

JUDITH A GIBSON REC OF DEEDS MECK NC

FILED FOR REGISTRATION 08/20/97 16:44

PK: 09211 Pg: 0884/0903 #:0435 46.00

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
KENILWORTH/AMBERLEIGH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 20 day of August, 1997 by HINSHAW PROPERTIES, LLC, a North Carolina Limited Liability Company, hereinafter referred to as "Declarant".

**STATEMENT OF PURPOSE**

Declarant is the owner of certain property in Mecklenburg County, North Carolina, which is more particularly described on a map recorded in Map Book 28 at Page 502 in the Mecklenburg County, North Carolina, Public Registry (the "Map"), reference to which is hereby made. Declarant desires to create thereon an exclusive residential community of single-family residences to be named "KENILWORTH/AMBERLEIGH."

Declarant desires to insure the attractiveness of KENILWORTH/AMBERLEIGH and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within KENILWORTH/AMBERLEIGH and to provide for the maintenance and upkeep of all common amenities in KENILWORTH/AMBERLEIGH. To this end the Declarant desires to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, governing, maintaining and administering the common area in KENILWORTH/AMBERLEIGH, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in KENILWORTH/AMBERLEIGH to insure the residents' enjoyment of the specific rights, privileges and easements in the common amenities, and to provide for the maintenance and upkeep of the common amenities.

To that end the Declarant has or will cause to be incorporated under North Carolina law, KENILWORTH/AMBERLEIGH OWNERS' ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

Drawn By and Mail To:

Mr. John S. Freeman  
KNOX KNOX FREEMAN & BROTHERTON (Box 26)

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

#### ARTICLE I

##### DEFINITIONS

Section 1. "Association" shall mean and refer to KENILWORTH/AMBERLEIGH OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Declarant" shall mean and refer to Hinshaw Properties, LLC, a North Carolina Limited Liability Company, its successors and assigns and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by Hinshaw Properties, LLC.

Section 3. "Development" shall mean and refer to KENILWORTH/AMBERLEIGH, a single-family residential development proposed to be developed on the Properties by the Declarant.

Section 4. "Lot" shall mean and refer to any plot of land, intended for construction of a residence and with delineated boundary lines and appearing on the Map with the exception of the public roads and streets.

Section 5. "Map" shall mean and refer to the map of the Property as recorded in Map Book 28 at Page 502, in the Mecklenburg County, North Carolina, Public Registry and the maps of any additions to the Properties which may be recorded by Declarant in the Mecklenburg County, North Carolina, Public Registry hereafter, and any revised or supplemental maps which may hereafter be recorded by Declarant, and Declarant reserves the right, by recording one or more revised or supplemental maps, to re-configure any lots which it still owns, add or eliminate lots, or revise the street layout.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot including the Declarant if it owns any lots and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 8. "Property" or "Properties" shall mean and refer to the "Existing Property" and any "Additional Properties" described in Section 1 and Section 2 in Article II hereof and such

other property as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF KENIMORTH/AMBERLEIGH OWNERS' ASSOCIATION, INC.

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Mecklenburg County, North Carolina, and is that certain property shown on the map recorded in Map Book 28 at Page 502, in the Mecklenburg County Public Registry as shown on such map (the "Existing Property").

### Section 2. Additional Properties.

(a) Additional property adjoining or in the vicinity of the Existing Property or any additions thereto (the "Additional Properties") may be brought within the scheme of this Declaration in one or more additional phases and within the jurisdiction of the Association in future stages of development, without the consent of the Association or its members provided that (i) such annexations occur within seven (7) years after the date of the filing of this instrument and (ii) no more than one hundred fifty (150) additional lots are added by such annexation. Declarant shall not be obligated to subject any Additional Property to this Declaration.

(b) The additions authorized under Subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Properties in the Mecklenburg County, North Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. At the time of the filing of each such Supplementary Declaration, there shall be recorded in the Mecklenburg County Public Registry a map which shows the boundary line of each lot annexed pursuant to such Supplementary Declaration and which delineates all Common Area annexed pursuant to such Supplementary Declaration.

(c) The obligation for Owners of lots in any portion of the Additional Properties to pay the assessments described in Article IV hereof shall commence upon the filing of the Supplementary Declaration in the

Mecklenburg County Public Registry annexing such portion or upon the conveyance of such lot to an Owner other than Declarant, whichever occurs later. The Owners' of such lots shall have the same voting rights as shall commence as of the date of the filing of the Supplementary Declaration.

### ARTICLE III

#### MEMBERSHIP, VOTING RIGHTS AND CONTROL OF THE ASSOCIATION

Section 1. Membership. Every Owner of a lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. The Board of Directors of the Association may admit Owners of property contiguous to the Properties to membership in the Association upon such terms as they shall in their sole discretion determine.

Section 2. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 3. Maintenance. Certain features that are deemed common amenities, being of benefit to all lots, shall be maintained exclusively by the Association until such time, if ever, as the maintenance thereof is accepted by an appropriate governmental entity. Said common amenities may include without limitation, play ground area, sidewalks, common walks, landscaping around entrance sign, entry ways and entry walls, and street lighting.

The Association shall not be responsible for the maintenance of any lots or the improvements within the boundaries thereof. The Owner shall be responsible for same. The Owner or Owners of any lots shall maintain their lots in a neat and clean condition free of all trash and debris. The yard, grounds, shrubbery and trees shall be maintained in a neat and trim condition.

Section 4. Utilities and Other Costs. The Association shall be responsible for paying all costs of electricity used in the operation of the street lights, all water costs in connection with any irrigation systems installed by Declarant or the Association in connection with the maintenance of landscaping around the entrance sign, and such other utility charges or other costs necessary or appropriate for the operation and maintenance of the common amenities referred to in Section 3 above.

Section 5. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all common amenities which the Association is obligated to maintain. Such reserve fund shall be maintained out of the annual assessments described in Article IV hereof.

Section 6. Voting Rights and Classes of Lots. The voting rights of the Membership shall be apportioned to the ownership or lots. There shall be two (2) classes of lots with respect to voting rights:

(a) Class A lots. Class A lots shall be all lots except Class B lots as defined below. Each Class A lot shall entitle the Owner(s) of said lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any lot, all such persons shall be Members and the voting rights apportioned to said lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A lot.

(b) Class B lots. Class B lots shall be all lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to three (3) votes for each Class B lot owned by it.

Section 7. Amendment. Notwithstanding the provisions of Section 6 above, so long as Declarant owns any lot, the Bylaws to the Association may not be amended without its written consent.

Section 8. Board of Directors. The Association shall be governed by a Board of Directors in accordance with the Bylaws. Notwithstanding the provisions of Section 6 above, the Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs:

- (1) Declarant no longer owns any lot, or
- (2) Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and personal Obligation for Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by

acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, damage assessments and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used as follows:

(a) to maintain the sidewalks, street lighting fixtures, entry ways, entry walls, entrance sign and landscaping around the entrance sign and any other common amenities which the Association may now or hereafter maintain;

(b) to pay for the costs of electricity in connection with the operation of the street lights, the costs of water in connection with any irrigation system installed by Declarant or the Association in connection with the maintenance of landscaping around the entrance sign, and other utility charges and other costs in connection with the operation or maintenance of the common amenities referred to in Subparagraph (a) above; and

(c) to maintain a contingency reserve equal to ten percent (10%) of the sum of the estimated amount described in Sections (a) and (b) above in order to fund unanticipated expenses of the Association.

**Section 3. Maximum Annual Assessment.** Until January 1 of the calendar year following the conveyance of the first lot by the Declarant to another Owner, the maximum annual assessment for each lot shall be One Hundred Fifty and No/100 (\$150.00) Dollars.

(a) The maximum annual assessments established above may be increased on a yearly basis, effective January 1 of each calendar year following the conveyance of the first lot by the Declarant to another Owner, if such increase is approved by Members entitled to no fewer than fifty-one percent (51%) of all of the votes to which all Members are entitled. Such voting may be represented in person or by proxy at a meeting duly called for this purpose.

(b) The Board of Directors may fix the annual assessments at amounts not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.  
In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon a common amenity including fixtures and personal property related thereto provided that any such assessment requires the same assent of the Members as provided in Section 3(a) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all lots.

Section 6. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than fifteen (15) days nor more than forty-five (45) days in advance of the meeting. At such meeting the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on and as of the date of the first conveyance of a lot to an Owner from Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Damage Assessment. In the event the Association finds that an Owner has damaged any of the common amenities, the Association may levy an assessment on such Owner's lot for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the common amenities including the sidewalks and street lighting fixtures serving the development and the amount of said assessment shall be a lien with respect to said lot.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30)

days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the lot, and of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Area or abandoning his lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

#### ARTICLE V

#### BUILDING AND USE RESTRICTIONS

Section 1. General Guidelines. The placement and construction of improvements on the lots shall be subject to the following general requirements:

(a) 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 line than the applicable zoning ordinance shall allow. In the event of the unintentional violation of any minimum setback requirements herein set forth, then, subject to the requirements of the applicable zoning ordinance, Declarant, 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, as to said lot, provided, however, that such changes shall not



exceed ten percent (10%) of the marginal requirements of such restrictions.

(b) Driveway. Any driveway constructed or used in or on any lot in the subdivision shall have cement concrete surface which shall be kept and maintained in good condition and repair.

(c) Sidewalks. All lot Owners, and their respective heirs, successors and assigns, shall each be responsible for maintaining that portion of any sidewalk lying within the right of way of any street adjoining sidewalk is accepted for maintenance purposes of such municipality or other governmental authority.

(d) Tanks; Above-ground Pools. No above-ground water or fuel tanks or above-ground swimming pools will be permitted to be located on any lot.

Section 2. Subdivision of lots. No lot shall be subdivided by sale or otherwise so as to reduce the total lot area shown on the Map, except by and with the written consent of the Declarant and provided same is also permitted under applicable governmental regulations and private restrictions affecting said lot.

Section 3. Reserved Easements. The Declarant reserves for itself, its successors and assigns permanent easements for the installation and maintenance of telephone and electric power lines, cable television liens, water and sewer lines, drainage ditches and for other utility installations over each of the lots (including, but without limitation, those easements shown on the recorded Map), including the right to re-enter each lot to maintain, replace or repair, if required by the applicable public authorities, each of said lines, drainage ditches or other utility installations, each of Lot Owner, by his acceptance of a deed to a lot, acknowledges such reservations and the rights of Declarant to transfer such easements to such utility companies as Declarant may choose or to the Association. The easements reserved by Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the lots. In addition to the foregoing, Declarant specifically reserves a perpetual easement over the rear ten (10) feet of each lot for utility installation and maintenance, and public drainage and a perpetual easement over the side five (5) feet of each lot line for utility installation are reserved. No structure, planting or other material shall be placed or permitted to remain upon any lot which may damage or interfere with any easement for utilities or drainage.

Section 4. Residential Use of Property. All lots in the Property shall be used for single-family residential purposes only

with the exception of "model home" lots which may be used by home builders for marketing purposes until such "model homes" are sold for single-family residential purposes. For purposes hereof, "single family purposes" means ordinary residential use and occupancy by individuals related by blood, marriage or adoption or similar relationship; provided, however, that occupancy by temporary guests not so related shall not be prohibited so long as such temporary residency is not commercial or institutional use. 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 and other accessory structures customarily incidental to the use of the lot; provided, however, construction trailers owned by home builders shall be allowed on lots during the construction of dwellings on such lots. Dwellings may incorporate basements and such basements shall not be considered a "story" for purposes of this paragraph so long as the top of such basements are at or below grade level at the front of the building. No trade, profession, business or customary home occupation or industry shall be conducted in or on any part of any lot or improvement thereon without the written approval of the Board of Directors of the Association; provided, this provision shall not prohibit model improvements and sales offices operated by declarant or any home builder.

Section 5. Minimum size of Dwelling. Single family dwellings shall contain not less than a minimum of 1,600 square feet under roof in the case of one-story residence and not less than 1,800 square feet under roof in the case of residences of one and one-half (1 1/2) stories or more.

Section 6. Sight lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangle area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines extended. The same sight line limitation shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances at such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of said sight lines.

Section 7. Outbuildings and Similar Structures. No trailer, tent, shack, garage, barn, camper or other outbuilding (collectively, the "Outbuildings") erected on a lot 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. All Outbuildings shall be of a similar design and constructed of similar materials as the dwelling on the lot on which the Outbuilding is located. With the exception of construction trailers used during the construction of a dwelling, no structure shall be moved onto any lot unless it shall conform to and be in harmony with the existing structures in the Development.

**Section 8. Nuisances and Unsightly Materials; Animals.** No noxious, offensive, or illegal activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No person may keep any animal upon any part of the lot except that any Owner or tenant then occupying a residence upon a lot may keep customary household pets upon such lot provided that such pets are not kept, bred or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the subdivision, and subject to such reasonable rules and regulations as the Association may promulgate. No dog shall be allowed to be off of the lot where the Owner or tenant resides unless such dog is on a leash or otherwise under the actual direct control of the Owner or tenant, and no dangerous or vicious dog may be kept or maintained on any lot.

**Section 9. Maintenance of lots.** Each Owner shall keep his lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire, or other casualty. No lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing that will cause any noise that will disturb the peace and quiet of the occupants of or surrounding lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary (day of collection only) deposits of trash, rubbish or other debris for collection by governmental or other similar garbage and trash removal units. Any outdoor clotheslines, and any swingsets or other playground equipment, shall be so situated as not to be visible from the street, or from any adjoining lot. No vegetable garden shall be larger than three hundred (300) square feet, and no more than two (2) cords of firewood shall be stored on any lot, and must be neatly stacked and free of unsightly debris. No trash or rubbish shall be burned on any lot. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant or the Association may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such lot and by posting such notice on the lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant or the Association may enter and correct the same at the Owner's expense. Each Owner, by acquiring a lot(s) subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant or the Association. No such entry as provided herein shall be deemed a trespass.

**Section 10. Signs.** No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent, or a sign used by a builder to advertise the property during the construction and sales period.

**Section 11. Antennas and Satellite Dishes.** No satellite dish or disk, nor any outside television or radio aerial, antenna or transmitter, shall be constructed or placed on any lot unless the same is completely enclosed within a privacy fence or screen and is not visible from the street or the ground level of adjoining lots. If this Section is in violation of the Federal Telecommunications Act, then this Section shall be deemed amended to the extent necessary to remove such violation and to provide for the maximum restriction allowed by said Act.

**Section 12. Walls and Fences.** Walls and fences of stone, brick or wood construction may be erected on any lot, provided, that such fence is of suitable quality and design to be in harmony with the external design and natural features of the existing structures on the subject lot and surrounding lots. No chain link fence shall be erected on any lot and no fence shall be erected on any lot closer to any street line than the building set back line as shown on the recorded map. Walls and fences are deemed to be "improvements" within the meaning of the provisions of this Declaration requiring architectural approval.

**Section 13. Vehicles and Motor Homes.** No motor homes or other similar types of recreational vehicles, campers, vans, commercial vehicle, trailer, trucks of more than one (1) ton, motorcycle, horse trailer, boat or boat trailer shall be allowed to be kept, stored or used on the property unless totally enclosed within an improvement or garage, so as not to be visible from the exterior thereof, with the exception of construction trailers owned by home builders, which may be kept on a lot until construction of the dwelling thereon is completed. No truck or van having a load-bearing capacity in excess of one (1) ton may be parked on any lot or on the street adjacent to any lot except on a temporary basis to facilitate deliveries or performance of services to the lot Owner. Nothing herein shall be construed to prohibit keeping a passenger van used only for private non-commercial purposes.

**Section 14. Utilities.** All residential utility service lines to the lots shall be underground. Further certain facilities such as utilities transformers, telephone company installations, trash containers, mail boxes, lighting facilities, utilities meters, drainage pipes, ditches and scales, storm drains and easements may be located and maintained on a lot (even though such facilities serve adjacent lots) and each Owner benefitting from such facility shall have non-exclusive easements over such lot for the installation, maintenance and use of same.

**Section 15. Hazardous Activities.** Nothing shall be done or kept on any lot which will increase the rate of insurance on any other lot without the prior written consent of the Owner of such other lot. No lot Owner shall permit anything to be done or kept on his lot which would result in the cancellation of insurance on any other lot, or which would be in violation of any law.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Plan of Design Approval. All residences, outbuildings and other structures initially constructed within the Subdivision by Approved Builders (collectively, "Initial Improvements") shall be built in accordance with plans and specifications which have been previously approved by Declarant. Under no circumstances shall any additional architectural approval be required as to the Initial Improvements. Other than the Initial Improvements, no building, outbuilding, fence, wall, porch, deck or any other structure or improvement, (collectively, "Improvements") including, without limitation, the alteration or painting of the exterior surface of any existing improvement or initial improvement shall be undertaken upon any lot unless the plans and specifications and location of the proposed improvement shall have been expressly approved in writing by the Architectural Committee established pursuant to Section 2. No subsequent alteration or modification of any existing improvements, initial improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain on any lot without the review and express written approval of the Architectural Committee, subject to Section 5 below.

Section 2. Architectural Committee. Until such time as the Class B membership expires, Declarant shall annually appoint the members of the Architectural Committee, which will be composed of at least three (3) members of the Board, the exact number of members of the Architectural Committee being designated by Declarant from time to time. Each member shall be generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the property. In the event of the death or resignation of any member of the Architectural Committee, Declarant, for as long as it has the authority to appoint the members of the Architectural Committee, and thereafter, the Board shall have full authority to designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time with or without cause, and without prior notice, by Declarant, for so long as Declarant has the right to appoint the members thereof, and thereafter by the Board. Subsequent to the expiration of Class B membership (and earlier if Declarant specifically assigns this right to the Board), the Board shall designate the number of and appoint the members of the Architectural Committee on an annual basis. At any time Declarant may elect not to designate the number of and/or appoint the members of the Architectural Committee and may assign this right to the Board.

Section 3. Procedure. No Improvement (other than the Initial Improvements as described above) shall be erected, remodeled or placed on any lot until all plans and specifications

therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Committee, as to:

- (a) quality of workmanship and materials, adequacy of site dimensions and facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (c) location with respect to topography and finished grade elevation and effect of location and use on neighboring lots and improvements situated thereon and drainage arrangement; and
- (d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Committee, or matters in which the Architectural Committee has been vested with the architectural final interpretation and decision.

Final plans and specifications (including a site plan showing the location of the contemplated Improvements on the site) for all Improvements proposed to be constructed on a site shall be submitted to the Architectural Committee for approval or disapproval. The Architectural Committee is authorized to request the submission of samples of proposed construction materials or modification or change to the Architectural Committee-approved set of plans and specifications (specifically including, but without limitation, the above-described site plan) must again be submitted to the Architectural Committee for its inspection and approval. The Architectural Committee's approval or disapproval, as required herein, shall be in writing. Once the Architectural Committee has approved the plans and specifications for the proposed Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within the time set therefor by the Architectural Committee in the written approval (but in no event later than one (1) year after such approval), such approval shall be deemed rescinded and before construction of Improvements shall thereafter be commenced on the lot in question, the plans and specifications therefor must again be approved by the Architectural Committee pursuant to this Article.

The Architectural Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair and reasonable and shall carry forward the spirit and intention of this Declaration. Architectural standards bulletins or other guidelines issued by the Architectural Committee shall be used by the Architectural Committee in reviewing any proposed plans, specifications and materials submitted to the Architectural Committee for approval. In any event, such architectural standards bulletins and/or

guidelines may be revised and amended at any time by the Architectural Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications or other materials submitted to the Architectural Committee for approval. Current copies of the architectural standards bulletins shall be available to interested persons at the principal office of the Association for a reasonable cost. Although the Architectural Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Architectural Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). The Architectural Committee is specifically authorized to make decisions based on purely aesthetic concerns and such decisions shall be final and conclusive unless arbitrary or grossly inequitable.

Section 4. **Enforcement.** In addition to the Declarant's and the Association's rights to enforce the provisions of this Declaration as set forth in Article VII, Section 1 of this Declaration, the Architectural Committee shall have the specific, nonexclusive right to enforce the provisions contained in this Article and/or to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein. In the event that the Architectural Committee, Declarant or the Association resorts to litigation to determine the propriety of any constructed improvement, to remove any unapproved improvement or otherwise to remedy a violation of this Article, the Architectural Committee, Declarant or the Association, as applicable, shall be entitled to recover court costs, attorneys fees and expenses incurred in connection therewith, which costs, fees and expenses may be levied as a Specific Individual Assessment against the offending Owner's lot.

Section 5. **Effect of Failure to Approve or Disapprove.** If any Owner erects any improvements on a lot and a suit to enjoin the erection of or require the removal of such improvements is not brought by any person or entity having standing to sue within three(3) months from the commencement of construction of such improvements, then this Article shall be deemed to have been fully satisfied.

If the Architectural Committee fails to approve or disapprove the design of any proposed improvements within forty-five (45) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article shall be deemed to have been fully satisfied; provided that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Committee if they contain erroneous data or present inadequate information upon which the Architectural Committee can arrive at a decision.

Notwithstanding the foregoing, the Architectural Committee shall have no right or power, either by faction or failure to act, to waive or grant any variance relating to any mandatory requirements specified in the Declaration.

Section 6. Right of Inspection. The Architectural Committee shall have the right, at its election, to enter upon any of the lots during (and after) preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specification.

Section 7. Limitation of Liability. Neither the Architectural Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to any one submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance (except where occasioned by gross negligence or intentional conduct) arising out of services performed pursuant to this Declaration.

Section 8. Compensation. No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article. The Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

#### ARTICLE VII

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2015, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by written instrument executed by all Owners of the lots hereby restricted and recorded in the office of the Register of Deeds of Mecklenburg County, North Carolina. This Declaration (except as otherwise provided herein) may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66 2/3%)



of the lots. Provided, that so long as Declarant owns any lot, this Declaration may not be amended without the consent and joinder of Declarant. Provided further, Declarant reserves the right, without the necessity of consent or joinder by any other person or entity whomsoever, at any time when Declarant still owns any lot, to make any amendment to this Declaration which may be or become necessary to cause the Development, or any lot, to comply with any rule, regulation, condition or requirement of any proposed F.H.A. or V.A. loan.

Section 4. Waiver of Unintentional Violations. Declarant reserves the right, but shall not be obligated, to waive in writing any violation of the designated and approved building location line or either side lot line, provided that such violation does not exceed ten percent (10%) of the applicable requirements and the violation thereof was unintentional.

Section 5. 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.

Section 6. Joinder of Development Lender; Successor to Declarant. James J. Edahl, as Trustee and as Substitute Trustee, and Branch Banking and Trust Company join in the execution of this instrument solely for the purpose of consenting to the recordation of this Declaration and of subordinating the lien of the following described Deeds of Trust to this Declaration: Deed of Trust in Book 8763, Page 155, Deed of Trust in Book 9067, Page 741 and Deed of Trust in Book 9067, Page 747 in the Mecklenburg County Public Registry. Further, said Trustee and Substitute Trustee, and said Owner and Holder agree that Declarant may record amendments or supplemental declarations hereafter, and said Deeds of Trust shall be deemed subordinated thereto without the necessity of their joinder, provided the sole purpose thereof is to annex Additional Properties pursuant to Article II, Section 2. In the event of a foreclosure or conveyance in lieu of foreclosure of the above-described Deeds of Trust or any subsequent Deed of Trust from Declarant encumbering all or a portion of the Property and resulting in a transfer of all or substantially all of the remaining lots not yet conveyed by Declarant, such purchaser or grantee shall thereafter be deemed Successor Declarant under the terms of this Declaration.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed and sealed as of the day and year first above written.

HINSHAW PROPERTIES, LLC

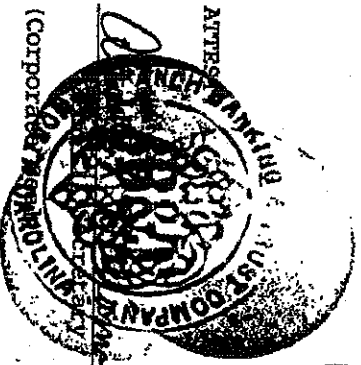
By: [Signature] (SEAL)  
Michael W. Hinshaw, Manager

[Signature] (SEAL)  
James J. Edahl - Substitute Trustee

[Signature] (SEAL)  
James J. Edahl, Trustee

BRANCH BANKING AND TRUST COMPANY

By: [Signature] (SEAL)  
President



STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, Linda J. Poston, a Notary Public of the  
aforesaid County and State, certify that MICHAEL W. HINSHAW as  
Manager of HINSHAW PROPERTIES, LLC personally appeared before me  
this day and acknowledged the execution of the foregoing  
instrument.

Witness my hand and official stamp or seal, this 18th  
day of August, 1997.

[Signature]  
Notary Public  
My Commission Expires: 10/12/2002



STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Christina P. Studiner, a Notary Public of the  
aforesaid County and State, certify that JEROME G. HARRING, Trustee,  
Substituted Trustee, personally appeared before me this day and acknowledged Edahl  
the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19  
day of August, 1997.



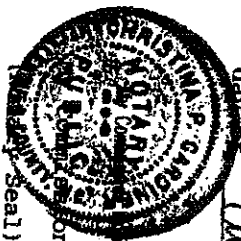
Christina P. Studiner  
Notary Public

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Christina P. Studiner, a Notary Public of the  
aforesaid County and State, certify that JAMES J. ED AHL, Trustee,  
personally appeared before me this day and acknowledged the  
execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 19  
day of August, 1997.



Christina P. Studiner  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

This 19 day of August, 1997, personally came before me William B. Baker, who, being by me duly sworn says that he is the President of BRANCH BANKING AND TRUST COMPANY, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, said writing was signed and sealed by him/her in behalf of said corporation by its authority duly given. And the said WBC said corporation acknowledged the said writing to be the act and deed of said corporation.



Expires: November 13, 1997

William B. Baker  
Notary Public

State of North Carolina, County of Mecklenburg  
The foregoing certificate of

Christina P. Baker and  
Notary(ies) Public is/are certified to be correct. This 20th day of August, 1997.

JUDITH A. GIBSON, REGISTER OF DEEDS BY Yvonne B. Adams Register of Deeds  
RD98