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Prepared by and Return to:  
PERRY, BUNDY, PLYLER & LONG, L.L.P.

NORTH CAROLINA  
UNION COUNTY

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Date 8.13.2002  
Time 3:05 pm  
JUDY G. PRICE, Register of Deeds  
Union County, North Carolina

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
CRISMARK

THIS DECLARATION is made this 13<sup>th</sup> day of August, 2002, by CRISMARK PROPERTIES, L.L.C., a North Carolina limited liability company, referred to in this instrument as "Developer."

STATEMENT OF PURPOSE

Developer is the owner of that certain parcel of land which is known as Crismark located in Union County, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Submitted Property").

It is in the best interest of Developer, as well as to the benefit, interest and advantage of each person or other entity later acquiring any property in Crismark that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed and set forth and declared to be covenants running with the land.

Developer desires to provide for the preservation of the values and attractiveness of the real property in Crismark and for the continued maintenance and operation of such common areas as may be provided.

Developer further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to sufficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas and amenities. To that end, the Developer has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit

"B" and incorporated herein by reference, CRISMARK HOMEOWNERS ASSOCIATION, INC., as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the bylaws attached hereto as Exhibit "C" and incorporated herein by reference.

In consideration of the premises and for the purposes stated, Developer hereby declares that all of the Submitted Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions (all of which are collectively referred to in this instrument as "restrictions"), which restrictions shall be construed as covenants running with the land and shall be binding upon all parties having any right, title or interest in the described real property Or any part thereof, and to their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I: DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(1.1) "Additional Property" shall mean additional real estate other than the submitted property which may be subject to the terms of this declaration in accordance with the provisions of Section 2.2 of this declaration.

(1.2) "Annual Assessments" shall mean the assessments established pursuant to Paragraph 5.2 of the Declaration.

(1.3) "Association" shall mean CRISMARK HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

(1.4) "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and serve pursuant to the Bylaws.

(1.5) "Bylaws" shall mean the Bylaws for the Association attached as Exhibit "C" hereto and incorporated herein by reference.

(1.6) "Common Area" shall mean all real property owned by the Association in Crismark for the common use and enjoyment of members of the Association lying within the boundaries of the Properties, Common Areas, with respect to the Properties subject to this Declaration, shall be shown on the plats of Crismark recorded in the Union County Public Registry and designated thereon as "Common Area" or "Common Open Space."

(1.7) "Developer" shall mean and refer to Crismark Properties, L.L.C. and its successors and assigns.

(1.8) "FHA and VA" shall mean and refer to the Federal Housing Administration, U.S. Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

(1.9) "Lot" shall mean any numbered plot of land to be used for residential purposes shown upon any recorded subdivision plat of the Properties subject to this Declaration.

(1.10) "Owner" or "Lot Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Crismark, but excluding those having such interest merely as security for the performance of an obligation.

(1.11) "Person" shall mean a natural person, as well as a corporation, partnership, limited liability company, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

(1.12) "Property" or "Properties" shall mean the Submitted Property described in Exhibit "A" together with such additions thereto as may from time to time be designated by Developer in accordance with Article II hereof, whether or not such additions are contiguous with or adjoining the boundary lines of the Submitted Property. "Property" or "properties" may sometimes be referred to herein as "Crismark."

(1.13) "Special Assessments" shall mean the assessments established pursuant to Paragraph 5.6 of the declaration.

(1.14) "Submitted Property" shall mean that certain parcel of real property described on Exhibit "A" attached hereto.

(1.15) "Dwelling" shall mean a building constructed for residential use.

(1.16) "Accessory Building" shall mean every garage, tool shed, storage or utility building constructed on a lot incidental thereto which is not a dwelling.

(1.17) "Improvements" or "Structures" shall mean buildings, walls, fences, decks, patios, planters, terraces, swimming pools, tennis courts or anything else constructed or placed on any lot.

(1.18) "Building" or "Buildings" shall mean accessory building or buildings, improvements, or structures.

(1.19) "Architectural Review Board" or "ARB" shall mean the Architectural Review Board established by pursuant to Article VIII of this declaration.

#### ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

(2.1) The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Only the Submitted Property is hereby made subject to this Declaration; provided, however, Developer shall have the right to subject other real property to these restrictions as provided in Section 2.2.

(2.2) Without further assent or permit, Developer shall have the right from time to time to submit other real property to the terms and scheme of this Declaration said property to be developed as part of Crismark and thereby bringing such additional properties within the jurisdiction of the Association by filing a Supplemental Declaration in the office of the Register of Deeds for Union County, North Carolina containing a description of the additional property and a statement by the Developer of its intent to extend the operation and effect of this Declaration to the additional property.

(2.3) Any addition of real property shall be made by filing of record one or more Supplemental Declarations in respect to the property to be then made subject to this Declaration, and the jurisdiction of the Association shall thereby then extend to such property and subject such addition to the assessments provided in

this instrument for a just and proportionate share of the Association's expenses. Each Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character of the added properties.

(2.4) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of Developer to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Submitted Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in Section 8.3 of this Declaration.

### ARTICLE III: PROPERTY RIGHTS

(3.1) Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration, including but not limited to the following:

- (a) The right of the Association to limit the use of the Common Area to Owners, their families and guests;
- (b) The right of the Association to suspend the voting rights of an Owner and/or to suspend community privileges or services and impose fines for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations, including the restrictive covenants, if any;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective after the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership.
- (d) The right of the association to mortgage or convey all or any part of the common area with the consent of at least two-thirds (2/3) of the lot owners (excluding the developer).
- (e) The right of the Developer or the Association to grant utility, drainage and other easements across the Common Areas;
- (f) The Board of Directors of the Association shall have the right to dedicate or transfer all or any part of the Common Area to third parties provided the Association acquires in return other Common Area of equal or greater value.
- (g) Any other rights granted the association pursuant to N.C.G.S. §47-3-102.

(3.2) Delegation and Use. The right and easement of enjoyment granted to every Owner in Section 3.1 of this Article may be exercised by members of Owner's family and guests thereof. An Owner may delegate to his tenants his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Association's Bylaws and rules and regulations, if any.

#### ARTICLE IV: ASSOCIATION

(4.1) Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association which shall be activated no later than August 1, 2002. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(4.2) Voting and Voting Rights. The Association shall have two classes of voting membership:

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

(b) Class B. The Class B member shall be Developer and any person, firm or corporation which shall hereafter become vested with title, at any given time, to five or more undeveloped lots for the purpose of causing residence building(s) [dwellings] to be constructed thereon, and any such successor in title to Crismark Properties, L.L.C. shall be a Class B member during such period of time as said party is vested with title to five or more lots so long as said lots are undeveloped, developed but unconveyed, or improvements constructed thereon are unoccupied; but only during such period. A Class B member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B membership shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B membership to Class A membership hereunder, additional land containing Lots is annexed to the existing property pursuant to Section 2.2 hereof, or

(ii) Twenty-five (25) years from the date of this Declaration.

(4.3) Suspension of Rights/Imposition of Fines. During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any of the restrictions or rules and regulations established by the Board of Directors, such member's voting rights may be suspended by the Board after a hearing. A hearing shall be held before an adjudicatory committee appointed by the Board to determine if any lot owner should be fined or if planned community privileges or services should be suspended. If the Board fails to appoint an adjudicatory committee to hear such matters, hearings shall be held before the Board. Such hearings shall be held by the Board or the adjudicatory committee thereof after giving the member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. The lot owner charged shall be given the opportunity to be heard and to present evidence, and notice of the decision. Determination of the violation shall be made by majority vote of the Board or the committee thereof. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation

and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. §47D-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

(4.4) Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee. The Association is authorized and empowered to enter into contracts with any person, firm or corporation to provide services to Lot Owners, Members or the Association.

(4.5) Insurance. The Association shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to the development, covering each member of the Board of Directors, the Managing Agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than a million dollars per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Owners as a single group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than one million dollars per occurrence for claims for bodily injury and property damage.

#### ARTICLE V. COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1) Purpose of Assessment. The assessments levied by the Association shall be used: (a) to provide funds for maintenance, upkeep, landscaping and beautification of the Common Area in Crismark; (b) to provide services for the Association members to promote the health, safety and welfare of the residents of Crismark, and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Areas, including but not limited to the cost of repair, replacement and additions thereto; (c) for the payment of taxes assessed against the Common Area, for insurance related to the Common Area, for the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, the employment of security personnel; and (d) the provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Association shall decide to provide. The purposes for which assessments may be levied shall include payment for utilities necessary to accomplish the foregoing purposes.

(5.2) Budgeting and Allocating Common Expenses. At least 15 days before the beginning of each fiscal year, the Board shall prepare proposed a budget of the estimated expenses for the operation of the Association and the Operation and maintenance of the Common Areas for the coming year. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Annual Assessments and Special Assessments against the Lots, as authorized in Section 5.6.

The Association is hereby authorized to levy Annual Assessments equally against all Lots subject to assessments to fund the Common Expenses. In determining the Annual Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Developer may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Developer under Section 5.3), which may, in the Developer's discretion, either be a contribution, an advance against future assessments due from the Developer, or a loan. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Developer to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Developer.

Within thirty (30) days after adoption of any proposed budget, the Board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting sixty-seven percent (67%) of all the lot owners in the association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the Board.

If the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(5.3) Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in said Deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments ("Annual Assessments") as established in Section 5.2 for the purposes specified in Section 5.1 which shall be paid annually on or before January 1st of each year.

(b) Special assessments ("Special Assessments") as may be established in Section 5.6 for the purposes specified in Section 5.1 as may be approved by the members, to be established, and collected as provided herein.

For any annual or Special Assessment which remains unpaid for a period of thirty (30) days, in order to secure payment of the Annual and Special Assessments, such charges as may be levied by the Association against any Lot, together with interest, fines, late charges, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment, together with interest, fines, late charges, costs of collection and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligations.

(5.4) Exempt Property. The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of

Veterans Affairs or any other state or federal governmental agency which acquired title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessment shall again accrue on such Lot. Any Lot which Developer may hereinafter designate for common use as part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.5) Maximum Annual Assessments. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first lot to an owner the maximum Annual Assessment shall be Four Hundred Dollars (\$400.00) on each Lot. Annual Assessments may only be increased in accordance with the following:

(a) From and after January 1, of the year immediately following the conveyance of the first lot to an owner, the maximum Annual Assessment may be increased each year not more than ten percent (10%) above the maximum Annual Assessment for the previous year without a vote of the membership.

(b) From and after January 1, of the year immediately following the conveyance of the first lot to an owner, the maximum Annual Assessment may be increased above ten percent (10%) of the previous year's Annual Assessment by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum herein provided.

The Annual Assessments shall be paid as provided in Subparagraph 5.3(a).

(5.6) Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Association members who are voting in person or by proxy at a meeting duly called for this purpose.

(5.7) Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The Annual Assessments shall commence as to all Lots on the first day of the month following the date such property is submitted to the provisions of this Declaration. From the date on which the Annual Assessments commence on a Lot until the date on which the Lot is sold by the Developer to a purchaser, the Developer and all other Class B members shall be liable for Annual Assessments at a rate which is one-eighth (1/8) of the rate otherwise payable. The first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year when filed. The Association shall, upon demand for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid to date.

(5.8) Effect of Non-Payment of Assessment; Remedies of the Association. Notwithstanding Section 5.7 hereof, the Developer may, at its election, postpone in whole or in part the date on which the assessment shall commence provided that the Developer maintains the Common Area for which no assessment is being collected during the period of such postponement. Any assessment not paid within thirty (30) days after the due date shall be assessed a late charge as determined by the Board of Directors and bear interest from the due date at an annual rate of eighteen percent (18%) but in no event above the then maximum legal rate, and to the extent allowed by law. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such



assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area, abandonment of his Lot or for any other reason.

(5.9) Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

#### ARTICLE VI: USE RESTRICTIONS

(6.1) Use of Common Areas. No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Developer's intent that this paragraph inure to the mutual benefit of all Owners within the properties, and each Owner shall have a nonexclusive easement right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

(a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to ensure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;

(b) The right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, and to suspend community privileges and the right to use certain or all of the common areas by an owner or to impose fines for any violation of the restrictions or infraction of its published rules and regulations after the owner is accorded a hearing and an opportunity to be heard.

(c) The right of the Developer or the Association to grant utility, drainage or other easements across the Common Areas; and

(d) The right of the Developer or the Association to permit use of any recreational facility situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Developer or the Association.

(6.2) Use of Lots. Each Lot now or hereafter subjected to this Declaration are subjected to the following restrictions as to the use thereof running with said property by whomsoever owned:

(a) Residential Lots Only. All lots in the tract shall be known and described as residential lots and shall be used only for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any lot other than a single-family dwelling not to exceed two and one-half (2-1/2) stories in height excluding basement. No business or commercial building may be erected on any lot and no business, other than customary home occupation as referred to in the Indian Trail zoning ordinance, may be conducted on any part thereof. No dwelling, building or other improvement shall be erected upon any lot without prior ARB approval thereof as elsewhere herein provided. In order to assure, however,

that location of the dwellings will be staggered where practical and appropriate, and that all structures will be located with regard to the topography of each individual lot, taking into consideration the elevation contours of the lot and the location of large trees. Developer reserves unto itself, its successors and assigns, the right to absolute control and to solely decide the precise site and location of any dwelling, structure or improvement and the location of utilities upon all lots within Crismark; provided, however, such location shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site and, in any event, all buildings shall be constructed within the minimum set back lines designated on the recorded map of the subdivision. No lot shall be divided, subdivided or reduced in size unless (i) it is to increase the size of a smaller lot by a reduction from an adjoining larger lot, or (ii) to adjust the property lines to allocate sufficient area for nitrification fields for each lot, or (iii) to permit the flow of storm water in a more natural course, or (iv) unless each divided or subdivided portion thereof is consolidated with one or more contiguous lots under one ownership. In the event that one or more lots are developed as a unit, the provisions of these covenants and restrictions shall apply thereto as a single lot. No dwelling or other structure or improvement shall be erected, altered, placed or permitted to remain on any site not including at least one (1) full lot according to the recorded Map of Crismark.

(b) Setbacks. No building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded map. No building shall be located nearer any side lot than the applicable zoning ordinance shall allow. All measurements shall be to the base of the dwelling. In the event of the unintentional violation of any minimum setback requirements herein set forth, Developer, for itself and for its successors and assigns, reserves the right, by and with the mutual consent of the owner of the lot in question, to change the restrictions set forth in this instrument, provided, however, that such changes shall not exceed ten percent (10%) of the marginal requirements of such restrictions.

(c) Minimum Square Footage. The total heated area of each dwelling unit shall be as specified in Exhibit "D".

(d) Limitation of Subdivision of Lots. No Lot shall be subdivided so as to increase the total number of lots shown on said recorded plat.

(e) Driveway. Any driveway constructed or used in or on any lot in the subdivision shall be constructed of concrete, brick or brick pavers, which driveway shall be kept and maintained in good condition and repair. Plans for and installation of driveways are subject to approval of the ARB.

(f) Maintenance. Exterior maintenance, upkeep and repair to the yard, fence, walkways, shrubbery, dwelling and other improvements on each lot shall be the sole responsibility and expense of the owner of the lot. The owner of each lot shall maintain his lot or lots in a neat and clean condition, free of all trash, debris, weeds and vines. The yard, grounds, shrubbery and trees shall be maintained in a neat and trim condition at all times.

(g) Nuisances. No obnoxious or offensive trade or activity shall be carried on or upon any lot nor shall anything be done thereof which may be or become an annoyance or nuisances to the neighborhood. Examples of such offensive activities, shall include but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, the origination or emission of any offensive odors, the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, boats, or motorcycles), or other unsightly activity not in keeping with the aesthetic character and high level of appearance of Crismark. In the event of a dispute or question as to

what is or may become an annoyance, nuisance or offensive activity, such dispute or question shall be submitted to the ARB, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

(h) Other Structures. No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the tract shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence. No above-ground swimming pools shall be permitted on any lot. No accessory structure shall be moved onto any lot unless it shall conform to and be in harmony with the existing structures in the tract as to design and color. No metal buildings shall be allowed to remain on any lot and all accessory structures must be situated on a permanent foundation. Nothing contained herein shall prevent a construction trailer or sales trailer from being located temporarily on a lot during the construction of improvements within the subdivision.

(i) Utility and Drainage Easements. A perpetual easement is reserved over the rear ten (10) feet of each lot for utility installation and maintenance, and public drainage, and/or as shown on the recorded map. A perpetual easement is reserved over the side and front five (5) feet of each lot line for utility installation, and/or as shown on the recorded map.

(j) Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than six (6) square feet, or in accordance with the sign and zoning ordinance of the Town of Indian Trail, advertising the property for sale or rent, or a sign used by a builder or Developer to advertise the property during the construction and sales period. Developer shall have the right to place permanent signs for advertising and directional within the development.

(k) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any lot, except household pets (dogs or cats) which may be kept thereon for the sole pleasure and use of the occupants, but not for any commercial use or purpose and no more than two (2) pets over the age of six (6) months which stay primarily outside the residence shall be permitted at any time. Notwithstanding the foregoing, Pit Bulls are expressly prohibited and the Association shall have the right to prohibit and require the removal of any other animal which the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard after consideration of factors, such as size, breed and disposition of the animal, likely interference by the animal with the peaceful enjoyment of the Properties by the Owners and the security measures taken by the Owner with respect to such animal. Every person owning or having possession, charge, care custody or control of a pet shall keep such pet exclusively upon his lot; provided, that such pet may be off the owners' lot if it is under the control of a capable person and restrained by a chain, leash or other means of adequate physical control. Owners are expressly responsible for cleaning up after their pet on the property of other owners and the common areas.

(l) Clotheslines, Garbage Cans, Etc. All garbage cans, lawnmowers and similar equipment shall be kept in an enclosed structure or screened by adequate planting or fencing as to conceal same from the view of neighboring owners and streets. Clotheslines shall not be used nor permitted to be erected or placed on any lot.

(m) Radio and Television Antennas. No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a lot. Only one radio and one television antenna attached to the residence not exceeding five (5) feet in height above the roofline of the residence and only one (1) dish attached to the house not exceeding one (1) meter in diameter not visible from the street in front of the residence shall be permitted.

(n) Commercial Vehicles, Buses, Boats, Etc. No commercial vehicle, including but not limited to school buses and tractor trailers, shall be parked within the property shown on the above-described recorded plat. In addition, no boats, campers, trailers, tagless or junk vehicles shall be placed, parked or stored upon any lot, except within an enclosed garage. No maintenance or repair of any vehicle or trailer may be performed upon any lot except within the garage and totally isolated from public view.

(o) Basketball Goals Within Road Right-of-Way. No basketball goal shall be erected or allowed to remain within the right-of-way of any street located within the Submitted Property.

(p) Covenants Independent of One Another. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

(q) Limitations. It is distinctly understood and agreed that nothing herein contained shall be taken and construed as imposing any conditions or restrictions upon any land not specifically covered by these restrictions.

(r) Sale of Unimproved Lot. Before any unimproved lot may be sold or resold to any person, firm, or corporation by any owner or owners thereof except to Developer, the owner or owners of such lot first shall offer in writing to sell the lot to Developer, at the same price for which said lot was sold originally by Developer, to such owner or owners or to his, her or their predecessor or predecessors in title. Said offer must be mailed by certified mail, return receipt requested. If Developer does not accept or reject in writing said offer of sale within fifteen (15) days from the date of receipt of the same, the then owner or owners of such lot shall have the right to sell the same without any further or additional offer to Developer.

(s) Trees. No living tree or shrub, the trunk of which exceeds two (2) inches in diameter at one foot above natural grade, shall be cut down or otherwise destroyed without the prior express written consent of the ARB.

(t) Artificial Vegetation. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any lot, unless approved by the ARB.

(u) Landscaping. A basic landscaping plan for each dwelling must be submitted to and approved by the ARB.

(v) Miscellaneous. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Lot Owner shall fail or refuse to keep the Lot Owner's lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association may enter upon said lot and remove the same at the expense of the Lot Owner, and such entry shall not be deemed a trespass.

(w) Necessary Exceptions for Development. Developer, or the agents of Developer, shall undertake the work of developing all lots included within the subdivision. The completion of that work and the sale, rent, or other disposition of residential units is essential to the establishment and welfare of the subdivision as an on-going residential community. In order that such work may be completed and the subdivision established as a fully-occupied residential community as soon as possible, nothing in this

Declaration shall be understood or construed to prevent the Developer, Developer's agents or transferees, or the employees, contractors of sub-contractors of Developer, from doing whatever Developer may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the subdivision as a residential community. Lot Owners, upon commencement of construction of any residence, dwelling unit or other structure, which is not prohibited by this Declaration, shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this subparagraph, the words, "its transferees" specifically exclude purchasers of lots improved with completed residences.

(6.3) Permanent Architectural Control. After completion of the construction of the dwelling located on any Lot as approved by the ARB, no building, fence, wall, or other structure shall be commenced or maintained upon the lot, nor shall any exterior addition to or change or alteration to the dwelling be made, including the erection of antennas, aerials, awnings, the replacement of reflective or other material in the windows of a dwelling or other exterior attachment, until the plans and specifications showing the nature, kind, shape, heights, materials, and locations of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Board composed of three or more representatives appointed by Developer or by the Board of Directors, once Developer assigns to it the right of appointment hereunder. In the event the ARB fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, approval will not be required, and this paragraph 6.3 will be deemed to have been fully complied with. The Architectural Review Board shall have the right to charge a reasonable fee, payable to the Association, for receiving such application in an amount not to exceed \$100.00. The Architectural Review Board shall not approve any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety or appearance of any Lot. Refusal or approval of plans, specifications, builder or location may be based upon any grounds including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Architectural Review Board shall be deemed sufficient. Provided that nothing contained herein shall be construed to permit interference with the development of the properties by the Developer in accordance with its general plan of development.

#### ARTICLE VII: EASEMENTS

(7.1) General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot or the Common Area which shall interfere with rights and use of any and all easements shown on said recorded plat.

(7.2) Utility and Drainage. An Easement on each Lot is hereby reserved by Developer for itself and its successors and assigns along, over, under and upon a strip of land ten (10) feet in width along the rear lot lines of all Lots shown on the recorded plats, and easements five (5) feet in width along the front and side lot lines of all Lots shown on recorded plats, in addition to such other easements as may appear on a recorded subdivision plat for Crismark. The purposes of them easements shall be to provide, install, maintain, construct and operate drainlines to, from or for each of the Lots. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow or drainage channels in the easements except for party walls located on a portion of the side line or lines of a Lot. The easement area of each and all improvements in it shall be maintained continuously by Owner, except for those improvements for which a public authority or utility is responsible. With ten (10) days' prior written notice to Owner, Developer may exercise the right to remove obstructions in such easements upon Owner's failure to do so. For the purpose of this covenant, Developer reserves the right to modify or extinguish the herein reserved easements along any Lot lines when in its sole

discretion adequate reserved easements are otherwise available for the installation of drainage facilities and/or utility service lines. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Developer; provided, however, local service from utilities within easement areas to residence constructed upon any such lots may be established without first obtaining separate consents therefor from Developer. The Association may likewise reserve and grant easements for the installation and maintenance of sewerage, utility and drainage facilities in, across, under and over the Common Area.

(7.3) Control of Signs. Developer shall have the right to place permanent and temporary directional and advertising signs for Crismark on the Common Area and unsold Lots and within street rights-of-way until one hundred percent (100%) of the Lots have been sold.

(7.4) Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and security guards employed by Developer and all similar persons to enter upon the Properties or any portion thereof in the performance of their respective duties.

(7.5) Municipal Easement. A general easement of access is granted to all utility providers, into, over and through each Lot for the purpose of maintaining, repairing and servicing the utility lines located on said Lot and for providing municipal services to which said Lot is entitled.

#### ARTICLE VIII: ARCHITECTURAL CONTROL

##### TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE NEIGHBORHOOD

(8.1) Necessity of Architectural Review and Approval. No dwelling, improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Architectural Review Board ("ARB"). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the Architectural Planning Criteria of the Developer, a copy of which is attached hereto as Exhibit "D" and incorporated herein by reference. The Architectural Review Board shall examine the plans to ensure that dwelling improvements or structures comply with the guidelines set forth in the Architectural Planning Criteria and building procedure.

(8.2) Architectural Review Board. The architectural review and control functions shall be administered and performed by the Architectural Review Board ("ARB"), which shall consist of three (3) members, who need not be members of the Association. The Developer shall have the right to appoint all of the members of the ARB, or such lesser number as Developer may choose, as long as Developer owns at least one lot in Crismark. Members of the ARB as to whom Developer may relinquish the right to appoint, and all members of the ARB after Developer no longer owns at least one lot in Crismark, shall be appointed by, and shall serve at the pleasure of the Board of Directors of the Association. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board of Directors of the Association; except that Developer, to the exclusion of the Association, shall fill any vacancy created by

death, resignation, removal or other termination of services of any member of the ARB appointed by Developer. Developer reserves the right to transfer or assign the duties and functions of the ARB to the Association.

(8.3) Powers and Duties of the ARB. The ARB shall have the following powers and duties:

A. To recommend, from time to time, to the Association modifications and/or amendments of the Architectural Planning Criteria. Any modification or amendment to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a 75% majority of the Lot Owners (members) of the Association at a meeting duly called and noticed and at which a quorum is present and voting. Notice of any modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such change or modification, shall be delivered to each Lot Owner (member) of the Association; provided that, the delivery to each Lot Owner (member) of the Association of notice and a copy of any modification or amendment to the Architectural Planning Criteria shall not constitute a condition precedent to the effectiveness or validity of such change or modification.

B. To require submission to the ARB of two (2) complete sets of all plans and specifications for any improvement or structure of any kind, including, without limitation, any dwelling, building, fence, wall, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvements, the construction or placement of which is proposed upon any lot in Crismark. The ARB may also require submission of samples of building materials proposed for use on any lot, and way require such additional information as reasonably may be necessary for the ARB to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.

C. Using the Architectural Planning Criteria as its guide, to approve or disapprove any improvement or structure of any kind, including without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon any lot in Crismark, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARB shall be in writing. Nothing herein or the approval granted by the ARB for construction shall constitute or be construed as an approval by ARB of the structural design, stability or quality of any dwelling, building or improvement.

D. After Developer has assigned the ARB duties and functions to the Association, the Association may adopt a schedule for reasonable fees for processing requests for ARB approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specification are submitted to the Association.

#### ARTICLE IX: GENERAL PROVISIONS

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



(9.2) Duration. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each.

(9.3) Amendment. This Declaration may be amended or terminated by an instrument signed by not less than sixty-seven percent (67%) of the Class A Owners and all of the Class B owners subject to the following conditions:

(a) All additions or amendments must be consented to by Developer in writing so long as Developer is the owner of any lot in the development;

(b) Notwithstanding anything in this Section 8.3 to the contrary, Developer may, at Developer's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of the FHA, VA, the Federal National Mortgage Association or other similar agency;

(c) No amendment shall become effective until the instrument evidencing such change has been filed of record in the Union County Public Registry.

(9.4) FHA/VA Approval. In the event the Developer, its successors or assigns, has arranged for and provided purchaser of Lots with FHA insured or VA mortgage loans, then as long as any Class B lot exists, as provided in Article VI hereof the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, other than as provided in Article II hereof, deed, mortgaging or dedication of Common Area to persons other than the Association and amendment of this Declaration.

(9.5) Enforcement. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association, or, in proper case, by an aggrieved Owner. Any failure by Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidation of any covenant, condition or restriction or other provision of this Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

(9.6) Headings. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

(9.7) Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Developer or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend or release any of the foregoing restrictions as the same may apply to that particular Lot.

(9.8) Severability. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.



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

CRISMARK PROPERTIES, L.L.C.

By: C. J. [Signature] (SEAL)  
Member

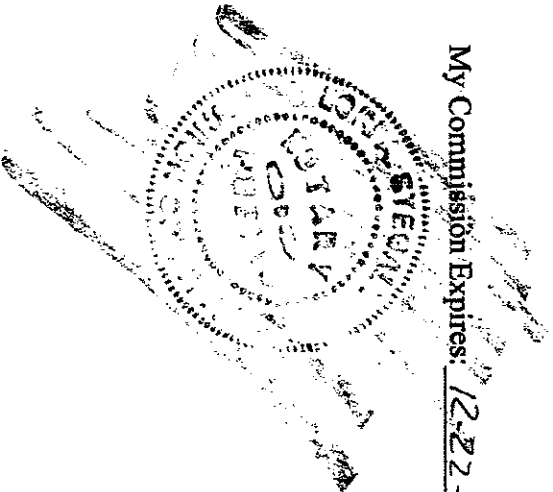
NORTH CAROLINA  
UNION COUNTY.

I, Lori A Stegall, a Notary Public of the County and State aforesaid, certify that E. Mark Tessel, personally came before me this day and acknowledged that he is "Member" of Crimmark LLC, a North Carolina LLC, and that he, as Member, being authorized to do so, executed the foregoing on behalf of the LLC.

Witness my hand and official stamp or seal, this 13 day of August, 2002.

*David Stegall*  
Notary Public

My Commission Expires: 12-22-2004



NORTH CAROLINA-UNION COUNTY  
The foregoing certificate(s) of  
Low, A. Sea Sable

Notary (yes) Public  
is/are certified

to be correct.

JUDY G. PRICE: REGISTER OF DEEDS  
BY: Mary G. Smith  
ASST. DEPT.

EXHIBIT"A"  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CRISMARK  
SUBMITTED PROPERTY

Being all of the lots, common area and other property in Crismark as shown on a deed thereof recorded in Book 1298 at Page 20 in the Union County Public Registry.