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FOR REGISTRATION WITH A GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
1998 NOV 24 12:34 PM  
BOOK 10064 PAGE 607-826 FEE \$44.00  
INSTRUMENT # 1998185372

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
OAK GROVE

036532

THIS DECLARATION is made this 20<sup>th</sup> day of November, 1998, by  
SHERLANCO, INC., a North Carolina corporation, referred to in this instrument as  
"Declarant".

STATEMENT OF PURPOSE

Declarant is the owner of that certain parcel of land subdivided into residential lots  
and common area which is known as Oak Grove subdivision located in Union County,  
North Carolina, as shown on maps of OAK GROVE Subdivision recorded in Plat Cabinet  
F, Files 339 - 342 in the Union County Public Registry (the "Submitted Property").

It is in the best interest of Declarant, as well as to the benefit, interest and advantage  
of each person or other entity later acquiring any property in Oak Grove 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.

Declarant desires to provide for the preservation of the values and amenities and the  
desirability and attractiveness of the real property in Oak Grove and for the continued  
maintenance and operation of such recreational and common areas as may be provided.

DECLARATION

In consideration of the premises and for the purposes stated, Declarant 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 on all parties having any right, title  
or interest in the described real property or any part thereof, and their heirs, successors  
and assigns, and shall inure to the benefit of each owner thereof.

Drawn by and Mail to: Timothy W. Gilbert (Box #74)  
Horack, Talley, Pharr & Lowndes, P.A.  
2640 One First Union Center  
301 South College Street  
Charlotte, North Carolina 28202-6038

Filed for record 57.98  
Date 10-05 o'clock PM  
Time 10:05  
JUDY G. HICKS, Register of Deeds  
Union County, NC

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 "Association" shall mean Oak Grove Community Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

1.2 "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 Oak Grove but excluding those having such interest merely as security for the performance of an obligation.

1.3 "Properties" shall mean the Submitted Property and such real property as may subsequently be brought within the jurisdiction of the Association.

1.4 "Common Area" shall mean all real property owned by the Association in Oak Grove 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, may be described and/or shown on the plats of Oak Grove recorded in the Union County Public Registry and designated thereon as "Common Area" or "Common Open Space."

1.5 "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.

1.6 "Declarant" shall mean and refer to Sherlance, Inc. and its successors and assigns and shall also mean and refer to any person, firm or corporation which shall hereafter become vested, at any given time, with title to three (3) or more undeveloped lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Sherlance, Inc. shall be a Declarant during such period of time as said party is vested with title to two (2) or more such lots so long as said lots are undeveloped, developed but unconveyed, or improvements constructed thereon are unoccupied, but only during such period. If at any time Declarant refers to more than one person, firm or corporation and a right of Declarant hereunder is to be exercised and such right does not include a right to vote as an Association member, then a person, firm or corporation which owns a majority interest in the Properties shall control such right, otherwise, such right shall be determined by majority vote among those persons, firms or corporations which are the Declarant.

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1.7 "Person" shall mean a natural person, as well as a corporation, partnership, 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.

1.8 "Oak Grove" shall mean the Submitted Property.

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

The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to 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 for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations, 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 unless the members entitled to at least two-thirds (2/3) of the votes 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 if such easements are requisite for the convenient use and enjoyment of the Properties.

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

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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: MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. 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 (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners with the exception of Declarant 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 Declarant and 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 first occurs:

- (i) When the total votes outstanding in the Class A membership exceed or equal the total votes outstanding in Class B membership, or
- (ii) Seven years from the date of recording of this Declaration.

4.3 Suspension of Rights. 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 rules or regulations established by the Board of Directors, such member's voting rights may be suspended by the board after a hearing. Such hearings shall only be held by the board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the board or the committee thereof.

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#### 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 Oak Grove and any landscaped medians within any street rights of way located in Oak Grove or the entrance thereto; (b) to provide services for the Association members to promote the health, safety and welfare of the residents of Oak Grove, and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including but not limited to the cost of repair, replacement and additions thereto; (c) for the payment of taxes assessed against the Common Area; (d) for insurance related to the Common Area; (e) for the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; (f) the employment of security personnel; (g) 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; and (h) to provide funds for the maintenance and repair of any street lights, either owned by the Association or rented, and the payment of all utility charges incident thereto, located within the bounds of the Submitted Property.

5.2 Creation of the Lien and Personal Obligation of Assessments. The Declarant, 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") for the purposes specified in Section 5.1 in the amount hereinafter set forth; and

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

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, costs of collection and reasonable attorney's fees, shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment, together with interest, late charges, costs of collection and reasonable attorney's 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 obligation.

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5.3 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 any state or federal governmental agency which acquires 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 assessments shall again accrue on such Lot. Any Lot which Declarant may hereafter designate for common use as part of the Common Area 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.

5.4 Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be One Hundred Fifty and No/100 Dollars (\$150.00) on each Lot.

(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 above the maximum assessment for the previous year without a vote of the membership not more than the greater of (1) six percent (6%) or (2) the increase in the Consumer Price Index from the previous year.

(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 the greater of six percent (6%) or the previous year increase in the Consumer Price Index 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.

5.5 Special Assessments. In addition to the annual assessment 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.

5.6 Notice and Quorum for Any Action Authorized Under Sections 5.4 and 5.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.4 and 5.5 of this Article shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called,

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the presence in person or by proxy of members entitled to cast sixty percent (60%) of all the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be the presence in person or proxy of members entitled to cast forty percent (40%) of all the votes of each class of members. No such subsequent meeting shall be held more than six (6) months following the preceding meeting.

**5.7** Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The Annual Assessments shall commence as to all Lots on January 1, 1999. From the date on which the Annual Assessments commence on a Lot until the date on which the Lot is sold by the Declarant to a purchaser, the Declarant shall be liable for Annual Assessments at a rate which is one-third of the rate otherwise payable except that Declarant shall not be liable for Annual Assessments on any Lots if the Association is operating without a deficit. The first Annual Assessment shall be prorated for the number of months remaining in the calendar year. At least thirty (30) days before February 1 of each year, the Board of Directors shall fix the amount of the Annual Assessment against each Lot and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's Annual Assessment shall be the fixed amount. Written notice of any change in assessment rate shall be sent to every owner. After the first Annual Assessment, subsequent Annual Assessments shall be due and payable in advance on January 1 of each year unless the Board of Directors votes to collect such assessments on a monthly basis and the due dates for the payment of Special Assessments 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 to date.

**5.8** Effect of Non-Payment of Assessment; Remedies of the Association. 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 six percent (6%) 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 attorney's 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 assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

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 payments 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.

5.10 Collection Upon Sale by Declarant. Upon the sale of a Lot by Declarant, the purchaser shall pay to the Association at the closing of the sale that amount of money that is equal to that portion of the Annual Assessment attributable to the balance of the year in which the closing takes place. Any amounts prepaid by the Declarant shall be refunded by the Association. Any Special Assessment made before, but falling due after, the date of closing of the sale of a Lot by Declarant shall be paid in full to the Association by the purchaser at the closing of the sale.

#### ARTICLE VI: ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS

6.1 Architectural Control Committee. Before all Class B Lots shall cease to exist and be converted to Class A Lots pursuant to Article IV, Declarant shall appoint an Architectural Control Committee consisting of not less than three (3) members to serve as representatives of the Association's Board of Directors and enforce the restrictions hereafter set forth.

Prior to the formation of said Committee, Declarant shall have the responsibility of enforcing the restrictions set forth in this Article. Upon the later of the following two dates, the Architectural Control Committee shall be appointed by the Board of Directors: (1) Upon the termination of the Class B membership; or (2) five years following the date of this Declaration. Reference herein to the Committee shall mean the Declarant until such Committee is appointed. The following architectural, maintenance and use restrictions shall apply to each and every Lot now or hereafter subject to this Declaration.

6.2 Approval of Plans and Architectural Committee. Except as to the construction of the initial residence on any Lot by a Declarant, which construction is specifically exempted herefrom, no construction, reconstruction, remodeling, alteration, roofing or addition to any structure, building, fence, wall, drive or walkway, or exterior color change, shall be commenced or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made after completion of construction of said dwelling, unless and until the plans and specifications showing the nature, kind, shape,



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height, color, material and location of the same shall have been mailed to the Committee by certified mail with return receipt requested and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee. If the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications shall have been submitted to it, further approval will not be required and this Article will be deemed to have been fully complied with. Upon giving approval to such plans and specifications, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans as have been previously approved by the Committee. The Committee or the Board of Directors of the Association shall be entitled to stop any construction in violation of these restrictions.

6.3 Residential Use. All Lots shall be used for residential purposes only. Lots are to be used exclusively for single family residential purposes and are devoted exclusively to dwelling use.

6.4 Building Line Requirements. Minimum setback lines which may be shown on any recorded plat of the Properties are not necessarily intended to create uniformity of setbacks; they are meant primarily to avoid overcrowding and monotony. It is intended that setbacks may be staggered where appropriate so as to preserve the trees and other natural vegetation, and to insure each Owner the greatest benefit and enjoyment. Any deviation from the building line requirements not in excess of ten (10) percent thereof shall not be construed as a violation of the building line requirements.

6.5 Building Requirements. No dwelling shall be erected or placed on any Lot exceeding two and one-half stories in height and with a private garage for not more than three automobiles. No dwelling shall be erected or placed on a Lot having a heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than 1,100 square feet.

6.6 Walls, Fences and Hedges. No fence, hedge or wall of any type or kind shall be erected or maintained on a Lot except such fences, hedges or walls as may be installed, constructed or erected with the initial construction of the main dwelling located on said Lot, or as may later be approved by the Committee as described in Paragraph (6.2) above. No metal fences, except for a 2 x 4 wire mesh inside of an approved wooden fence to contain pets, are allowed on a Lot. No solid fence is allowed on the perimeter of any Lot. All perimeter fences on a Lot must be rail type or picket fences with at least 40% of surface area open. Privacy fences are permitted around pools or patios with a maximum height of six (6) feet.

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6.7 Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shed, tent, garage, carport, or any other structure of a similar nature shall be used as a residence either temporarily or permanently. Provided, however, this paragraph shall not be construed to prevent the Declarant or a licensed contractor approved by Declarant from using sheds or other temporary structures during construction for such purposes as Declarant deems necessary or later approved by the Association. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Board of Directors of the Association or the Architectural Control Committee. No solar panels, solar collectors or other solar power apparatus shall be allowed on any Lot. No metal storage buildings, metal sheds, metal trailers or metal garages shall be permitted on any Lot. All other types of storage buildings, sheds, trailers or garages shall not be allowed on a Lot unless approved by the Architectural Control Committee as described in Paragraph (6.2) above.

6.8 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, pastured, or maintained on any Lot, except household pets which may be kept thereon in reasonable numbers as pets for the sole pleasure and use of the occupants, but not for any commercial use or purpose. All household pets shall be kept under Owner's control so as not to be a nuisance to other Owners. Birds shall be confined in cages.

6.9 Signs. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale," which sign shall not exceed two feet by two feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot.

6.10 Nuisances. No offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereof which is or may become an annoyance or nuisance to any other Owner. 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 such Lot to appear in any unclean or untidy condition or that is unsightly; nor shall any substance, thing or material be kept upon any Lot that will emit a foul odor or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding Lots. No trash, rubbish, stored materials, wrecked, unlicensed or inoperable vehicles, boats and/or trailers, recreational vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by governmental and other similar garbage and trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds or underbrush

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in a manner satisfactory to a majority of the Association Board of Directors, the Association may, through its agent or representative, five days after posting a notice on such Lot or mailing a notice to the Owner thereof at his property requesting the Owner to comply with the requirements of this paragraph, enter and remove all such unsightly objects, debris or other vegetation at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by the Association in the enforcement of this paragraph promptly upon demand. No such entry as provided herein shall be deemed a trespass. Notwithstanding anything to the contrary herein, the provisions of this Paragraph (6.10) shall not apply to a Declarant and Declarant shall be specifically exempt from being required to comply herewith.

6.11 Clotheslines, Garbage Cans, Etc. All clothes-lines, garbage cans, lawnmowers and similar equipment shall be kept, in an enclosed structure or screened by adequate planting or fencing so as to conceal same from the view of neighboring Owners and streets. Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any Lot.

6.12 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 Declarant's intent that this paragraph inure to the mutual benefit of all Owners within the Properties.

#### 6.13 Maintenance.

(a) Exterior maintenance, upkeep and repair to the main dwelling on each Lot, yard, fence, walkway and shrubbery shall be the sole responsibility and expense of the Owner of the Lot subject to such reasonable requirements as may from time to time be established by the Committee to insure the continuity and harmony of exterior design of Oak Grove. Should a majority of the Association Board of Directors determine that any Owner has failed or refused to discharge properly his obligations with respect to such maintenance, upkeep and repairs, the Association, through its agent or representative, may provide same as it may deem necessary and proper.

(b) All Lots, together with the exterior of all improvements thereon, shall be maintained in a neat and attractive condition by their respective Owners. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing or caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks or other exterior

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improvements. In the event an Owner shall fail to maintain a Lot and the improvements thereon in a manner satisfactory to the Association Board of Directors, the Association may, through its agent or representative, after approval by two-thirds (2/3) vote of the Board, have the right to enter upon said Lot and repair, maintain and restore the Lot and the exterior of the buildings and any other improvements thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject and the Owner shall be personally liable to the Association for the costs of such maintenance, and the cost, until paid, shall be a permanent charge and lien upon such Lot, enforceable to the same extent and collectible as provided for in Article V. Such entry as provided herein shall not be a trespass, nor shall the Association be liable for doing anything reasonably necessary or appropriate in connection with carrying out those provisions, provided such entry shall be at reasonable times and places so as not to interfere with the right of quiet enjoyment of the individual Lot Owner.

6.14 Above Ground Swimming Pools. No above ground swimming pools, except for small wading pools, are permitted on any Lot.

6.15 Decorative Structures. No decorative statues, birdbaths, fountains, ornaments, figurines, or any other decorative structures or items are permitted in the front or side yards of any Lot.

6.16 Boats, Commercial Vehicles and Recreational Vehicles. No boats, commercial vehicles, or recreational vehicles shall be permitted on any Lot except in an enclosed garage.

6.17 Mailboxes. Mailboxes on each Lot shall conform to specifics set forth by the Architectural Control Committee.

6.18 Wetlands. Areas shown as Wetlands on any recorded plat of the Properties may be subject to the Corps of Engineers Wetland Regulations or other applicable laws and regulations governing wetlands.

#### 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 will interfere with rights and use of any and all easements shown on said recorded plat.

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**7.2 Utility and Drainage.** An easement on each Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under and upon a strip of land five feet (5') in width parallel and contiguous to the rear or back Lot line of each Lot, in addition to such other easements as may appear on a recorded subdivision plat for Oak Grove. The purpose of these easements shall be to provide, install, maintain, construct and operate drainage facilities now or in the future and utility service lines 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 of drainage channels in the easements. 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 company is responsible. With ten (10) days prior written notice to Owner, Declarant may exercise the right to remove obstructions in such easements upon Owner's failure to do so. For the purpose of this covenant, Declarant 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 Declarant; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Declarant. 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 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 Declarant and all similar persons to enter upon the Properties or any portion thereof, in the performance of their respective duties.

#### **ARTICLE VIII: GENERAL PROVISIONS**

**8.1 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.

**8.2 Duration.** The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after

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which time they shall be automatically extended for successive and additional periods of ten (10) years each.

8.3 Amendment. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Owner or mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such owner's Lot or of the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot; however, such amendment does require the prior written consent of the Department of Housing and Urban Development and the Veterans Administration. In the event that such amendment would materially and adversely affect the security, title and interest of any mortgagee, such amendment shall be valid only upon the written consent of at least sixty-seven percent (67%) of the mortgagees (based on one vote for each mortgage on a Lot owned) and the prior written consent of the Department of Housing and Urban Development and the Veterans Administration.

Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Board of Directors of the Association, without approval of the Owners, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of at least sixty-seven percent (67%) of each class of members of the Association as such classes are set forth in this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of at least sixty-seven percent (67%) of the members of the Association; provided, however, that the percentage of the votes (of each class of members, of the Association, and of members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

Notwithstanding anything to the contrary contained in this Declaration, any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such lien; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Common Area; (vi) responsibility for maintenance and repair of the Properties; (vii) expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties; (viii) the boundaries of any

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Lot; (ix) interests in the Common Area; (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (xii) any provisions which are for the express benefit of mortgagees; or (xiii) any other material amendment shall require (i) if a two-class voting structure is in effect, the vote or written consent of at least sixty-seven percent (67%) of each class of members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of at least sixty-seven percent (67%) of the total votes of the Association, and the written consent of at least sixty-seven percent (67%) of the mortgagees. Any mortgagee who does not respond within thirty (30) days to a request by the Association for consent to an amendment of this Declaration shall be deemed to have approved such request.

Any instrument amending this Declaration must contain a certification by the Secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of Union County. Any such amendment shall be effective upon the date of recordation.

**8.4 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.

**8.5 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.

**8.6 Unintentional Violation of Restrictions.** In the event of the unintentional violation of any of the setback line restrictions set forth on any recorded plat of the Properties, Declarant reserves the right, by and with the mutual written consent of the owner or owners for the time being of such lot, to change the setback line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the applicable zoning ordinance requirements of Union County.

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8.7 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.

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

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

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and attested by authority duly given on the day and year first above written.

SEAL

SHERLANCO, INC.,  
a North Carolina corporation

Walter A. Arnold  
Secretary

By: Walter A. Arnold  
President



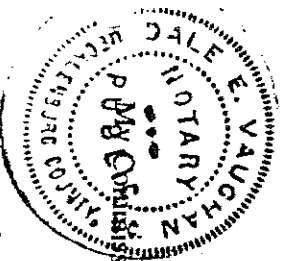
BK1244PG0278

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

This 19<sup>th</sup> day of November, 1998, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came H. Grady Sherrad, who, being duly sworn, says that he is President of SHERLANCO, INC., and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that he signed and sealed said instrument on behalf of said corporation by its authority duly given. And the said ~~Secretary~~ President acknowledged said instrument to be the act and deed of said corporation.

WITNESS my hand and seal this 19<sup>th</sup> day of November, 1998.



Dale E. Vaughan  
Notary Public

NORTH CAROLINA -- Union County  
The foregoing certificate(s) of Dale E. Vaughan, Juna O. Helms,  
Hettie and Ed Helms, Chad R. Helms Notary Public at Elon, N.C.  
08


As (are) certified to be correct. This instrument was presented for registration and recorded in this office at Book 1244, Page 242  
this 19<sup>th</sup> day of Nov, 1998 at 10:05 o'clock P. M.  
JUDY G. PRICE, REGISTER OF DEEDS By: Judy G. Price, RD ASYD

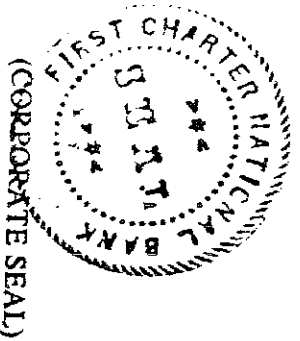
BN 1241, PG 0279

CONSENT OF MORTGAGEE

FIRST CHARTER NATIONAL BANK, being the Beneficiary under that certain Deed of Trust from Sherlance, Inc. to H. Clark Goodwin, Trustee, conveying the property described in Exhibit A attached hereto and made a part hereof, and recorded in Book 1107 at Page 134 in the Union County Public Registry, does hereby consent to the recordation of this Master Declaration and the imposing of the provisions hereof to said real property described in Exhibit A, and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Master Declaration, including all exhibits, attachments and amendments hereto, shall be superior to the lien of said Deed of Trust on the property described in Exhibit A. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Declarant, the relationship of partnership or of joint venture, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the Declarant under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

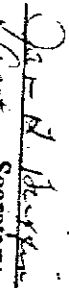
IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 20<sup>th</sup> day of November, 1998.

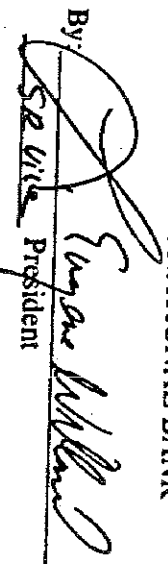
  
H. Clark Goodwin (SEAL)  
Trustee



FIRST CHARTER NATIONAL BANK

ATTEST:

  
David H. Clark  
Secretary

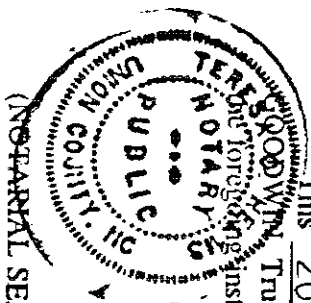
By   
Eugene Williams  
President

BK 1244 PG 0280

STATE OF NORTH CAROLINA

COUNTY OF Union

This 20<sup>th</sup> day of Nov., 1998 personally came before me H. CLARK  
TERESA D. WILSON Trustee, who, being by me duly sworn, acknowledged the due execution of  
the foregoing instrument.



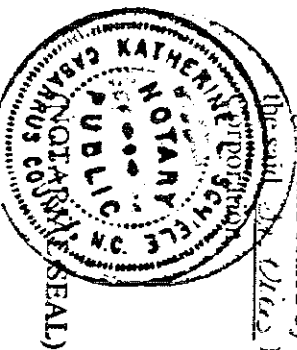
Teresa D. Wilson  
Notary Public

My commission expires: 01.23.2002

STATE OF NORTH CAROLINA

COUNTY OF Catawba

This 19 day of November, 1998, personally came before me  
George Willard, who being by me duly sworn, says that he is a Director  
President of FIRST CHARTER NATIONAL BANK, that the seal affixed to the foregoing  
instrument in writing is the corporate seal of the Corporation and that said writing was  
signed and sealed by him, in behalf of said Corporation by its authority duly given. And  
the said George Willard President acknowledged the said writing to be the act and deed of said



Katherine Schell  
Notary Public

My commission expires: 4/3/2000

**CONSENT AND JOINDER OF OWNER**

NVR, Inc., owner of certain Lots comprising a portion of the Properties as described in the foregoing Declaration of Covenants, Conditions and Restrictions for Oak Grove, hereby joins in and consents to the terms, conditions and covenants of said Declaration, and agrees that all of said Lots owned by the undersigned shall be held, transferred, sold, conveyed and occupied subject to the terms, conditions and covenants contained in said Declaration, including all exhibits, amendments and supplemental declarations thereto.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Joinder under seal by authority duly given as of this 6 day of May, 1999.

(CORPORATE SEAL)

NVR, INC.

ATTEST:

By: [Signature]

[Signature] President

[Signature]  
Secretary

COMMONWEALTH OF ~~VIRGINIA~~ North Carolina. [Signature]

COUNTY OF Wake

This 6 day of May, 1999, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Charles H. Milledge, who, being duly sworn, says that he is Vice President of NVR, INC., and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that he signed and sealed said instrument on behalf of said corporation by its authority duly given. And the said Charles H. Milledge acknowledged said instrument to be the act and deed of said corporation.

WITNESS my hand and notarial stamp or seal this 6 day of May, 1999.

Charles H. Milledge  
Notary Public

My Commission Expires:

June 30, 2002

HTPL 84831

BK 1244PG0282

**CONSENT AND JOINDER OF OWNER**

Gary D. Smith Homes, Inc., owner of certain Lots comprising a portion of the Properties as described in the foregoing Declaration of Covenants, Conditions and Restrictions for Oak Grove, hereby joins in and consents to the terms, conditions and covenants of said Declaration, and agrees that all of said Lots owned by the undersigned shall be held, transferred, sold, conveyed and occupied subject to the terms, conditions and covenants contained in said Declaration, including all exhibits, amendments and supplemental declarations thereto.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Joinder under seal by authority duly given as of this 4th day of May, 1999.

(CORPORATE SEAL)

GARY D. SMITH HOMES, INC.

ATTEST:

By

President

Robin J. Smith  
Secretary[Signature]

STATE OF NORTH CAROLINA

COUNTY OF Union

This 4th day of May, 1999, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Garry D. Smith, who, being duly sworn, says that he is President of GARY D. SMITH HOMES, INC., and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that he signed and sealed said instrument on behalf of said corporation by its authority duly given. And the said Robin J. Smith acknowledged said instrument to be the act and deed of said corporation.

WITNESS my hand and notarial stamp or seal this 4th day of May, 1999.

[Signature]  
Notary Public

My Commission Expires:

April 18, 2004