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DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

ANNANDALE



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DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
ANNANDALE

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by McCAR HOMES-CHARLOTTE, LLC, a North Carolina limited liability company, as successor by name change to MDC Homes-Charlotte, LLC (hereinafter referred to as the "*Declaration*").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land being approximately 92.4 acres lying and being located in Union County, North Carolina, as more particularly described on Exhibit A (hereinafter referred to as the "Property"); and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create an association to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below), to administer and enforce the covenants and restrictions and design guidelines imposed hereby, and to collect, hold, and disburse the charges and assessments provided in the Declaration; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association;

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association, but does not and is not intended to submit the Property to the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, et seq.

ARTICLE I.  
DEFINITIONS

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

"*Additional Property*" shall mean any and all real property lying and being within five (5) miles of the Property.

"*Annual Assessment*" shall have the meaning specified in the Article entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

"*Architectural Control Committee*" ("*ACC*") shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in the Article entitled "Architectural Control".

"*Area of Common Responsibility*" shall mean the Common Areas, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person become the responsibility of the Association.

"*Articles of Incorporation*" shall mean the Articles of Incorporation of the Association, as the same may be

amended from time to time.

**"Association"** shall mean Annandale Owners Association, Inc., a North Carolina non-profit corporation.

**"Board of Directors"** shall mean the body responsible for the administration of the Association, selected as provided in the Bylaws.

**"Bylaws"** shall mean the Bylaws of the Association, as the same may be amended from time to time.

**"Common Areas"** shall mean, singularly or collectively, as applicable, all land, common open space ("COS"), amenity areas, improvements and other properties which hereafter shall be deeded to, or acquired by, the Association for the common use and enjoyment of the Owners

**"Community Wide Standards"** shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by Declarant and may be more specifically determined by the Architectural Control Committee.

**"Declarant"** shall mean McCAR HOMES-CHARLOTTE, L.L.C., a North Carolina limited liability company, as successor by name change to MDC Homes-Charlotte, L.L.C. and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

**"Declaration"** shall mean this Declaration of Covenants, Restrictions and Easements, as the same may be hereafter amended in accordance with the terms hereof.

**"Development Period"** shall mean the period of time during which Declarant owns any property that is subject to this Declaration or has the unilateral right to subject Additional Property to this Declaration pursuant to Article II. Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the Register of Deeds.

**"Improved Lot"** shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which has been sold to a Person who is not the Declarant.

**"Lot"** shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown and indicated as a "Lot" on any of the Plats which are hereafter recorded.

**"Member"** shall mean a Person subject to membership in the Association pursuant to the Article entitled "The Association".

**"Mortgage"** shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

**"Owner"** shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

**"Person"** shall mean a natural person, corporation, trust, partnership or any other legal entity.

**"Plats"** shall mean the Final Plat of ANNANDALE prepared by Insite Engineering & Surveying, recorded in the Register of Deeds Office, at Plat Cabinet 1, Files 917-919, together with all amendments thereto, and any and all other

plats, and amendments thereto, that are hereafter recorded in the plat book records of the Register of Deeds for the purpose of subjecting any of the Additional Property to this Declaration.

*"Property"* shall have the meaning ascribed to it hereinabove.

*"Register of Deeds"* shall mean the Union County, North Carolina Register of Deeds.

*"Resource Conservation Areas"* (sometimes abbreviated "RCA") shall mean those portions of the Common Areas the use of which the Declarant or the Association has restricted for the purpose of complying with governmental regulations or advancing environmental or ecological objectives.

*"Supplemental Declaration"* shall mean an instrument filed with the Register of Deeds which imposes additional restrictions and/or obligations on the land described in such instrument.

*"Unimproved Lot"* shall mean a Lot which is not an Improved Lot.

## ARTICLE II. PROPERTY SUBMITTED TO THIS DECLARATION

Section 1. Lots Hereby Subjected to this Declaration. Declarant, for itself and its successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 3. Annexation of Additional Property. Declarant may, at any time, and from time to time, prior to ten (10) years from the date hereof, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the Register of Deeds an amendment to this Declaration describing the property being annexed. Declarant further has the right to convey to the Association additional Common Areas contained within such Additional Property, the maintenance of which may increase the amount of the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Lot.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the Register of Deeds covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, and developments contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

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No approval from any member of the Association, or from anyone else whomsoever, shall be required for Declarant to subject additional property to this Declaration.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration during the Development Period, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes Declarant's right to deed over property to any governmental entity as required or deemed desirable in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not Declarant. If the property is part of the Common Areas, the Association shall also consent to the withdrawal.

Section 5. Submission to a Master Community and Other Acts of Declarant. Declarant reserves the right to amend this Declaration during the Development Period to submit the Property and the Additional Property to a larger planned community, to subject the Property to a master association and to consolidate the Association with other homeowners' or community associations.

### ARTICLE III ASSOCIATION PROPERTY

Section 1. Common Areas and Association Property. Declarant shall have the right to transfer and convey to the Association, or cause the transfer and conveyance to the Association, any portion of the Property. All portions of the Property which are so transferred or conveyed to the Association shall thereafter constitute Common Areas. Said right may be exercised by Declarant any time, and from time to time, prior to ten (10) years from the date hereof. Common Areas shall be conveyed to the Association by Special Warranty Deed subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such right and easements.

Section 2. Member's Rights in Association Property. Except in the case of Common Areas designated as Limited Common Areas or Resource Conservation Areas, every Owner of every Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. Where Common Areas are designated as Limited Common Areas, the Owners of Lots benefited by said Limited Common Areas shall have the right and easement of enjoyment and use in and to said Limited Common Areas. The right and easement of enjoyment and use of the Common Areas and Limited Common Areas are and shall be subject to the easements which are described in this Article and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, Limited Common Areas and Resource Conservation Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Areas to the extent necessary for such Owner to have access to and from his Lot.

The Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all Mortgages encumbering any portion of the Property.

Section 4. Condemnation. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board acting on the written direction of the Owners of at least 67% of the Lots (and, if during the Development Period,



the written consent of Declarant), the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent feasible unless, within 60 days after such taking, the Owners of at least 67% of the Lots (and Declarant, if during the Development Period) otherwise agree. The provisions of the subsection immediately below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by the Owners of at least 67% of the Lots, and by Declarant, if during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgage of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy special assessments to cover the shortfall.

Section 6. Permitted Actions. Notwithstanding anything to the contrary in this Article, however, after the Declarant's control period, the Association, acting through the Board, may dedicate portions of the Common Areas, except for any Common Area amenities, to any local, state or federal governmental or quasi-governmental entity and may grant easement over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas, all without the approval of the Membership. Any dedication of Common Area amenities shall be done with approval of the Membership as set forth in the Bylaws. During the Declarant control period, the Declarant may dedicate all portions of the Common Areas, as it deems appropriate, to any local, state or federal governmental or quasi-governmental entity.

Section 7. Actions Requiring Owner Approval. If the U.S. Department of Housing and Urban Development ("HUD") is insuring the Mortgage on any Lot or the U.D. Department of Veterans Affairs ("VA") is guaranteeing the Mortgage on any Lot, and if HUD or VA regulations require such approval, then any conveyance or mortgaging of the Common Areas will require the consent of at least 67% of the Class A votes held by Members other than the Declarant and, if during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this section, however, the Association, acting through the Board, may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas, without the approval of the Membership.

#### ARTICLE IV. EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY

Section 1. Easements and Agreements Regarding Association Property. In addition to all easements and agreements of record, the Property shall be subject to, and Declarant and the Association do hereby grant, the following easements:

- (a) Easements Shown on Plans. The Property shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plans as affecting and burdening the Property.
- (b) Use of Common Areas. Declarant hereby reserves an easement for the exclusive use of such portions of the

Common Areas as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by Declarant and any and all persons who Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders, and their subcontractors, of residences upon the Lots, irrespective of whether such persons are affiliated with Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate one (1) year and thirty (30) days after the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) Declarant Activities. Notwithstanding any provision contained in this Declaration, the Bylaws or the Articles of Incorporation to the contrary, until the expiration of the Development Period, it shall be expressly permissible for Declarant, and any Person authorized by Declarant, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as may reasonably be required by Declarant, including but without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Property; the right to tie into any portion of the Property with driveways, parking, areas and walkways; the right to tie into and/or maintain and repair any device (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; the right to carry on sales and promotional activities on the Property; and the right to construct and operate business offices, signs, construction trailers, and model residences; and the right to exercise all rights reserved to Declarant in this Declaration.

Section 2. Easements Over Lots. In addition to all easements and agreements of record, the Lots shall be subjected to, and Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) Easements Shown on Plats. Each Lot shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plats as affecting and burdening such Lot.

(b) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(c) Encroachments. Each Lot shall have a three (3) foot easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and adjacent Common Areas, for driveway, HVAC or fence encroachments which may be erected in said easement areas, unless such encroachment was due to a willful act of the Lot Owner or the Association. HVAC units must adhere to a five (5) foot setback from all property lines.

(d) Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of Declarant, authorized builders and contractors, and adjoining Lot Owners for construction activities on any Lot, including but not limited to the installation of boundary line improvements such as walls, fences and hedges. Any improvement made by an adjoining Lot Owner shall be subject to the architectural control provisions contained herein and must be approved by Declarant or the Association, as applicable, prior to installation.

(e) Slope Control. Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(f) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association

and all other Lots for the drainage of surface waters over, under and across such Lot, including any runoff or carry over of water from one Lot to another, provided that such cross Lot drainage condition was created by Declarant or by a builder authorized by Declarant.

(g) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, and authorized builders and subcontractors, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction and maintenance of wires, lines, conduits, and attachments both above and below ground in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables and other utilities. The easement rights to which the Lots shall be subject shall include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work. The Association shall be responsible for the maintenance and management of the private water and sewer facilities located on or under the Common Areas.

Section 3. Easement Disclosure. Persons considering purchasing lots 37-66 are informed that an easement for the maintenance of sanitary sewer pipes is located along the rear of lots 37-66. This easement is recorded at Book 781, Page 675 of the Union County registry. Interested persons are referred to the easement for additional information and are encouraged to investigate the easement fully.  
.. and in Book 1516, Page 679

#### ARTICLE V. THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the Register of Deeds, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 2. Membership. Every Owner is and shall be a Member of the Association. In no event shall such membership be severed from the Ownership of such Lot.

Section 3. Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. The Class A members shall be all those Persons holding an interest required for membership in the Association, as specified in this Article, except for those Persons who are Class B members. Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

The Class A members shall be entitled to full voting privileges on the earlier of the following dates to occur: (i) the date which the Declarant may so designate by notice in a writing delivered to the Association, (ii) the date on which 100% of the Lots are Improved Lots, or (iii) ten years from the date hereof. Until the earliest of these dates occurs, the Class A members shall be entitled to vote only on matters for which it is herein specifically provided, or for which it is provided by the law, that approval of each and every class of membership of the Association is required. When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

(b) Class B. Declarant shall be the only Class B member. Class B membership shall be a full voting membership and, during its existence, the Class B members shall be entitled to vote on all matters and in all events. At such time as the Class A members shall be entitled to full voting privileges, as provided in paragraph (a) hereof, the Class

B membership shall automatically terminate and cease to exist, and the Class B member shall be and become a Class A member insofar as it may then hold any interest required for membership.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4. Suspension of Membership Privileges. The membership privileges of any Member of the Association, including the right to use any of the Association amenities, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association.

Section 5. Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law. In the event of any discrepancy, the law shall take precedent, followed by the Declaration, Articles and Bylaws, in that order.

Section 6. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association or the Owners of Lots must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by Declarant during the Declarant Control Period, as such term is defined in the Bylaws) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 7. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

## ARTICLE VI. ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for an Improved Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon, late charges, and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any first priority Mortgage covering the Lot and the lien of any Mortgage recorded prior to the recording of this Declaration; and (3) The lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and

and upon each resale of the Lot thereafter, there shall be levied against such Improved Lot and paid to the Association a special assessment as set from time to time by Declarant or the Board of Directors of the Association. Such amount shall not be less than 1/6 of the Annual Assessment or greater than the total amount of the Annual Assessment which shall have been levied against Improved Lots for the calendar year in which such transfer of title shall take place. The Association shall use all special assessment payments which shall be so received by it pursuant to this section to establish a working capital reserve fund for use in connection with capital repairs and capital improvements. Declarant or Board shall endeavor to collect such special assessment at the closing of the purchase of the Improved Lot; however, the failure to collect such special assessment at that time shall not excuse the obligation to make such payment.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. (a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, or any installment of any annual or special assessment which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent Member, which lien shall bind such Lot or Lots in the hands of the then Owner, and his heirs, devisees, successors and assigns. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain as fully obligated as before to pay to the Association any and all amounts which such Owner shall nevertheless remain as fully obligated as before to pay to the Association and all amounts which said Owner was obligated to pay immediately preceding the transfer, and such Owner and such successors in title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and successors in title creating any indemnification of the Owner or any relationship of principal and surety as between themselves.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this section shall accrue a late charge, at the sole discretion of the Board of Directors, and bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the Member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such Member, in either of which events such Member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 8. Budget Deficits during Declarant Control Period. Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association.

Section 9. Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## ARTICLE VII. ARCHITECTURAL CONTROL

Section 1. Architectural Restrictions. No Exterior Structure or Improvement, as defined herein, shall be placed, constructed, erected, installed or made on any Lot unless such building meets all square footage and other requirements that may be set forth in the Plans and is in strict compliance with the provisions of this article. The architectural restrictions contained in this Article are in addition to those imposed by applicable statutes, ordinances and regulations, and all Owners must comply with both the restrictions contained in this Declaration and must comply with all applicable statutes, ordinances and regulations. Without limiting the generality of the foregoing, now Owner may undertake any

construction on its property without first obtaining from the Town of Indian Trail and Union county such permits as may be required for such construction.

Section 2. Architectural Control Committee. Responsibility for the review of all applications under this Article shall be handled by the Architectural Control Committee ("ACC"), the members of which need not be Members of the Association and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ACC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ACC in having any application reviewed by architects, engineers or other professionals.

The ACC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property and shall be the sole arbiter of applications and may withhold approval for any reason, including, without limitation, purely aesthetic considerations. ACC shall have the right, but not the obligation, to promulgate design guidelines and standards for the Property in order to provide guidance to Owners and builders regarding the approval process, which guidelines and standards may be amended by the ACC at any time and from time to time. Compliance with such guidelines and standards shall not guarantee approval of any application.

Until the termination of the Development Period, Declarant retains the right to appoint all members of the ACC, who shall serve at Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board of Directors shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board of Director's discretion.

Section 3. Exterior Structure or Improvement. The term "Exterior Structure or Improvement" shall mean an exterior construction, alteration, addition or change of any nature whatsoever on a Lot [including but not limited to (i) a building, fence, wall, patio, playhouse, playground equipment, swimming pool, spa or other structure, (ii) staking, clearing, excavation, grading, or filling of land, (iii) change in color, type or material of any existing improvement (iv) planting or removal of landscaping materials (v) placement or installation of exterior lighting, statuary, flags, fountains and similar items, or (vi) modification of the interior of a porch, deck, patio or similar portion of a structure which is visible from outside the Lot]. No Exterior Structure or Improvement shall be commenced, placed or maintained upon any Lot until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to and approved by the ACC as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography.

Section 4. Approval Procedures. The plans and specifications which must be submitted to the ACC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ACC may reasonably request in order to render a decision. Notwithstanding the above, however, the ACC, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided that such activities are undertaken in strict compliance with the requirements of such resolution.

In the event that the ACC fails to approve or disapprove any application within sixty (60) days after submission, in the case of the initial construction of a residence on an Unimproved Lot, or within thirty (30) days, in the case of any requested modification, addition or alteration on an Improved Lot, of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with any provision of this Declaration or any rule or guideline promulgated pursuant to this Declaration.

The ACC shall, upon demand, furnish to any member of the Association a certificate in writing signed by a member of the ACC, stating that any exterior addition to, change in, or alteration of any structure or landscaping that has been approved and built in accordance with the provisions of this section is in compliance with the provisions of this section, and such certificate shall be conclusive as to whether the same is in such compliance.

Section 5. Construction Period. Unless otherwise agreed to in writing by the ACC, any Exterior Structure or Improvement must be commenced within 30 days after ACC approval of the plans and specifications for same. After commencement of construction, the Owner shall diligently continue construction to completion in a timely manner and within the time limits and in the manner specified by the ACC at the time the project is approved.

Section 6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 7. Variance. The ACC, in its sole discretion, may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ACC from denying a variance in other circumstances.

Section 8. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only, and shall not create any duty to any Person. Neither Declarant, the Association, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other governmental requirements or regulations. Neither Declarant, the Association, the ACC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the ACC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association.

Section 9. Enforcement. Declarant, any member of the ACC, the Board, or the representatives or agents of each, shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any Exterior Structure or Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request by the ACC, the Owner shall, at its own cost and expense, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Upon the failure or refusal of any person to perform the restoration required herein, the ACC, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized work has been performed, and make such restoration as the ACC, in the exercise of its discretion, may deem necessary or advisable. Entry for such purposes and in compliance with this Section shall not constitute a trespass. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, including without limitation attorneys' fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the ACC shall determine.

Unless otherwise specified in writing by the ACC, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a specific assessment pursuant to this Declaration.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

Section 10. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article shall be construed as prohibiting any construction, alteration, addition or removal by Declarant upon any Lot while such Lot is owned by Declarant. Any construction, alteration, addition or removal performed by Declarant upon any Lot while such Lot is owned by Declarant shall be exempt from the provisions of this Article.

## ARTICLE VIII. RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be used only in accordance with, statutes, ordinances and regulations regarding the use of the Property, including but not limited to the Indian Trail Zoning Ordinance, and the following provisions:

Section 1. Residential Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. No owner may rent a Lot without the prior written consent of the Board of Directors and in no event may greater than 20% of the Lots be rented. Notwithstanding the foregoing, however, nothing set forth in this section shall prohibit: (a) Declarant from conducting such sales, leasing and promotional activities on any Lot as said Declarant shall determine; or (b) the Owner of any Lot from using a portion of a building located on such Lot as an office, provided that such use does not create regular customer, client or employee traffic to and from such Lot and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot; and provided further that the Owner acquires from the Town of Indian Trail all permits necessary for conducting a home occupation on such Lot.

Section 2. Prohibited Activities. No noxious, offensive, unsightly or unkempt activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot. Storage or placement of furniture, potted plants, fixtures, appliances, machinery, bicycles, towels, clotheslines, lawn equipment, building materials or other goods or chattels not in active use on any Lot which is visible from outside the Lot is prohibited except as specifically permitted in this Declaration. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof. Outdoor speakers are allowed, but must be kept to a reasonable sound level so as to not disturb neighboring Lots, which level may be determined by the Board of Directors.

Section 3. Animals. No Owner may keep any pets on any portion of the Property other than dogs, cats and other customary household pets. No Owner or occupant may keep, breed or maintain any pet for any commercial purpose. No Owner or occupant may keep or maintain a dog whose persistent barking causes annoyance or nuisance to any other resident of any other Lot. No owner may keep or maintain more than three (3) animals on any Lot without approval of the Board of Directors, at their sole discretion. Animals must be kept on a leash and be under the physical control of a responsible person at all times while outdoors unless contained within a fenced area. Any feces left upon the Common Areas by an animal must be removed by the owner of the animal or the person responsible for the animal.

No animal determined to be dangerous, in the Board's sole and absolute discretion, may be brought onto or kept on the Property at any time. The Board may have removed by the local authorities, without notice to the animal's owner, any animal that presents an immediate danger to the health, safety or property of any person.

Each Owner who keeps an animal on the Property agrees to indemnify and hold the Association and its directors, officers and agents harmless from any loss, claim or liability of any kind whatsoever arising by reason of such animal.

Section 4. Antennas; Aerials; Satellite Dishes. No transmission antenna of any kind, or the location of same,



may be erected anywhere on a Lot without the prior written consent of the ACC. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter may be placed, allowed or maintained upon any Lot. A DBS or MMDS antenna one (1) meter or less in diameter or television broadcast service antenna may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association as authorized by the FCC, as both may be amended from time to time. HAM radios, two way radios and other hobby or professional radio communication transmission equipment are prohibited.

Declarant or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus of any size for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property.

Section 5. Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Property; (5) seasonal decorative lights; or (6) from house illumination of model homes. Any holiday lighting must be removed no later than thirty (30) days following the holiday.

Section 6. Mailboxes. No change or addition, other than by the Board of Directors shall be made to the design, materials or location of the original mailboxes installed by Declarant for the benefit of the Lots. Mailbox covers and decorations are prohibited.

Section 7. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Board of Directors, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale, not to exceed 2' x 3' in size, and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle. In addition to obtaining the approval of the Board of Directors, an Owner must obtain from the Town of Indian Trail all permits necessary for the display of a sign before displaying an sign on a Lot.

Section 8. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which are approved by the Board of Directors or as required by the applicable governing jurisdiction, and subject to rules promulgated by the Association. No person shall burn rubbish, the garbage or any other form of solid waste on any Lot or on Common Areas or within the right of way of any street within the Property. Trash containers shall be screened from view from the street using landscape materials or other screening materials approved by the ACC. Trash containers should be removed from the street by the end of the day following the trash removal service.

Section 9. Vehicles and Parking. The term "vehicles" as used in this section shall include without limitation automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. With the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Lot or the Property, no person shall park any commercial vehicles (as defined by the Board of Directors), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles or unlicensed or inoperable vehicles within the Property except within a garage.

All Owner and occupant vehicles must be kept and stored when not in use within the Lot's garage space or driveway. Garage doors must remain closed at all times except for entry and exit by vehicles and except for periods not to exceed four consecutive hours for homeownerrelated maintenance activities. No conversion of garage space to living space shall be permitted.

The Association may promulgate and enforce additional rules and restrictions regarding vehicles and parking privileges on the Lots and Common Areas.

Section 10. Window Air-Conditioners. No air-conditioner shall be installed in any window of any building

located on any Lot, nor shall any air-conditioner be installed on any building located on any Lot so that the same protrudes through any exterior wall of such building.

Section 11. Window Treatments. Except as may be otherwise approved in accordance with the Architectural Control provisions contained in the previous Article, all window treatments visible from the outside of a Lot shall be white or off-white in color. No bed sheets, towels, newspaper, tin foil, or similar materials may be used as window treatments.

Section 12. No Subdivision of Lots or Timesharing. No Lot may be further subdivided into any smaller Lot. No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 13. No Combination of Lots. Contiguous Lots may not be combined together without prior written consent of the Board of Directors. In the event that the Board of Directors does approve such a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots which were so combined would have been liable had such combination not taken place. In addition to obtaining the approval of the Board of Directors, an Owner must obtain from the Town of Indian Trail all permits necessary for the combination of one or more Lots before combining any Lots.

Section 14. Trees. No healthy living trees having a diameter of six (6) inches or more measured from a point two (2) feet above the ground shall be removed after the Lot is an Improved Lot, unless such removal is approved by the ACC. In addition to obtaining the approval of the ACC, an Owner must obtain from the Town of Indian Trail all permits necessary for the removal of any tree located in the front yard of a Lot, before removing any tree located in the front yard of a Lot.

Section 15. Outbuildings. Any outbuilding or storage building must be approved by the Board of Directors. Any such buildings may be used for storage purposes only and not for other activities, such as wood working shop, machine shop or other home hobby activities. Such buildings are to be built of similar material as the house on the Lot and painted the same color. Approved storage buildings or outbuildings are to be sited at rear of the house, may not be sited beyond rear building set back line and may not be over one story in height. If any area under a deck attached to a home is used for storage (such as for garden equipment, etc.), such area and storage must be screened from view of other Lots and any street, as approved herein. No animal pens shall be allowed. In addition to obtaining the approval of the Board of Directors, an Owner must obtain from the Town of Indian Trail and Union County all permits necessary for the construction of an outbuilding. The design of any outbuilding must conform to the principal structure on the Lot and must be approved by the ACC. Without limiting the generality of the foregoing, vinyl siding will not be allowed as a building material on any outbuilding.

Section 16. Clotheslines. No exterior clotheslines of any type shall be permitted on any portion of any Lot.

Section 17. Play Equipment. Recreational and playground equipment shall not be placed on the front or side yard of any Lot. Recreational and playground equipment may be placed in the rear of Lot, provided that the equipment is placed 10 feet or more from the rear of the Lot and 10 feet or more from either side of the Lot, and provided further that Recreational and playground equipment may be placed on a Lot which is adjacent to the Common Areas only with the prior written consent of the ACC. Materials, colors and other specifications shall be as provided in the Design Guidelines and otherwise approved by the ACC.

Section 18. Soots, Driveways, Decks, and Patio Areas. Grills, patio furniture and potted plants may be permitted on Patio Areas and Decks, subject to local ordinances and any rules promulgated by the Association with respect thereto; provided such grills, patio furniture or potted plants are not visible from the street, except for Lots situated at the corner of two streets. In addition, any items placed on Soots and Driveways must comply with any rules promulgated by the Association with respect thereto. In addition to obtaining the approval of the ACC, an Owner must obtain from the Town of Indian Trail and Union County all permits necessary for the construction, renovation, repair, or

expansion of a stoop, driveway, deck or patio.

Section 19. Swimming Pools. No swimming pool shall be constructed, erected or maintained without prior approval of the ACC. In no event shall above ground swimming pools or spas be allowed on any Lot, except for wading pools no deeper than two (2) feet and no wider than ten (10) feet in diameter. Wading pools shall be properly stored when not in use. In addition to obtaining the approval of the ACC, an Owner must obtain from the Town of Indian Trail and Union County all permits necessary for the construction, renovation, repair, or expansion of a swimming pool.

Section 20. Decorative Structures. No decorative item, including, but not limited to, statues, birdbaths, lawn ornaments, figurines and fountains, are permitted in the front or side yards that may be visible from the street. Planters which contain live plants are not considered decorative items. Artificial vegetation is considered decorative in nature and is not permitted in the front or side yards.

Section 21. Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness, the Board may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

Section 22. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

## ARTICLE IX. MAINTENANCE

Section 1. Association's Maintenance Responsibility. The Association shall maintain the Area of Common Responsibility (whether or not constituting Common Areas), including: (a) all entry features to the Property, including any electrical and irrigation systems; (b) all streets and sidewalks within the Property; (c) any perimeter fencing, landscaping, irrigation systems and improvements in the Common Areas; (d) storm water detention or drainage facilities serving the Property; and (e) any recreational amenities that are determined by the Association to be a part of its maintenance responsibilities. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed to the Owner as a specific assessment. The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary to maintain the Community Wide Standards.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

Section 2. Owner's Maintenance Responsibility. All maintenance and repair of each Lot and all improvements thereon (unless specifically addressed as being the responsibility of the Association in Section 1 above) shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and improvements in a manner consistent with this

Declaration and the Community Wide Standards. Such maintenance obligation shall include, without limitation, the following: prompt removal of litter and waste; moving and maintenance of yard and beds; keeping improvements, roofs and exterior structures and lighting in good working order and repair and neat and clean condition; complying with all governmental health and police requirements; and repair of exterior damage to improvements.

In the event that the Board determines that any Owner has failed or refused to discharge properly such Owner's obligations hereunder, the Board shall have the right, exercisable by it or through its agents or employees, and after giving to the Owner of such Lot at least fourteen (14) days' notice and an opportunity to correct the unsatisfactory condition (except in the event of an emergency situation, which shall be solely determined by the Board, in which case no notice and opportunity to correct shall be required), to enter upon such Lot and correct the unsatisfactory condition. The Owner of the Lot upon which such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all liens, and shall be subject to the same means of collection, as are the other assessments and charges provided for in this Declaration. In addition, all such costs shall be paid to the Association by such Owner at the same time as the next due Annual Assessment payment, or at such other time, and in such installments, as the Board shall determine.

Section 3. Damage or Destruction. In the event of the occurrence of any damage or destruction by fire or other casualty to the improvements on a Lot, such damage or destruction shall be repaired or rebuilt, as applicable, in all events. All repair, reconstruction or rebuilding of the improvements shall be substantially in accordance with the plans and specifications for such damaged or destroyed Improved Lot prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by the Owner of such Lot and the Board of Directors. The Owner of such damaged or destroyed Improved Lot shall be responsible for ensuring that the work of repairing, reconstructing or rebuilding a damaged or destroyed Improved Lot is completed as soon after the occurrence of such damaged or destruction as is reasonably practicable, at no cost or expense to the Association.

## ARTICLE X. INSURANCE

Section 1. Insurance on Common Areas. The Association shall obtain and maintain casualty insurance for insurable improvements located on the Common Areas. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single limit of at least One Million (\$1,000,000.00) Dollars applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 2. Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance on the Lot and all structures constructed thereon, as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

## Section 3. Additional Insurance Requirements

The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members;
- (b) an agreed value endorsement and an inflation guard endorsement.

All policies of insurance shall be written with a company licensed to do business in the State of North Carolina. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

#### ARTICLE XI. MORTGAGEE PROVISIONS

Section 1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "Eligible Holder"), will be entitled to timely written notice of: (a) any condemnation loss of any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder where such delinquency has continued for a period of sixty (60) days; (c) any default in the performance by the Owner of such encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (d) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 2. Audit. Upon written request of an Eligible Holder and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within 90 days of the date of the request.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds.

Section 4. HUD/VA Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by HUD for insuring or the VA for guaranteeing any Mortgage in the Development, and if required by HUD or VA regulations, then the following actions shall require the prior approval of HUD and/or the VA as applicable: annexation of additional property and material amendment of the Declaration, Bylaws or Articles of Incorporation.

Section 5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a

written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### ARTICLE XII. AMENDMENT

Until the termination of the Development Period, the Declaration may be amended only by Declarant, who may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure or guarantee mortgage loans on the Lots, (d) an amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing.

After the termination of the Development Period, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of 2/3 of the Lot Owners. Notwithstanding the foregoing, the Board governed by the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, *et seq.*

Any amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

#### ARTICLE XIII. MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in the Superior Court of the county where the Property is located for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

BK 4053PG802

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of fifty-one percent of the record Owners of the Lots.

Section 4. Notices. Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of the mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of North Carolina. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or to application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Judicial Proceedings. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Lot Owners. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of Declarant by operation of law or through purchase of Declarant's interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of Declarant.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

McCar Homes-Charlotte, LLC,  
a North Carolina limited liability company,  
as successor by name change to MDC Homes-Charlotte, LLC

By: McCar Homes, Inc., a Georgia Corporation, Its Manager

BK 4 053 PG 803

Scott Payne  
Assistant Vice-President

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Daniel A. Swanson, a Notary Public of Mecklenburg County, North Carolina, certify that Scott Payne personally came before me this day and acknowledged that he is Assistant Vice President of McCar Homes, Inc., a Georgia corporation, and further acknowledged the due execution of this Declaration on behalf of McCar Homes, Inc., acting in its capacity as the Manager of, and as the act and for and on behalf of McCar Homes Charlotte, LLC, a North Carolina limited liability company.

Witness my hand and official notarial stamp or seal, this 24 day of Jun, 2008.

Daniel A. Swanson  
Notary Public

My Commission Expires: 10-18-2010  
[Affix Notarial Stamp or Seal]

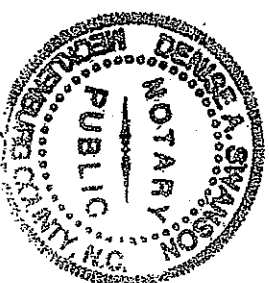




EXHIBIT 'A'  
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in the Town of Indian Trail, Union County, North Carolina and being more particularly described as follows:

BEGINNING at a point marked by a railroad spike found on the centerline of the right-of-way of Poplin Road (having a right-of-way width of 60 feet), said point being located South 38° 48' 07" East 29.97 feet from a point marked by a concrete monument found on the northerly margin of the right-of-way of Poplin Road; thence leaving said right-of-way and running North 38° 48' 7" West a distance of 1,139.19 feet to a point marked by an old pipe found; thence running North 21° 59' 43" East a distance of 225.09 feet to a point marked by a stone found; thence running North 22° 0' 49" East a distance of 503.15 feet to a point marked by a 15-inch mulberry; thence running North 54° 15' 2" West a distance of 410.54 feet to a point marked by a 20-inch sweet gum; thence running North 0° 31' 10" East a distance of 80.91 feet to a point marked by an 18-inch sweet gum; thence running North 74° 47' 13" West a distance of 310.68 feet to a point marked by a rebar found; thence running North 22° 13' 7" East a distance of 805.14 feet to a point marked by a rebar found; thence running South 77° 58' 38" East a distance of 1,381.97 feet to a point marked by a centerline creek; thence running South 38° 5' 8" East a distance of 934.27 feet to a point marked by an iron rod found; thence running South 46° South 22° 8' 27" East a distance of 908.24 feet to a point marked by an iron rod found; thence running South 36° 11' 1" West a distance of 385.77 feet to a point marked by an old pipe found; thence running South 37° 52' 33" West a distance of 103.98 feet to a point marked by an old pipe found; concrete monument found on the right-of-way of Poplin Road; thence running South 37° 52' 33" West a distance of 40.01 feet to a point marked by a railroad spike found on the centerline of the right-of-way of Poplin Road; thence continuing along the centerline of the right-of-way of Poplin Road, the following courses and distances, North 87° 24' 36" West a distance of 12.04 feet to a point; South 88° 24' 28" West a distance of 56.14 feet to a point; South 86° 23' 38" West a distance of 53.20 feet to a point; South 84° 8' 5" West a distance of 38.83 feet to a point marked by a railroad spike found; South 83° 39' 33" West a distance of 18.93 feet to a point; South 82° 5' 43" West a distance of 53.80 feet to a point; South 80° 59' 37" West a distance of 55.98 feet to a point; South 79° 58' 18" West a distance of 54.31 feet to a point; South 78° 47' 51" West a distance of 57.40 feet to a point; South 77° 47' 24" West a distance of 58.24 feet to a point; South 76° 44' 27" West a distance of 55.57 feet to a point; South 75° 28' 23" West a distance of 56.91 feet to a point; South 74° 20' 55" West a distance of 57.62 feet to a point; South 72° 52' 13" West a distance of 55.91 feet to a point; South 70° 38' 57" West a distance of 57.05 feet to a point; South 68° 22' 52" West a distance of 55.94 feet to a point; South 66° 10' 35" West a distance of 55.88 feet to a point; South 63° 29' 47" West a distance of 55.53 feet to a point; South 60° 58' 28" West a distance of 55.41 feet to a point; South 56° 52' 45" West a distance of 62.00 feet to a point; and South 57° 8' 28" West a distance of 9.23 feet to a point marked by a railroad spike found on the centerline of the right-of-way of Poplin Road, said point being the POINT OF BEGINNING.

Said tract or parcel containing .92,3999 acres, 0.7252 acres of which are located within the right-of-way of Poplin Road, resulting in Net Acreage of 91.6747, as shown on that certain Boundary Survey of 92.3999 acres on Poplin Road for MDC Homes, dated July 16, 2004, last revised September 15, 2005, prepared by Insile Engineering & Surveying, Robert D. Bartlett, N.C.P.L.S. L-3635.

**BYLAWS**  
**OF**  
**ANNANDALE OWNERS ASSOCIATION, INC.**

**ARTICLE I: OFFICE**

The Annandale Owners Association, Inc. (the "Association") shall at all times maintain a registered office in the State of North Carolina and a registered agent at that address. The Association may also have such other offices as the Board of Directors shall determine.

**ARTICLE II: DEFINITIONS**

Unless the context requires otherwise, the terms defined in the Declaration of Covenants, Restrictions and Easements for Annandale, recorded in the Union County, North Carolina Registry (the "*Declaration*", the Declaration being incorporated herein in its entirety) shall have the same meanings for purposes of these Bylaws as are ascribed to them in the Declaration.

**ARTICLE III: MEMBERS**

Section 3.1 Membership. The Association shall have two classes of membership, Class A and Class B, which classes of membership shall have the rights conferred upon them by the Declaration, the Articles of Incorporation of the Association and these Bylaws.

Persons who hold an interest merely as security for the performance of an obligation are not Members, and the giving of a security interest shall not terminate a Member's membership. In no event shall there be more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, rights of use and enjoyment shall be as provided in the Declaration and in the Bylaws, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

In the event a Member is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Member, which will create a vacancy in any elected or appointed position within the Association in which such person may have been serving, to be filled by the Board.

Section 3.2 Annual Meeting. A meeting of the Members of the Association shall be held annually at such time and place on such date as the Directors shall determine from time to time.

Section 3.3 Special Meetings. Special meetings of the Members may be called at any time by the President of the Association. Additionally, it shall be the duty of the President to call a special meeting of the Members upon being presented with a written request to do so signed (i) by a majority

of the members of the Board of Directors, or (ii) after the termination of the Class B membership, by the Members of the Association entitled to cast no less than twenty percent (20%) of the total vote of the Association.

Section 3.4 Notice of Meetings. It shall be the duty of the Secretary to give a notice to each Member of each meeting of the Members at least 21 days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting. Each notice of a meeting shall state the purpose thereof, as well as the time and place where it is to be held, and shall be delivered personally or sent by United States mail, postage prepaid, to all Owners of record at such address or addresses as designated by such Owners or, if no other address has been so designated, at the address of their respective Lot.

Section 3.5 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any Association meeting, either before or after such meeting. Attendance at a meeting by a Member, whether in person or represented by proxy, shall be deemed a waiver by such Member of notice of the time, date, and place thereof unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 3.6 Quorum. A quorum is composed of those Members attending a meeting or voting on a matter in person or by proxy, provided that, unless 20 percent or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice. If a 20 percent or more of the voting power is not present in person or proxy at the first meeting to discuss those matters described in the meeting notice, the quorum at a subsequent meeting, to discuss those same matters described in the first meeting notice, will be met if 10 percent or more of the voting power is present in person or by proxy at the subsequent meeting.

Section 3.7 Voting. On all matters upon which the Members are entitled to vote, each Member shall be entitled to cast one (1) vote for each Lot in which he shall own of record a fee interest or an undivided fee interest. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercise as they determine between themselves, but in no event shall more than one vote be cast with respect to any Lot. If only one co-owner attempts to cast the vote for a Member Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement among co-owners and two or more of them attempt to cast a vote, such Persons shall not be recognized and such votes shall not be counted.

No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Member is shown on the books or management accounts of the Association to be more than (30) days delinquent in any payment due the Association or if the Member has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of a Member have been suspended, that Member shall not be

counted as an eligible vote for purposes of establishing a majority or a quorum or for purposes of amending these Bylaws or the Declaration.

**Section 3.8 Adjournments.** Any meeting of the Members may be adjourned by the holders of a majority of the votes represented at the meeting to reconvene at a specific time and place. It shall not be necessary to give any notice of the reconvened meeting, if the time and place of the reconvened meeting are announced at the meeting which was adjourned. At any such reconvened meeting, any business may be transacted which could have been transacted at the meeting which was adjourned.

**Section 3.9 Proxy.** Any Member entitled to vote may do so by written proxy duly executed by such Member setting forth the meeting at which the proxy is valid. Only Members and their spouses or co-habitants may hold proxies. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail, or facsimile transmission to any Board member or any Board member. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the proxy giver at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

**Section 3.10 Consents.** In the Board's discretion, any action that may be taken by the Association Members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every Member entitled to vote on the matter.

(a) **Ballot.** A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the corporation in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) **Written Consent.** Approval by written consent shall be valid only when the number of written consents received equals or exceeds the requisite majority of the voting power for such action. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the Members is approved by written consent hereunder, the Board shall issue written notice of such approval to all Members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued, provided, however, if the

consent is to an amendment to the Declaration which must be recorded, the effective date shall be no earlier than the date of recording of such amendment

Section 3.11 Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation.

#### **ARTICLE IV: DIRECTORS**

Section 4.1 Number. The initial number of directors on the Board of Directors shall be one (1). From and after the election of the first Board of Directors to be elected by the Class A Members, the Board of Directors shall consist of five (5) directors who shall be Members or spouses or cohabitants of Members, provided, however, that no Member and his or her spouse or cohabitant or co-Owner may serve on the Board at the same time. The two (2) directors receiving the most votes shall be elected for a term of two (2) years and the remaining three (3) directors elected shall have a term of one (1) year. At the expiration of the term of office of each Board member, and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. The Board members shall hold office until their respective successors shall have been elected by the Association.

Section 4.2 Appointment and Election. Until the termination of the Class B membership, as provided in the Declaration and the Articles of Incorporation of the Association, the Board of Directors shall be appointed by the Class B member.

From and after the termination of the Class B membership, as provided in the Declaration and the Articles of Incorporation of the Association, the members of the Board of Directors (except for the members of the first Board of Directors to be elected after the termination of the Class B membership) shall be elected at each annual meeting of the Members of the Association.

Each Member entitled to vote shall be entitled to cast one (1) vote for each Lot owned by such member for each directorship to be filled on the Board of Directors. Cumulative voting shall not be permitted. The candidates receiving the most votes shall be elected. Voting for election of Board member shall be by secret written ballot (unless dispensed with by unanimous consent at such meeting at which such voting is conducted).

Section 4.3 Removal of Members of the Board of Directors. At any valid regular or special Association meeting, any one or more Board members may be removed with or without cause by a majority of the Members and a successor may then and there be elected to fill the vacancy created. Moreover, any director who has had two (2) consecutive unexcused absences from regularly scheduled Board meetings or missed more than one-third of the meetings of the Board during their term, or who is more than sixty (60) days past due in the payment of any assessment may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 4.4 Vacancies. Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any Board meeting. The successor selected shall hold office for the remainder of the term of the director being replaced.

Section 4.5 Compensation. No fee or compensation shall be paid by the Association to directors for their services in said capacity unless such fee or compensation is approved by a majority of the votes of the Members cast at a duly convened meeting thereof, and in no event shall any director receive any compensation from the Association for serving as a director prior to the termination of the Class B membership. The directors shall, however, be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties upon Board approval of such expenses.

Section 4.6 Regular Meetings. Until such time as the Class B membership shall terminate, the Board of Directors shall not be required to hold regular meetings and the Board of Directors shall meet as often as the President of the Association shall determine. Thereafter, the Board of Directors shall meet no less frequently than once every six months, and, in all events, within thirty (30) days after the election or appointment of new directors.

Section 4.7 Special Meetings. Special meetings of the Board of Directors may be called at any time by the President, or by any two directors, on three (3) days notice to each director, which notice shall specify the time and place of the meeting. Notice of any such meeting may be waived by an instrument in writing executed before or after the meeting. Attendance in person at any meeting shall constitute a waiver of notice thereof.

Section 4.8 Waiver of Notice. Any director at any time, in writing, may waive notice of any Board meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any Board meeting shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4.9 Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The presence of directors entitled to cast one-half of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 4.10 Open Meetings. Board meetings may be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, matters related to contract negotiation,

litigation in which the Association is or may become involved, and orders of business of a similar nature.

Section 4.11 Action Without a Meeting. Any Board action required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent in writing to such action. The written consents must describe the action taken and be signed by no fewer than a majority of the directors. The written consents shall be filed with the minutes of the Board.

Section 4.12 Duties and Powers. Except as specifically provided otherwise in the North Carolina Nonprofit Corporation Act, the Declaration, the Articles of Incorporation of the Association or these Bylaws, all powers inherent in or expressly granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Members. The Board of Directors shall also have the responsibility of discharging all of the duties imposed upon the Board of Directors under the terms and provisions of the aforesaid instruments. By way of explanation, but not limitation, the Board of Directors shall have the power to and shall be responsible for the following:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each class of Members to the Annual Expenses;

(b) making assessments to defray the Annual Expenses, establishing the means and methods of collecting such assessments, and establishing the due dates and period of the payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility as defined in the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Area of Common Responsibility, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments and other fees or charges, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in the North Carolina Nonprofit Corporation Act, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines as provided herein;

(g) suspending the membership rights of any Member of the Association, including the right to vote and use the Common Areas and the facilities located thereon, during the period of time such Member shall be delinquent in the payment of any assessment, assessment installment, or any other

amount or amounts as shall be due and payable to the Association, or shall fail to comply with or abide by any rule or regulation adopted by the Board of Directors in regard to the Common Areas;

(h) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(i) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Area of Common Responsibility in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(j) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;

(k) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Declaration, and paying the premium cost thereof;

(l) paying the costs of all services rendered to the Association or its Members and not directly chargeable to specific Members;

(m) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred and

(n) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

(o) establishing an office and/or post office box as may be necessary for the transaction of the business of the Association.

Section 4.13 Management Agent. The Board may, but is not required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice, and for a term not in excess of one (1) year. The Board may delegate to one of its members the authority to act on behalf of the Board on all matter relating to the duties of the managing agent which might arise between meetings of the Board.

Section 4.14 Borrowing. The Board of Directors shall have the power to borrow money for any legal purpose subject to the approval of a two-thirds (2/3) of the Members present and voting in person or by proxy at a duly called meeting or by ballot.



Section 4.15 Committees. The Board shall have the authority to establish such committees as the Board may determine with such powers and duties that the Board shall authorize. The members of all committees shall be appointed by the Board of Directors and shall serve at the pleasure of the Board. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Each committee shall make recommendations to the Board of Directors with respect to the matters within the jurisdiction of such committee. The Board of Directors shall consider the recommendations of the committees in managing the affairs of the Association. The committees shall have no authority to transact business on behalf of the Association or to bind the Association, which authority is vested exclusively in the Board of Directors.

#### **ARTICLE V: OFFICERS**

Section 5.1 General Provisions. The officers of the Association shall consist of a President, a Vice President, a Secretary and a Treasurer. In addition, the Association shall have such other officers as the Board of Directors shall deem to be desirable in connection with the administration of the affairs of the Association. Any two or more offices may be held by the same persons, except the offices of President and Secretary.

Section 5.2 Appointment. All of the officers of the Association shall be appointed by, and shall serve at the pleasure of, a majority of the members of the Board of Directors.

Section 5.3 President. The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Members and of the Board of Directors. The President shall manage, supervise and control all of the business and affairs of the Association, and shall have all of the powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.4 Vice President. The Vice President shall perform the duties of the President whenever the President shall be absent or unable to perform such duties. If neither the President nor the Vice President shall be able to perform such duties, the Board of Directors shall appoint one of their members to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as the President may delegate to him from time to time.

Section 5.5 Secretary. The Secretary (a) shall attend all meetings of the Members and of the Board of Directors and shall keep the minutes thereof, (b) shall be responsible for the preparation and giving of all notices which are required to be given by the Declaration and these Bylaws, (c) shall perform the responsibilities of the Secretary under these Bylaws, (d) shall be the custodian of the books and records of the Association, (e) shall keep a register of the addresses of each Member of the Association, and (f) shall perform such other duties as are incident to the office of the secretary of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.6 Treasurer. The Treasurer shall be charged with the management of the financial affairs of the Association, and shall keep full and accurate financial records and books of account showing all receipts and disbursements and of the Association, and shall prepare all required financial data. The Treasurer shall also perform all of the duties which are incident to the office of the treasurer of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.7 Compensation of Officers. In no event shall any officer receive any compensation from the Association for serving in such capacity. The officers shall, however, be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties upon Board approval of such expenses.

#### ARTICLE VI: MISCELLANEOUS

Section 6.1 Fiscal Year. The fiscal year of the Association shall be selected by the Board. Unless otherwise selected, the fiscal year shall be the calendar year.

Section 6.2 Certain Notices. Any Member who shall sell or lease any Lot in which he has a fee or undivided fee interest shall promptly give the Secretary a written notice of such sale or lease, which notice shall also set forth the name and address of such purchaser or lessee. The address so furnished for such purchaser or lessee shall be the address to which the Secretary shall send any notices to be sent to such purchaser or lessee, until such purchaser or lessee shall furnish the Secretary with another address for such purpose.

Section 6.3 Severability. If any term, covenant or condition of these Bylaws is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any provision hereof and these Bylaws shall be construed as if such invalid or unenforceable provision had never been contained herein.

#### ARTICLE VII: AMENDMENTS

These Bylaws may be amended only in accordance with the following procedure: the Board of Directors shall first adopt a resolution proposing the amendment and recommending its adoption by the Members. Such proposed amendment shall then be presented to the Members at a meeting thereof duly called and held for the purpose of considering such proposed amendment. If such proposed amendment is approved by at least two-thirds (2/3) of the votes cast at such meeting, such amendment shall become effective; provided, however that the U.S. Department of Veterans Affairs (if it is then guaranteeing any Mortgage secured by any Lot and its regulations require) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage secured by any Lot and its regulations require) shall have the right to veto material amendments to these Bylaws for as long as the Class B membership shall not have terminated.

#### ARTICLE VIII: INDEMNIFICATION

Each person who is or was a director or officer of the Association, shall be indemnified by the Association against those expenses (including attorneys' fees), judgments, fines and amounts paid in settlement which are allowed to be paid or reimbursed by the Association under the laws of the State of North Carolina and which are actually and reasonably incurred in connection with any action, suit or proceeding, pending or threatened, whether civil, criminal, administrative or investigative, in which such person may be involved by reason of his being or having been a director or officer of the Association. Such indemnification shall be made only in accordance with the laws of the State of North Carolina and subject to the conditions prescribed therein.

In any instance where the laws of the State of North Carolina permit indemnification to be provided to persons who are or have been an officer or director of the Association only on a determination that certain specified standards of conduct have been met, upon application for indemnification by any such person the Association shall promptly cause such determination to be made (i) by the Board of Directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding; (ii) if a quorum cannot be obtained, by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; (iii) by special legal counsel selected by the Board of Directors or its committee in the manner prescribed in (i) or (ii), or if a quorum of the Board of Directors cannot be obtained under (i), and a committee cannot be designated under (ii), selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or (iv) by the Members, but Members who are also directors who are at the time parties to the proceeding may not vote on the determination.

As a condition to any such right of indemnification, the Association may require that it be permitted to participate in the defense of any such action or proceeding through legal counsel designated by the Association and at the expense of the Association.

The Association may purchase and maintain insurance on behalf of any such persons whether or not the Association would have the power to indemnify such officers and directors against any liability under the laws of the State of North Carolina. If any expenses or other amounts are paid by way of indemnification, other than by court order, action by the Members or by an insurance carrier, the Association shall provide notice of such payment to the Members in accordance with the provisions of the laws of the State of North Carolina.

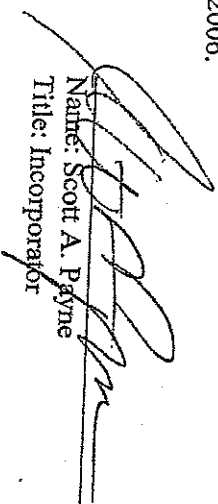
## CERTIFICATION OF BYLAWS

I, the undersigned, do hereby certify:

That I am the Incorporator of Annandale Owners Association, Inc., a North Carolina non-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of said Association this 7 day of August, 2006.

 (SEAL)  
Name: Scott A. Payne  
Title: Incorporator

**ARCHITECTURAL GUIDELINES  
FOR  
ANNANDALE**

**Effective: August 15, 2006**

**Amended 4/08, 7/08**

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A. Owner Architectural Request Form

## **Chapter I. INTRODUCTION TO ARCHITECTURAL REVIEW**

### **1.1. Purpose of Architectural Guidelines.**

The Architectural Guidelines for Annandale provide an overall framework and comprehensive set of standards and procedures for the development of the community in an orderly and cohesive manner. These standards have been developed to assist in the planning, constructing, landscaping, and modifying of Units within Annandale. The standards set forth criteria for design, style, materials, colors and location of site improvements, landscaping, signage and lighting. In addition, the Architectural Guidelines establish a process for review of proposed construction and modifications to Units and Parcels to ensure that all sites within Annandale are developed with the consistency and quality that attracted you to this development.

### **1.2. Definitions.**

The words used in these Architectural Guidelines shall be given their normal, commonly understood definitions.

### **1.3. Governmental Permits.**

To the extent that any Union County or other local government ordinance, building code or regulation requires a more restrictive standard than the standards set forth in these Architectural Guidelines, the Declaration for Annandale, the local government standards shall prevail. To the extent that any local government standard is less restrictive, the Declaration and the Architectural Guidelines (in that order) shall prevail.

### **1.4. Preparer.**

These initial Architectural Guidelines have been prepared for Annandale and adopted by the Declarant pursuant to the Declaration. The Architectural Guidelines may be changed and amended to serve the needs of an evolving community pursuant to the procedures set forth in the Declaration and in Article IX of these Architectural Guidelines.

### **1.5. Applicability of Architectural Review.**

These Architectural Guidelines govern all property, which is subject to the Declaration and any additional property, which may be subject to the Declaration in accordance with the Declaration. Unless otherwise specifically stated in the Declaration or these Architectural Guidelines, all plans and materials for new construction or exterior modifications of improvements on a Unit or Parcel must be approved before any construction activity begins. Unless otherwise specifically stated in these Architectural Guidelines, no structure may be erected upon any Unit or Parcel, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place without receiving the prior written approval of the appropriate reviewer as described below. Where these Architectural Guidelines specifically allow an Owner (for purposes of these Architectural Guidelines, the term "Owner" shall refer to an "Owner" as defined in the Declaration) to proceed without advance approval, such allowance



shall only be effective so long as the Owner complies with the requirements of the stated guideline.

Owners are responsible for ensuring compliance with all standards and procedures within these Architectural Guidelines. Owners are also governed by the requirements and restrictions set forth in the Declaration and any applicable Supplement. In particular, Unit Owners should review and become familiar with the Use Restrictions applicable to Annandale set forth in the Declaration, which address restricted and prohibited activities and conditions within the community.

#### **1.6. Review Structure.**

Architectural review for Annandale is handled by either (i) the Declarant or its designee or (ii) the Architectural Control Committee.

(a) Declarant. The Declarant has exclusive authority to review and act upon all applications for review of proposed Improvements, as set forth in the Declaration.

The Declarant may from time to time, but shall not be obligated to, delegate in writing all or a portion of its rights under this Section to a Architectural Control Committee appointed by the Association's Board of Directors. In the event of such delegation, the designee's jurisdiction shall be limited to such matters as are specifically delegated by the Declarant. In addition, any such delegation shall be subject to the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated.

(b) Architectural Control Committee. The Architectural Control Committee (the "ACC") has jurisdiction over those responsibilities delegated to it by the Declarant during Declarant control. Following the Declarant control period, the ACC has jurisdiction over all matters relating to Improvements of residential properties, as set forth in the Declaration. The ACC shall be the conclusive interpreter of these Architectural Guidelines, shall monitor the effectiveness of these Architectural Guidelines, and may promulgate additional Architectural Guidelines and review procedures consistent with these Architectural Guidelines. Members of the ACC will be appointed by the Board.

#### **1.7. Review Fees.**

The Association reserves the right to assess a "Review Fee" for the submittal of an Architectural request Form. Fees may vary according to the type of construction, modification, improvement, etc.

### **Chapter II. ARCHITECTURAL REVIEW PROCEDURES**

#### **2.1. Review of New Construction.**

Plans for new construction upon any Unit or Parcel must be reviewed and approved by the Declarant until such time as the Declarant relinquishes or assigns this right.

## **2.2. Review of Modifications.**

The review of modifications shall require the submission of an Architectural Request Form to the Reviewer along with any applicable Review Fee.

## **2.3. Review Criteria, Recommendations, Variances.**

While the Architectural Guidelines are intended to provide a framework for construction and modifications, the Architectural Guidelines are not all-inclusive. In its review process, the Reviewer may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Reviewer decisions may be based on purely aesthetic considerations. However, no Reviewer shall grant approval for proposed construction that is inconsistent with the Architectural Guidelines, unless such Reviewer grants a variance.

## **2.4. Review Period.**

Each Architectural Request Form and plan submittal shall be approved or disapproved within 30 business days of submission of all materials and fees required by the Reviewer. Within 30 business days of receipt of a complete review request, the Reviewer shall respond to Applicant. A copy of the Architectural Request Form shall be returned to the Applicant, accompanied by the Reviewer's decision. The Reviewer's decision shall be rendered in one of the following forms:

(a) "Approved." The entire application as submitted is approved.

(b) "Approved With Conditions." The application is not approved as submitted, but the Reviewer's suggestions for curing objectionable features or segments are noted. The Applicant must correct the plan's objectionable features or segments, and the Applicant may be required to resubmit the application and receive approval prior to commencing the construction or alteration.

(c) "Denied." The entire application as submitted is rejected in total. The Reviewer may provide comments but is not required to do so.

If the Reviewer fails to respond within 30 business days, approval shall be deemed granted. However, no construction or modification that is inconsistent with the Declaration or the Architectural Guidelines shall be deemed approved, unless the Reviewer has granted a variance.

## **2.5. Appeal.**

Any Applicant shall have the right to appeal a decision of the Reviewer by submitting to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the ACC's decision, (ii) affirm a portion and overturn a portion of the ACC's

decision, or (iii) overturn the ACC's entire decision. The Board shall notify the applicant and the ACC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. During the appeal process the Owner shall not commence any work requiring approval hereunder. The filing of an appeal does not extend any maximum time period for the completion of any new construction or modification.

## **2.6. Union County Approval.**

The review and approval of plans and specifications shall not be a substitute for compliance with the permitting and approval requirements of Union County or other governmental authorities. It is the responsibility of Applicant to obtain all necessary permits and approvals.

## **2.7. Implementation of Approved Plans.**

All work must conform to approved plans. If it is determined that work completed or in progress on any Unit or Parcel is not in compliance with these Architectural Guidelines or any approval issued by the Reviewer, the Reviewer shall, directly or through the Board, notify the Owner in writing of such noncompliance specifying in reasonable detail the particulars of noncompliance and shall require the Owner to remedy the same. If the Owner fails to remedy such noncompliance or fails to commence and continue diligently toward achieving compliance within the time period stated in the notice, then such noncompliance shall be deemed to be in violation of the Declaration and these Architectural Guidelines.

If construction is not completed on a project within the period set forth in the approval or within any extension approved by the Reviewer, the approval shall be deemed withdrawn, and the incomplete construction shall be deemed to be in violation of the Declaration and these Architectural Guidelines.

## **2.8. Changes After Approval.**

All proposed changes to plans made after the approval of plans must be submitted to and approved in writing by the Reviewer prior to implementation. Close cooperation and coordination between the Applicant and the Reviewer will ensure that changes are approved in a timely manner.

If Union County or any other authority having jurisdiction requires that changes be made to final construction plans previously approved by the Reviewer, the Applicant must notify the Reviewer of such changes and receive approval from the Reviewer prior to implementing such changes.

## **2.9. Enforcement.**

In the event of any violation of these Architectural Guidelines, the Declarant or the Board may take any action set forth in the By-Laws or the Declaration.

## Chapter III. ARCHITECTURAL GUIDELINES FOR RESIDENTIAL PROPERTIES

### 3.1. Accessory Buildings.

Owners shall secure Reviewer approval prior to construction of any accessory building, including sheds, or permanently installed playhouses. A detached garage is not considered an accessory building, and its construction shall require Reviewer approval. Accessory buildings shall meet the following criteria:

- (a) An accessory building must be of the same color, material, and architectural style as the main residence. If a house is brick on all four sides, alternative siding will be considered that is complimentary to the house. An accessory building's roofing materials shall match those of the main residence. Accessory buildings shall be no larger than 150 square feet and cannot exceed ten feet in height.
- (b) Any utilities servicing accessory buildings shall be installed underground.
- (c) Accessory buildings shall be located in the rear yard, shall conform with the side and rear yard setbacks required pursuant to Union County ordinance and shall not unreasonably obstruct any adjacent neighbor's views of open areas, and must have the foundation or underside screened by vegetation.

### 3.2. Additions and Expansions.

Reviewer approval is required for any addition to or expansion of a residence. Materials shall match the existing residence.

### 3.3. Air-Conditioning Equipment.

Reviewer approval is required for the installation of air-conditioning equipment or evaporative coolers. Window units and through the wall units are prohibited.

### 3.4. Antennas and Communication Dishes.

Section 207 of the Telecommunications Act (hereinafter the "Rule"), permits certain antennas. The Rule allows community associations to enforce restrictions that do not impair the installation, maintenance or use of these types of antennas, as well as restrictions needed for safety. Therefore, to the extent feasible, antennas should not be visible from the street and should be placed in the following locations:

- (a) Mounted directly on the rear of the house; mounted on the rear roof plane; or mounted on the backside of a chimney. Homeowners do not need to submit an application for a satellite dish smaller than 39" to the ACC if locating their dish in one of these three locations.
- (b) Mounted directly on the side of the house but not closer to the front of the house than 50% of the home's depth; mounted on a roof plane facing the side of the house but not closer to the front of the house than 50% of the home's depth; or mounted on the ground within close proximity to the side of the house but not closer to the front of the home than 50%.

of the home's depth. If the dish is mounted on the ground, it must be placed as low to the ground without interfering with reception. The satellite dish shall not be visible from the street if standing in the street, facing the center of the house. **An application indicating the requested location shall be submitted to the ACC for approval prior to locating a satellite dish in any of these three locations.**

As much as possible, the visibility of antennas mounted on the ground within close proximity to the side of the home should be minimized using one or both of the following methods:

a. Screen the antenna from view from the street with natural plantings, trees and shrubs; to the extent they do not compromise the signal reception.

b. Use antennas with a dark or muted color, or paint the antenna a muted color to blend with the background surface or with the surrounding landscape.

If no clear signal is obtained in any of the above locations, the homeowner shall provide the ACC with a written statement from the installer stating no reception is available from any of the above locations. Upon approval from the ACC, the homeowner may then install the antenna in an alternate location as deemed necessary for reception but while maintaining the standard aesthetics

### **3.5. Awnings and Overhangs.**

The installation of awnings or overhangs requires Reviewer approval. The awning or overhang color must be the same as or generally recognized as complementary to the exterior of the residence.

### **3.6. Birdbaths, Birdhouses, and Birdfeeders.**

Reviewer approval is not required for the rear yard installation of any birdbath that has height of three feet or less, including any pedestal. Placement in any front yard is prohibited.

No Reviewer approval is required for one rear or side yard installation of any birdhouse or birdfeeder. Such birdhouse or birdfeeder shall measure no more than one foot by two feet.

### **3.7. Carports.**

Carports are prohibited.

### **3.8. Clotheslines.**

All clotheslines are prohibited.

### **3.9. Compost**

Compost containers and accumulation of compost is prohibited.

**3.10. Decks and Balconies.**

Reviewer approval is required for the installation of a deck or balcony.

**3.11. Kennels.**

Animal kennels are prohibited. No animal structure shall provide shelter for more than two dogs over six months of age.

**3.12. Exterior Lighting.**

Exterior lighting must be utilized in accordance with Article VIII, Section 5 of the Declaration

**3.13. Flags.**

Flagpoles are prohibited. One flag is permitted per residence. Flags should be properly mounted on a house.

**3.14. Gazebos and Greenhouses.**

Reviewer approval is required prior to the construction of any gazebo or greenhouse. Any gazebo or greenhouse must be an integral part of the landscape plan and must not obstruct any adjacent property owner's view.

**3.15. Hot Tubs and Saunas.**

Reviewer approval is required for the installation of any outdoor hot tub, Jacuzzi, sauna or spa. Any hot tub, Jacuzzi, or spa shall be an integral part of the deck or patio area and/or the rear yard landscaping. A hot tub, Jacuzzi, or spa shall be located in the rear yard, shall be installed in such a way that it is not immediately visible to adjacent property owners, and shall not create an unreasonable level of noise for adjacent property owners. Owners may be required to install safety features such as locks or covers for these items when such are not in use.

**3.16. Mailboxes.**

All mailboxes in Annandale must be approved by the Declarant and be uniform throughout the community. Mailbox covers and decorations are prohibited.

**3.17. Mechanical Equipment.**

All mechanical equipment shall be screened from neighboring dwellings and yards, sidewalk, and street view.

**3.18. Paint.**

Owners may repaint in accordance with the most recently approved color scheme of any dwelling or improvement. Reviewer approval is required for all changes in exterior painting. Review criteria may include, but shall not be limited to, the sheen of paint, the home's

architecture, any existing stone or brick accents, roof color, and neighboring properties' colors. Primary colors for all exterior-building surfaces must complement the architectural theme of the house and must be earth tone colors.

### **3.19. Patios.**

Reviewer approval is required for the construction of patio covers, open patios, and enclosed patios.

Enclosed patios shall be constructed of materials that are similar to or generally accepted as complementary to those of the residence.

### **3.20. Playhouses.**

A playhouse shall be considered an accessory building if it measures more than 20 square feet, is more than 6 feet high from peak to ground, or is constructed on a concrete slab or footing.

### **3.21. Pools.**

Reviewer approval is required for the construction or installation of pools. Pools shall be an integral part of the deck or patio area and/or the rear yard landscaping. Any pool shall be located in the rear yard, and shall not create an unreasonable level of noise for adjacent property owners. Pools shall be fenced for safety purposes, and Owners may be required to install safety features such as locks or covers for these items when they are not in use. Above ground pools are prohibited.

### **3.22. Recreational Equipment.**

Permanent basketball goals must be submitted to the ACC for approval prior to installation. Permanent basketball goals are defined as a backboard and goal mounted on a pole set permanently in concrete, in the ground. Permanent basketball goals are permitted utilizing clear, white or gray backboards, mounted on a white, gray or black pole made of metal. Permanent goals may only be mounted adjacent to the driveway so as to face the home's driveway. Permanent goals shall not be mounted facing the street and cannot be mounted on any portion of a house.

Ten-foot portable basketball goals are permitted provided such goals are not in a state of disrepair. Owner shall exercise consideration toward neighbors; any such equipment shall be set back at least 10 ft from rear and side property lines to avoid disturbance of neighbors and shall not obstruct neighbors' views of open spaces. Recreational and playground equipment shall not be placed on front or side yards. Lots adjacent to common areas must have all play equipment approved before installation.

Tree houses are prohibited.

### **3.23. Roofing.**

Roof pitches and overhangs may vary as dictated by architectural design. Reviewer approval is required for a roof-material change.

### **3.24. Roof Accessories and Equipment.**

Any installed solar energy equipment shall have the appearance of a skylight, shall have a finished trim material or curb, and shall not be visible from the street. Landscaping or other buffering may be required for solar panels.

Reviewer approval is not required for skylights having measurements of three feet by five feet or less. Skylights should be placed in locations so as not to detract from the building elevations.

### **3.25. Setbacks and Yards.**

Setback requirements from property lines are established by Union County ordinance and are subject to public utility easements, drainage easements, landscape easements depicted on the Master Plan, and rights-of-way.

### **3.26. Signs.**

The display of trade signs is prohibited.

No signs shall be erected on the roof of any structure.

Signs are not permitted to be attached to telephone poles, posts, benches, boards, or other things within the Common Areas.

One security sign may be permitted in the front yard located either adjacent to the driveway or in close proximity to the front entrance of the main dwelling. The Reviewer may impose size, shape and color restrictions on security signs.

One temporary sign per Unit that advertises property for sale or lease, which stands no more than four feet high, which has dimensions of no more than two feet by three feet, and which is conservative in color and style, may be installed on a Unit without the Reviewer's approval. Temporary signs may be displayed only while the Unit is for sale or lease and must be removed when the property is no longer for sale or lease.

No temporary signs including election signs are permitted.

### **3.27. Statues.**

Statues, decorative items, including, **but not limited to**, statues, lawn ornaments, figurines and fountains, are not permitted in the front or side yards that may be visible from the street. Planters, which contain live plants, are not considered decorative items. Artificial vegetation is considered decorative in nature and is not permitted in the front or side yards.



Outdoor furniture and benches must be kept within the porch area when not in use. Reviewer approval is not required for the rear-yard installation of any statue, which, including any pedestal stands no more than five feet tall.

### **3.28. Temporary Structures.**

Temporary structures, other than those used during the initial construction of a residence, including without limitation, sheds, are prohibited. Reviewer approval is required for tents other than camping tents that are used for occasional overnight sleeping by children and are left standing for no longer than 72 hours.

### **3.29. Trash Containers.**

Trash or containers shall be enclosed or screened from view of adjacent property. Any method of screening other than landscaping must be approved.

### **3.30. Windows, Doors and Trim.**

Windows should be clear glass or a tinted glass of bronze, grey, green or smoke colors. No reflective glass or reflective tinting may be used.

Reviewer approval is not required for the addition of screen doors or other type doors to a home or an accessory building if the material matches or is similar to existing doors on the house and if the color is generally accepted as complementary to that of existing doors on the house. The Reviewer must approve security treatments for doors and windows; however, no "burglar bars," steel or wrought iron bars, or similar fixtures shall be installed on the exterior of any windows or doors of any dwelling.

## **Chapter IV. LANDSCAPING AND SITE STANDARDS**

Landscaping is an essential element of design at Annandale. Preservation of existing vegetation in addition to the introduction of plants native to the North Carolina Piedmont area must be considered in establishing the landscape design. Owners shall comply with all Union County ordinances, which establish landscape buffers and landscape easements.

Beds may only be mulched with organic materials such as: pine straw, wood mulch and pine bark. Crushed brick and colored stones are prohibited.

### **4.1. Drainage.**

Drainage of the Unit must conform to all Union County requirements. There shall be no interference with the established drainage pattern over any property except as approved in writing by the Reviewer. Owners may make minor drainage modifications to their Units provided that they do not alter the established drainage pattern.

#### **4.2. Fences.**

Certain styles of fences are permitted, however **all fences must be approved by the Reviewer.**

(a) Materials; Types. Generally, fence and gate materials should be: rough-sawn cedar material, treated pine or black aluminum. Applicants shall provide for a space of 2" to 4" between the bottom of the fence and the ground elevation so as not to block drainage patterns. At least 30% of the fence shall be open space (i.e., a space of at least 1.5 inches between each fence board is required). Fences shall be no taller than four (4) feet in height, except black aluminum fences which may be as high as five (5) feet tall.

(b) Locations. Fences will only be approved in rear yards. Fence sections shall be constructed such that the side of the fence, which is generally accepted as being the most "finished" side, faces away from the home. Fences are not permitted on berms, unless otherwise approved by the Reviewer. On corner lots, all portions of the fence should be setback a minimum of 12 ft from the curb.

(d) Maintenance. Any fences or walls, whether constructed by the Owner or a Builder, shall be well repaired and maintained consistent with the Community-Wide Standard. In the event a fence or wall is damaged or destroyed, the Owner shall repair or recondition the same at the Owner's expense.

#### **4.3. Grading.**

Owners shall not grade their property so as to interfere with the established drainage pattern over any property except as approved in writing by the Reviewer. Owners should work with the natural contours and seek solutions that minimize the impact of grading with respect to major alterations of existing grades.

Clearing of vegetation with greater than a four-inch caliper measurement and located within 25 feet from the rear property line requires approval, unless the Owner secures a variance from the Reviewer.

#### **4.4. Paving, Driveways.**

Owner shall secure Reviewer's approval prior to paving with any paving material, including concrete, asphalt, brick, flagstone, stepping stones, and pre-cast patterned or exposed aggregate concrete pavers, and for any purpose, including walks, driveways, or patio areas. Owners shall secure Reviewer approval before extending or expanding any driveway.

#### **4.5. Retaining Walls.**

All retaining walls require approval by the Reviewer. Such walls shall be properly anchored to withstand overturning forces. Stone walls shall be made thicker at the bottom than at the top to achieve stability. Neither the Declarant nor the Reviewer shall be responsible for ensuring the structural integrity or soundness of any approved retaining wall.

#### **4.6. Underground Installations.**

Owners shall seek approval for any proposed underground installation, except for installation of underground irrigation systems.

#### **4.7. Views.**

Views from the roadways and walkways toward a landscaped area should complement the appearance of the existing natural vegetation

#### **4.8. Water Systems.**

Installation of individual water supply or water softener systems, except for irrigation systems, is prohibited without Reviewer approval. Owners may install irrigation systems, above ground or underground, without Reviewer's approval so long as the Owner installing such system obtains any permits required by Union County.

Wells, except those drilled by the Declarant for the purpose of providing water service to Annandale, are prohibited.

### **Chapter V. CONSTRUCTION GUIDELINES**

#### **5.1. Inspections.**

The Reviewer will perform periodic informal inspections to ensure that work is being performed in conformance with approved plans, these Architectural Guidelines and the Community-Wide Standard. All inspections are observations only and will not relieve the obligation to obtain inspection approvals from Union County and other organizations having jurisdiction.

#### **5.2. Construction Damages.**

Any damage to vegetation or common area facilities caused by the Applicant, its contractors, sub-contractors, agents or employees must be corrected immediately to the satisfaction of the Reviewer, the Declarant, and the owner of the damaged property. If the damage is not corrected, the Declarant or the Association may repair such damage and assess the costs of repair to the Applicant.

#### **5.3. Conduct.**

The Applicant must ensure that all contractors and subcontractors control the conduct of their employees while working in Annandale. Loud music, profanity and other behavior, which is unbecoming of a quality operation, will not be tolerated. Employees violating this policy may be asked to leave the premises and may be denied access at the construction entrance.

#### **5.4. Site Cleanliness.**

All sites must be maintained in a clean and orderly manner at all times. The storage of materials should be in an inconspicuous location within the site and stored neatly and orderly.

All construction debris shall be stored in proper containers and periodically removed from the site.

## **Chapter VI. CHANGES AND AMENDMENTS TO THE ARCHITECTURAL GUIDELINES**

These Architectural Guidelines, as they apply to the residential properties, may be amended as follows:

(a) So long as Declarant has the authority per the Declaration, the Declarant may, in its sole discretion, amend these Architectural Guidelines, notwithstanding any delegation of reviewing authority to the ACC.

(b) When Declarant no longer has the authority to amend the Architectural Guidelines or has delegated its right to amend these Architectural Guidelines, these Architectural Guidelines, may be amended only upon approval of the Board.

(c) All amendments shall become effective upon adoption by the Declarant, so long as Declarant has the authority to amend these Architectural Guidelines or, if the Declarant no longer has such authority, upon adoption by the ACC. Such amendments shall not be retroactive so as to apply to previous work or approved work in progress.

(d) In no way shall any amendment to these Architectural Guidelines change, alter or modify any provision of the Declaration or any Supplement.

These Architectural Guidelines have been prepared for use at Annandale are hereby adopted on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

ANNANDALE OWNERS  
ASSOCIATION, INC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT "A"

# ANNANDALE OWNERS ASSOCIATION Architectural Request Form (One Improvement per Sheet)

Homeowner: \_\_\_\_\_

Address: \_\_\_\_\_

Fax/E-mail \_\_\_\_\_

Phone \_\_\_\_\_

Describe improvement. Include type of materials, size, color, etc. (attach additional sheets as needed)

Attach site drawing. Show size & location of proposed fences, decks, walks, storage building, etc. Include any setback dimensions from property lines and planting/screening plans for outbuildings. A copy of your survey with proposed changes indicated is recommended.  
Estimated Construction time for completion \_\_\_\_\_

CONSTRUCTION SHALL BEGIN WITHIN 30 DAYS OF THE DATE OF APPROVAL. IF CONSTRUCTION HAS NOT BEGUN WITHIN THE 30 DAY PERIOD, THIS REQUEST SHALL EXPIRE AND A NEW APPLICATION WILL NEED TO BE SUBMITTED BEFORE CONSTRUCTION BEGINS.

*Applicant understands that approval by the Architectural Control Committee is for compliance with aesthetics and limitations described in the governing documents and the Architectural Guidelines for Annandale Owners Association. Compliance with state, local or Federal codes, permitting and zoning shall be the sole responsibility of the homeowner/applicant and shall not be the responsibility of the Owners Association or its agents/employees.*

Signature of Applicant/Homeowner \_\_\_\_\_

Date \_\_\_\_\_

Committee Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposal:

Approved As Submitted: \_\_\_\_\_ Approved with Conditions Noted: \_\_\_\_\_ Proposal Denied: \_\_\_\_\_  
Architectural Control Committee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

### CONSTRUCTION FOLLOW-UP SECTION

Committee Member reviewed by: \_\_\_\_\_

Does Actual construction match Proposed Plan: Yes \_\_\_\_\_ No (if no add comments) \_\_\_\_\_ Date: \_\_\_\_\_

Committee Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Work: Approved: \_\_\_\_\_ Approved with Conditions noted: \_\_\_\_\_ Denied: \_\_\_\_\_ (see comments)

MAIL COMPLETED FORM TO:

Cornerstone Community Management

C/o Annandale Owners Association

1520 Uwharrie Point Parkway

New London, NC 28127