be constructed with similar materials and painted the same color as the dwelling. No above ground pools may be constructed, placed or permitted to remain on any lot.

#### **Section 15 - Maintenance of Lot**

Each owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing or caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks or other exterior improvements. The owner of each Lot shall maintain the grounds and improvements situated on the Lot, including but not limited to plantings, landscaping and lawns at all times in a neat and attractive manner. No lot shall be used in whole or in part for storage of rubbish of any character whatsoever, and no trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure, provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units.

#### **Section 16 - Recutting Lots**

No Lot shall be recut so as to face in any direction other than as is shown on the recorded plat nor shall it be recut so as to make any building site smaller than is provided for herein. This provision is not intended to prevent cutting off a small portion or portions of any Lot for the purpose of conveying the same to an adjoining property owner or straightening a boundary line. However, the remaining portion of the Lot must not violate the minimum size requirements of any zoning regulations.

### **Section 17 - Mailboxes**

Mailboxes installed by the Declarant must remain in place. Any repairs or replacement of mailboxes must be of equal size, color, design and materials.

### **Section 18 - Sports Equipment**

No permanent basketball goals will be allowed to be constructed or maintained on any Lot. Temporary basketball goals will be permitted but must be stored out of sight when not in use.

## **ARTICLE X - INSURANCE**

### **Section 1 - Authority to Purchase Insurance**

*(a) The Association shall have the duty and authority to maintain insurance coverage on the Common Area (except title insurance) in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the Project. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.*

*(b) Each Owner shall maintain a casualty and personal liability insurance pertaining to his Lot, in such form and in such amounts as the Rules and Regulations may require.*

*(c) All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation if such waiver can be obtained, unless otherwise provided in the Rules and Regulations.*

### **Section 2 - Proceeds of Insurance**

All insurance policies purchased by the Association shall be for the benefit of the Association, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. Proceeds payable on account of damage to the Common Area shall be held by the Association to repair or rebuild the Common Area. Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications. If the property is not rebuilt, then the funds shall be held by the Association and applied to its general expenses.

# **ARTICLE XI - INDEMNIFICATION OF OFFICERS AND DIRECTORS**

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim action, suit or proceeding in which they, or any of them are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in matters as to which an such director or officer or former director or officer or personal shall be adjudged in an action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association.

The provisions herein shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, bylaw, agreement, vote of the Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this Bylaw.

# **ARTICLE XII - MORTGAGEE PROTECTION**

## **Section 1 - Interpretation**

In the event any provision of this Article XII is inconsistent with or contrary to any other provision of this Declaration the Provisions of this Article XII shall control.

## **Section 2 - Notices**

Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of

*(i) any default which is outstanding for sixty (60) days or longer by the owner of such Lot in performance of his obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations,*

*(ii) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and*

*(iii) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or any Lot or portion thereof.*

## **Section 3 - Mortgagee's Right to Information**

Upon written request to the Association, a Mortgagee is entitled to:

*(1) inspect the books and records of the Association during normal business hours; and*

*(2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and*

*(3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.*

## **Section 4 - Damage and Destruction Rights**

In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area no provision of any document establishing the project shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

## **Section 5 - Condemnation Rights**

If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Project shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

## **Section 6 - Right of First Refusal**

Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed of assignment in lieu of foreclosure.

### **Section 7 - Subordination**

No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessments becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

### **Section 8 - Payments by Mortgagees**

Any Mortgagee, after at least ten (10) days prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

# ARTICLE XIII - DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

## **Section 1. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes**

The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Property in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section 2 of this Article, shall be resolved using the procedures set forth in Section 3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

## **Section 2 - Exempt Claims**

The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 3:

*a) Any suit by the Association against any Bound Party to enforce the provisions of Article VI (Assessments);*

*b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article VIII (Architectural Control) and Article IX (Use Restrictions);*

*c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds **\$5,000.00**;*

*d) Any suit arising out of any written contract between Owners, or between the Declarant and any Builder, which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, By-Laws, and Articles of the Association, and*

*e) Any suit in which all parties are not Bound Parties.*

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 3 herein, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 3 shall require the approval of the Association.

### **Section 3 - Mandatory Procedures for All Other Claims.**

All claims other than Exempt Claims shall be resolved using the following procedures:

#### *a) Notice*

Any Bound Party having a claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved and Respondent's role in the Claim;
2. The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);
3. What Claimant wants Respondent to do or not do to resolve the Claim; and That Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

#### *b) Negotiation.*

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.
2. Upon receipt of a written request from any Party accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

#### *c) Mediation.*

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of the Community Relator Dispute Settlement Program or any dispute resolution center or other such independent agency providing similar services in Union County area upon which the Parties may mutually agree.
2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.
3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.
4. Each Party shall, within 5 days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the

Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer,

*d) Final and Binding Arbitration,*

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 156 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "B" or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such a Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

**Section 4 - Allocation of Costs of Resolving Claims**

*1. Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 3(a), (b), and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 3 (c).*

*2. Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in subsection 4(c).*

*3. Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, which Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.*

**Section 5 - Enforcement of Resolution**

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 3 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.



### **Section 6 - Commencement of Litigation**

Any litigation by the homeowners association other than the "Exempt Claims" set out in subsection 2 shall require an of the members of the homeowners association prior to the institution of such litigation.

## **ARTICLE XIV - GENERAL PROVISIONS**

### **Section 1 - Covenants Running with the Land**

All provisions of this Declaration shall be construed to be covenants running with land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any Lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration

### **Section 2 - Duration**

The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty **(20)** years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten **(10)** years each.

### **Section 3 - Amendment**

This Declaration may be amended or terminated during the first twenty **(20)** year period by an instrument signed by not less than two-thirds **(2/3)** of the Owners, and thereafter may be amended or terminated by an instrument signed by not less than two thirds of the Owners. Any such amendment or termination shall not effective until an instrument evidencing such change has been filed of record in the Union County Public Registry

### **Section 4 - Enforcement**

The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles shall entitle the an action for the recovery of damages or injunctive relief or both, and such persons or entitles, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

### **Section 5 - Severability**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 6 - FHANVA Approval**

In the event the Declarant has arranged for and provided purchasers of Lots with FHA insured mortgage loans, then as long as any Class B Lot exists, as provided for in Article 4 hereof, the following actions will require the prior approval of the Federal Housing Administration of the Department of Veterans Affairs: annexation of additional properties, other than as provided in Article II hereof, deeding of common area to persons other than the Association and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF the undersigned, being the Declarant herein, has executed this Declaration as of the date first set about set forth.

# EXHIBIT A

## EXHIBIT "A"

Beginning at an iron on the northeasterly right-of-way margin of Shannon Road (R/W =60') which iron has NC Grid Coordinates of N:447110.2726 and E:1491492.5133 and is situated on the westerly line of the property of Gloria Owen and Michael R. Pressley (now or formerly, D.R. 578-603); thence proceeding from the Beginning Point with the westerly line (as extended) of the said Owen and Pressley property, S 35-28-00 W 29.95 feet to a nail in the centerline of Shannon Road; thence with the centerline of Shannon Road two courses and distances as follows: (1) N 49-53-48 W 31.62 feet to a point, and (2) N 50-21-48 W 595.27 feet to a new nail; thence N 46-53-12 E 30.24 feet to a point on the northeasterly right-of-way margin of Shannon Road; thence with the right-of-way margin of Shannon Road two courses and distances as follows: (1) N 50-13-52 W 349.99 feet and (2) N 49-34-13 W 603.56 feet to a point on the easterly line of the property of James Norman and Betty Norman (now or formerly, D.R. 710-347); thence with the easterly line of the property of James and Betty Norman, N 28-49-22 E 683.75 feet to an iron on the boundary of the property of Richard B. Baker (now or formerly, D.R. 287-320); thence with lines of the property of Richard B. Baker two courses and distances as follows: (1) S 81-59-09 E 217.75 feet and (2) N 51-53-54 W 232.29 feet to an iron the southerly most corner of the property of Paul W. Canter (now or formerly, D.R. 316-666); thence with the easterly line of the said property of Canter, N 02-32-42 E 70.21 feet to a point on the southerly line of the property of Silver Creek Development Group, LLC (now or formerly, D.R. 1254-231); thence with the southerly line of the property of Silver Creek Development Group, LLC twenty four courses and distances as follows: (1) S 46-38-39 E 93.00 feet (2) S 55-56-12 E 171.53 feet (3) N 51-08-56 E 158.49 feet (4) S 66-48-40 E 23.29 feet to a point (5) S 87-03-31 E 69.58 feet (6) N 74-54-16 E 120.78 feet (7) N 49-32-11 E 34.90 feet (8) N 16-25-07 E 88.94 feet (9) N 12-23-32 W 46.60 feet (10) N 43-28-18 W 141.47 feet (11) N 12-18-59 W 40.66 feet (12) N 11-39-16 W 23.70 feet (13) N 41-02-16 E 96.72 feet (14) N 32-14-36 E 272.02 feet (15) N 65-26-17 E 15.44 feet (16) S 77-36-07 E 67.03 feet (17) S 49-58-35 E 49.66 feet (18) S 67-07-14 E 74.82 feet (19) N 88-53-16 E 199.06 feet (20) N 78-08-02 E 385.69 feet (21) N 83-30-41 E 280.00 feet (22) N 66-04-59 E 939.19 feet (23) N 76-50-17 E 66.47 feet and (24) S 80-52-18 E 768.48 feet to an iron on the westerly line of Oak Hill Plantation, Phase 1; thence with the westerly line of Oak Hill Plantation, Phase 1 and continuing with the westerly line of Oak Hill Estates, Phase 2, S 23-36-15 W 3068.54 feet to an iron the southwesterly corner of Lot 64 of Oak Hill Estates, Phase 2 as shown on the plat recorded in Plat Cabinet E at File 512 of the Union County Public Registry; thence with the northerly boundary of

Donald Robinson Family Limited Partnership (now or formerly, D.R. 826-364) three courses and distances as follows: (1) N 65-24-08 W 234.04 feet, (2) N 30-14-48 W 52.60 feet and (3) N 37-05-19 W 215.60 feet thence with lines of the property of Harry W. Hammer (now or formerly, D.R. 370-574) seven courses and distances as follows: (1) N 29-09-48 W 66.97 feet, (2) N 58-37-08 W 18.39 feet, (3) N 76-21-08 W 114.65 feet, (4) N 66-14-08 W 76.61 feet (5) N 88-01-28 W 155.31 feet, (6) N 75-13-48 W 77.70 feet, and (7) S 35-58-12 W 415.35 feet to an iron, the northeasterly corner of the aforesaid property of Pressley; thence with the lines of the said property of Pressley two courses and distances as follows: (1) N 49-53-48 W 210.00 feet and (2) S 36-00-54 W 179.95 feet to the point and place of Beginning and containing 145.23 acres, all as shown on survey by Brian K. Flaherty, NCRLS, dated May 16, 2002.