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BK 3835 PG 692

Filed for record
Date 7-7, 2005
Time 8:25 o'clock Am
Crystal D. Crump, Register of Deeds
Union County, Monroe, North Carolina

82310

After Recording Return to:
Deborah S. Azzariti
Morris, Manning & Martin, L.L.P.
10150 Mallard Creek Road
Suite 105
Charlotte, North Carolina 28262

DECLARATION OF

COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

BRIARCREST

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
BRIARCREST**

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 "*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner, or has the consent of the owner, of all that tract or parcel of land being approximately 28.3606 acres lying and being located in Union County, North Carolina, as shown on the Final Plat for Briarcrest - South recorded in Plat Cabinet I, File 740-742, Union County, North Carolina Registry (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 Briarcrest 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, LLC, a North Carolina limited liability company, as successor by name change to MDC Homes-Charlotte, LLC, 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 an 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 BRIARCREST-SOUTH prepared by Insite Engineering & Surveying, recorded in the Register of Deeds Office, at Plat Cabinet I, File 740-742, together with all amendments thereto, and any and all other plats, and 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.

"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.

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**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 development 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.

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

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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 rights and easements.

Section 2. Member's Rights in Association Property. 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. The right and easement of enjoyment and use of the Common Areas is 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, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the Owner(s) of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and for such period as the Board of Directors may consider appropriate for any infraction of its 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 Mortgagee 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 Plats. The Property shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plats 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 limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, 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. 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.

(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.

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 expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: Responsibility and the Association's other operations; payment of the premiums for all insurance, fidelity and other bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; and such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members.

Section 3. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot, with all Improved Lots being assessed equally. No Annual Assessment shall be assessed against any Lot owned by Declarant. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board of Directors

shall determine and shall be paid to the Association when due without further notice.

Section 4. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section.

Section 5. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the act(s) of individual Owner(s) and not the result of ordinary wear and tear, (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the maintenance of the Common Areas, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots which are benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6. Special Assessment for Working Capital Reserve. Upon the first transfer of title to an Improved Lot 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 pass to his successors in title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any 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 Plats and is in strict compliance with the provisions of this article.

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 Directors' 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.

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 only in accordance with, the applicable zoning ordinances with respect to the Property 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.

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) front 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.

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, 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 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 homeowner related 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, 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

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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.

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.

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.

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. Stoops, 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 Stoops and Driveways must comply with any rules promulgated by the Association with respect thereto.

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.

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; mowing 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 the 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

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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.

MORTGAGE 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 to the Mortgage of such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject performance by the Owner of such delinquency has continued for a period of sixty (60) days; (c) any default in the 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.

NK 3835 PG 710

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.

AMENDMENT

ARTICLE XII.

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 of Directors, without the vote of the members, may amend this Declaration for the sole purpose of electing to be 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 agreement of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or 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.

PK 3835 PG 7 1 1

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 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 the 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) proceeding 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.

[Signatures Continue on the Next Page]

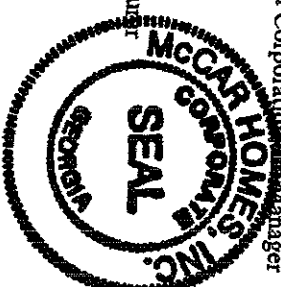
RK 3835 PG 712

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

By: *George Ojanuga*
George Ojanuga
Director of Finance and Treasurer



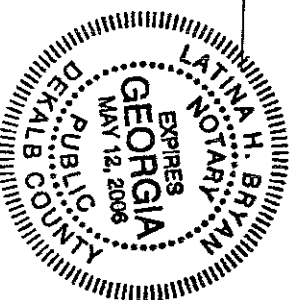
STATE OF GEORGIA
COUNTY OF FULTON

I, Latina H. Bryan, a Notary Public of Dekalb County, Georgia, certify that George Ojanuga personally came before me this day and acknowledged that he is Director of Finance and Treasurer 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 June, 2005.

Latina H. Bryan
Notary Public

My Commission Expires: _____
[Affix Notarial Stamp or Seal]



NORTH CAROLINA-UNION COUNTY
The foregoing certificate of

Latina H. Bryan

to be correct.
Notary (use) Public
I have certified

CERTIFIED D. CHIEF REGISTER OF DEEDS
Ellen McCarlin
REGISTER

4234
0270

BK 4234 PG 0270

FILED
UNION COUNTY
CRYSTAL CRUMP
REGISTER OF DEEDS

FILED Jul 19, 2006
AT 02:00 pm
BOOK 04234
START PAGE 0270
END PAGE 0271
INSTRUMENT # 32348
EXCISE TAX (None)
SWC

After Recording Return to:

Deborah S. Azariti
Morris, Manning & Martin, LLP
10150 Mallard Creed Road, Suite 105
Charlotte, NC 28262

CROSS REFERENCE TO:

Declaration of Covenants recorded at Deed Book
3835, Page 692, Union County Registry

SUPPLEMENTARY DECLARATION SUBJECTING ADDITIONAL LAND TO
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR
BRIARCREST

THIS SUPPLEMENTARY DECLARATION is made this the 7th day of July, 2006, by
McCar Homes-Charlotte, LLC, hereinafter referred to as the "Declarant."

WITNESSETH:

Declarant hereby declares that the following described real property located in Union
County, North Carolina is and shall be held, transferred, sold and conveyed subject to the
Declaration of Covenants, Conditions, Easements and Restrictions for Briarcrest recorded in
Book 3835, Page 692, Union County Registry (the "Declaration");

BEING all of the property described as Briarcrest-South, Map 2, as same is shown on plat
thereof recorded in Plat Cabinet J, Files 105-108, Union County, North Carolina, Registry, to
which reference is hereby made for a more particular description and all of the property
described as Briarcrest-North, Map 1, as same is shown on plat thereof recorded in Plat Cabinet
J, Files 204-207, Union County, North Carolina, Registry, to which reference is hereby made for
a more particular description.

The hereinabove described land shall be subject to all the terms, requirements and
conditions of the Declaration and any Amendments thereto, the provisions of which, are herein
specifically incorporated by reference as if fully set out herein.

4234
0271

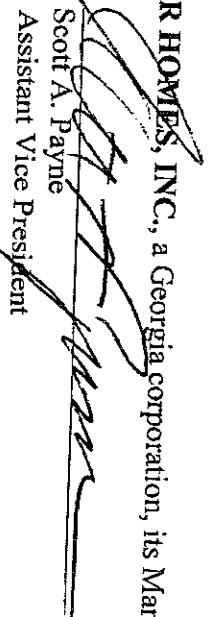
BK 4234 PG 0271

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

MCCAR HOMES-CHARLOTTE, LLC, a
North Carolina limited liability company

By: **MCCAR HOMES, INC.**, a Georgia corporation, its Manager

Name: Scott A. Payne
Its: Assistant Vice President



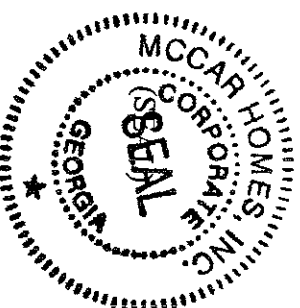
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

This 7 day of July, 2006, personally came before me, Deborah S. Azzariti, Notary Public for Cabarrus County, North Carolina, Scott A. Payne, who, being by me duly sworn, says that he is the Assistant Vice President of MccAR HOMES, INC., a Georgia corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of its authority duly given. And that said writing was signed and sealed by her on behalf of said corporation by and deed of said corporation.

Witness my hand and notarial seal this 7 day of July, 2006.

Notary Public Deborah S. Azzariti

My Commission Expires: May 16, 2009



4477
0021

BK4477PG0021

FILED
UNION COUNTY
CRYSTAL CRUMP
REGISTER OF DEEDS

FILED Mar 02, 2007
AT 01:25 pm
BOOK 04477
START PAGE 0021
END PAGE 0022
INSTRUMENT # 09330
EXCISE TAX (None)
TRB

After Recording Return to:

Deborah S. Azzariti
Morris, Manning & Martin, LLP
10150 Mallard Creed Road, Suite 105
Charlotte, NC 28262

CROSS REFERENCE TO:

Declaration of Covenants recorded at Deed Book
3835, Page 692, Union County Registry

SUPPLEMENTARY DECLARATION SUBJECTING ADDITIONAL LAND TO
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR
BRIARCREST

THIS SUPPLEMENTARY DECLARATION is made this the 27 day of February, 2007, by
McCar Homes-Charlotte, LLC, hereinafter referred to as the "Declarant."

WITNESSETH:

Declarant hereby declares that the following described real property located in Union
County, North Carolina is and shall be held, transferred, sold and conveyed subject to the
Declaration of Covenants, Conditions, Easements and Restrictions for Briarcrest recorded in
Book 3835, Page 692, Union County Registry (the "Declaration"):

BEING all of the property described as Briarcrest-North, Map 2, as same is shown on plat
thereof recorded in Plat Cabinet J, Files 764-765, Union County, North Carolina, Registry, to
which reference is hereby made for a more particular description.

The hereinabove described land shall be subject to all the terms, requirements and
conditions of the Declaration and any Amendments thereto, the provisions of which, are herein
specifically incorporated by reference as if fully set out herein.

4477
0022

BK4477PG0022

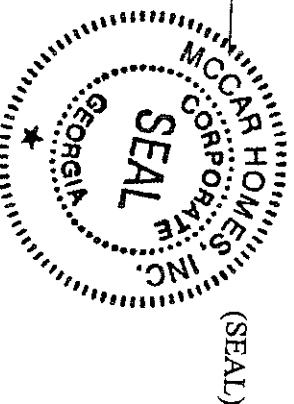
IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

MCCAR HOMES-CHARLOTTE, LLC, a
North Carolina limited liability company

By: **MCCAR HOMES, INC.**, a Georgia corporation, its Manager

By: *Scott A. Payne*
Name: Scott A. Payne
Its: Assistant Vice President

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG



This 27th day of February, 2007, personally came before me, Deborah S. Azzariti, Notary Public for Cabarrus County, North Carolina, Scott A. Payne, who, being by me duly sworn, says that he is the Assistant Vice President of MCCAR HOMES, INC., a Georgia corporation, the Manager of MCCAR HOMES-CHARLOTTE, LLC, a North Carolina limited liability company, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, and that said writing was voluntarily signed and sealed by him on behalf of said corporation by its authority duly given. And the said Scott A. Payne acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and notarial seal this 27th day of February, 2007.

Deborah S. Azzariti
Notary Public

My Commission Expires: May 16, 2009

