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**DECLARATION OF COVENANTS CONDITIONS AND
RESTRICTIONS FOR ST. JAMES**

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STATE OF NORTH CAROLINA DECLARATION OF COVENANTS
COUNTY OF UNION CONDITIONS AND RESTRICTIONS
FOR ST. JAMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the 29th day of April, 2005, by Lester Pressley Development LLC ("Declarant"), a North Carolina limited liability company with offices in Blowing Rock, North Carolina.

BACKGROUND STATEMENT

Declarant is the owner of a parcel of real property containing approximately 20.166 acres of land, located in the Town of Moore, Union County, North Carolina, such parcel bordering on James Hamilton Road (the "Entire Parcel"). The Entire Parcel is more particularly described on Exhibit A attached hereto. Declarant has constructed on the Entire Parcel (as defined below) a residential Villa development consisting of Building Numbers 1-70, inclusive, with a total of 35 townhouse units (the "Villa(s)"), together with certain common areas and facilities. This development (the "Project") shall be known as St. James.

A subdivision plat of a portion of the Entire Parcel is recorded in Plat Cabinet 1, Files 630 and 631 in the Union County Public Registry.

In creating the Project, Declarant desires to develop a residential villa community, with certain common areas and facilities, including but not limited to private roads for access to public highway, parking lots, driveways, one lake, a clubhouse, side walks, a gazebo, pool and various landscaped areas to be used for the benefit of the owners of Villas within the Project. Declarant desires to provide for the preservation of the values and amenities within the Project and for the maintenance of the common areas and facilities in the Project, and therefore desires to subject the Entire Parcel to the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Parcel and each owner of any part of the Parcel.

Declarant has deemed it herein desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the common areas and facilities of the Project, of performing exterior and structural maintenance of the Villas, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Villas and to promote the recreation, health, safety and welfare of the owners of the Villas within the Project. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, **THEREFORE**, in consideration of the premises and for the purposes stated, Declarant hereby declares that the property is hereby submitted to the provisions of Chapter 47F of the General Statutes of North Carolina, known as the North Carolina Planned Community Act, and as it may be amended or supplemented from time to time (herein "Planned Community Act" or "Act"), except as permitted within the Act to be controlled by provisions of this Declaration, and 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.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit).

Section 1.1. "Agency" shall mean and refer to anyone of the following entities (or their successors) that holds or insures a Mortgage: the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, the Government National Mortgage Association, and the United States Department of Housing and Urban Development.

Section 1.2. "Association" shall mean and refer to St. James Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

Section 1.3. "Board" shall mean and refer to the Executive Board of the Association.

Section 1.4. "Bylaws" shall mean the bylaws of the Association.

Section 1.5. "Committee" shall mean and refer to the architectural control committee established pursuant to Article VIII hereof

Section 1.6. "Common Area" shall mean and refer to all real property, real property interests and personal property owned by the Association, and the easements granted to the Association for the common use and enjoyment of the Owners. The Common Area to be owned in fee simple by the Association at the

time of the conveyance of the first Lot by Declarant to an Owner is all of the Phase I Parcel outside of the boundaries of individually platted Lots, as designated on the Phase I Plan, including specifically the Clubhouse as reflected thereon. The Common Area may expand in accordance with Article II herein.

Section 1.7. "Declarant" shall mean and refer to Lester Pressley Development, a North Carolina limited liability company, and its successors or assigns in ownership of all of the Entire Parcel which at the time of the conveyance is not part of the Property.

Section 1.8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

Section 1.9. "Entire Parcel" shall mean and refer to the real property described on Exhibit A attached hereto.

Section 1.10. "Entire Parcel Plat" shall mean and refer to the subdivision map of the Phase I Parcel, which is recorded in Map Book ____ at Page ____ in the Union County Public Registry.

Section 1.11. "Lot" shall mean and refer to any numbered plot of land, with the exception of the Common Area, appearing on any recorded subdivision map of the Property.

Section 1.12. "Member" shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association.

Section 1.13. "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Villa.

Section 1.14. "Mortgagee" shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Villa. Such notice shall be deemed to include a request that the Mortgage be given the notice and other rights described in Article XIII.

Section 1.15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Property, but excluding those parties who have such interest merely as a security for the performance of any obligation.

Section 1.16. "Project" shall mean and refer to the residential Villa project located on the Property, which initially shall be known as St. James.

Section 1.17. "Project Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, and its Bylaws, and the Rules and Regulations promulgated by the Association governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.18. "Property" shall mean and refer to the Phase I Parcel, and any other portion of the Entire Parcel which is subjected to this Declaration under the provisions of Article II below.

Section 1.19. "Rules and Regulations" shall mean reasonable Rules and Regulations for the use of Common Area and conduct of Owners with St. James as determined and published for Owners by the Board.

Section 1.20. "Villa Owner" shall mean the initial purchaser of a Lot from Declarant and all successive Owners.

Section 1.21. "Villa" shall mean and refer to an attached or semi-attached residential townhome constructed upon a Lot.

ARTICLE II EXPANSION OF PROJECT

Section 2.1. General. Declarant may, but shall not be required to, construct the Project in phases on the Entire Parcel. Additional portions of the Entire Parcel and improvements thereon, including Common Areas, may be subjected to the provisions of this Declaration and the other Project Documents in the manner provided in this Article II.

Section 2.2. Additions by Declarant. Declarant reserves an option, until the tenth (10th) anniversary of the date of recording of this Declaration, to subject to this Declaration additional land located within the Entire Parcel, in accordance with provisions of this Article II. Any additional land so subjected must be contiguous to the Property, and must be shown on a recorded subdivision plat. Declarant may exercise this right within the ten (10) year period specified above, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplementary Declaration in the manner provided in Section 2.3 below.

Section 2.3. Supplementary Declaration. In order to exercise any right to subject other portions of the Entire Parcel to this Declaration, Declarant shall execute and record an amendment to this Declaration (a "Supplementary Declaration"). Any Supplementary Declaration executed and recorded by Declarant shall automatically amend Exhibit B attached to this Declaration, legally expanding the Property that is then subjected to the operations of the Declaration.

Any such Supplementary Declaration also may contain such additions to the provisions of this Declaration, and may contain such complimentary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of Declarant, all such additions and modifications as may be necessary to reflect the different character of the new Villas created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not alter the Lot size or Villa construction as conveyed by Declarant prior to recordation of such Supplementary Declaration.

Section 2.4. Conveyance of Common Area. Following the recording of each Supplementary Declaration, Declarant shall convey to the Association the Common Area located within the additional property being subjected to this Declaration, as provided in Section 3.2.

Section 2.5. Amendments and Revisions to Existing Record Plats. Declarant reserves the right to amend and revise existing Recorded Plats at any time without joinder of Lot Owners or the Association so long as any such amendment or revisions does not affect Lots previously conveyed by Declarant.

Section 2.6. Access Easement Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successor and/or assigns, a perpetual, non-exclusive and alienable easement and right of ingress, egress and regress over and across all private streets and roads within St. James for access to and from other real property of Declarant or its successors and/or assigns. Any damage caused by Declarant, its agents, successors and/or assigns to the private streets and roads within St. James when exercising its rights created by this Section 2.6 shall be repaired at the expense of its successors and/or assigns. In addition, an easement and right of ingress, egress and regress over and across all private streets and roads and Common Areas within St. James, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, emergency service, garbage collection, delivery of the mail, installing, removing and reading water meters; maintaining and replacing water and sewer facilities and fire lines; and any other service related to public safety and preserving the general welfare.

ARTICLE III COMMON AREA

Section 3.1. Owners' Easement of Enjoyment. Every Owner shall have a nonexclusive perpetual 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 terms of this Declaration and the powers of the Association, including but not limited to all provisions enumerated under §47F-3-102 of the Act. The foregoing easement rights include, without limitation, a nonexclusive easement over that portion of the Property shown as "Private Street" on the Plat, and a non-exclusive easement over all other streets, driveways, walkways and

parking areas within the Common Area, for the purpose of vehicular and pedestrian access, ingress and egress to each Lot over the Common Area from James Hamilton Road. The access easements described in the preceding sentence shall survive the expiration or earlier termination of this Declaration, and shall continue as a burden running with the Common Area unless and until such reasonable access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easements in one or more strips of land adequate for that purpose.

All easements over the Common Area created by this Section 3.1 shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests, invitees and agents, and are granted subject to the following conditions and reservations:

(a) The right of the Association, in accordance with the provisions of Section 3.5 and the Project Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

(c) The right of the Association, as provided in the Project Documents, to suspend the voting rights of any Member and the enjoyment rights of any Member in the Common Area, except the right of pedestrian or vehicular access to the Member's Lot and the right of access to utility services for such Lot, for any period during which any assessment remains unpaid, or as a result of any infraction of its published Rules and Regulations;

(d) The right of the Association, in accordance with the provisions of Section 3.5 and the Project Documents, to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

(e) The right of Declarant, prior to the conveyance of the Common Area to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of utility facilities, as provided in ARTICLE IX;

(f) The other easements reserved by Declarant over the Common Area described in ARTICLE IX;

(g) The right of the Association to limit the number of guests of Members as to the use of any facilities situated upon the Common Area or any other property of the Association; and

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(h) The right of the Association to establish reasonable Rules and Regulations for the use of any of the facilities situated upon the Common Area by members or their tenants, family members, guests, invitees and agents, as provided in Article X.

Section 3.2. Title to Common Area. Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the common Area within the Entire Parcel to the Association, and upon such conveyance the Association shall accept prior to or simultaneously with the date of recordation of the first deed conveying the first Lot to an Owner other than Declarant. As subsequent portions of the Entire Parcel are subjected to this Declaration, as provided in Article II, Declarant shall convey fee simple title to the Common Area within such property, as designated on the Plat showing such property, to the first Lot in that phase to an Owner other than Declarant. Each such conveyance shall be free and clear of all liens and encumbrances, except the rights, restrictions, and easements set forth in this Declaration, including the reserved easements referenced in ARTICLE IX, other public and private access, utility and drainage easements, easements to governmental authorities, and ad valorem taxes for the year in which such conveyance occurs (which taxes shall be prorated as of the date of conveyance and paid when due by the Association).

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, his rights of enjoyment to the Common Area to members of his family, tenants or contract purchasers who reside on the Property, or to such other persons as may be permitted by the Association.

Section 3.4. Maintenance of Common Area. The Association shall be responsible for the maintenance and repair of the Common Area and all improvements located thereon, except for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

Section 3.5. Conveyance of Common Area. While the Property remains subject to this Declaration, no conveyances of (including dedications) or security interests or liens of any nature shall arise or be created against the Common Area without the prior written consent of at least two-thirds (2/3) of all Owners, including at least two-thirds (2/3) of all Owners other than Declarant, and at least two-thirds (2/3) of all Mortgages. In addition, so long as Declarant is a Class B Member in the Association, any dedication of all or any part of the Common Area to public use shall require the prior approval of any Agency holding or insuring a Mortgage. Any grant of a mortgage or security interest in the Common Area shall expressly be subject to the rights and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to the Common Area, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other

similar lien by reason of labor performed or material furnished is subordinated to this Declaration.

Section 3.6. Easement for Use Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a perpetual, non-exclusive and alienable easement and right to use of the Common Areas within St. James for residents of adjacent properties as currently owned and as developed by Declarant. Use of the clubhouse by such adjacent property residents may include a reasonable annual fee as determined by the Declarant prior to the sale of all Lots in St. James, or by the Association thereafter.

ARTICLE IV THE ASSOCIATION

Section 4.1. Automatic Membership. All Owners shall automatically be members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

Section 4.2. Voting Rights. There shall be two classes of Lots and Members with respect to voting rights in the Association.

(a) Class A Lots shall be all Lots in the Project transferred to a Villa Owner. The Owner (or group of Owners) of each Class A Lot shall be entitled to one (1) vote in the Association. If a Lot is owned by more than one person or entity as tenants in common or tenants by the entirety, then each such person or entity shall be deemed an Owner and a Member of the Association, but shall designate one person or entity to exercise the voting rights appurtenant to that Lot. In no event shall more than one (1) vote in the Association be cast with respect to each lot.

(b) Declarant currently plans to develop 70 Lots in the Project. Class B Lots shall be all Lots in the Project calculated by subtracting from 70 (or the revised total of Lots to be sold within the Project at the sole discretion of the Declarant) all Class A Lots. The Declarant shall be the Class B Member and shall be entitled to three (3) votes in the Association for each Class B Lot owned by it. The Class B Lots shall cease to exist and be converted to Class A Lots upon the earlier to occur of the following: (1) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in Class B Lots; (2) the date ten (10) years from the

date of recording of this Declaration; or (3) the effective date of Declarant's written notice of or written consent to termination.

Section 4.3. Directors Appointed by Declarant. The initial Board shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws. The initial directors are specifically authorized to fix the annual assessments for periods through December 31, 2004 and to enter into a Management Agreement for the Association, subject to the limitations set forth in Section 4.18.

Section 4.4. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of the Association, and (2) special assessments of the Association as provided in Section 4.7, such assessments to be established and collected as hereinafter provided. Each annual and special assessment, together with interest, costs and reasonable attorneys' fees shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

Section 4.5. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property and in particular for the acquisition, improvement, maintenance and operation of the Common Area; services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to maintenance, landscaping, operation of the Clubhouse, pool, and lakes, and security services; payment of taxes and governmental assessments on the Common Area; payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents; payment of water and sewer fees for water supplied and sewer services provided to the individual Villas through any metering device serving the Project unless such service(s) are separately metered to each Villa; payment of management fees to a property manager in accordance with Section 4.18; the provision of a reserve fund for repair and replacement of Association responsibilities relating to the Villas; the employment of attorneys and accountants to represent the Association when appropriate; the cost of utilities and fuel used in operating facilities in the Common Area; the maintenance and upkeep of all

private streets and roadways in the Property; and the exterior maintenance of Lots and Villas, as provided in Article VII.

Section 4.6. Maximum Annual Assessment. Until December 31, _____, the maximum annual assessment for each Class A Lot (the "Assessment Cap") shall be One Thousand Six Hundred Dollars (\$1,600.00) paid in quarterly installments; except as otherwise provided below:

(a) From and after December 31, 200 _____, the Assessment Cap may be increased by the Board, without a vote of the membership, so long as the amount of the increase does not exceed fifteen percent (15%) per annum, calculated on a cumulative basis.

(b) From and after December 31, 200 _____, the Board maintains the rights specified in Section 4.6(a); provided, however, the Assessment Cap may be increased above the increase allowed in Section 4.6(a) by a vote of two-thirds (2/3) of the Members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board shall fix the annual assessment for each assessment year at an amount not in excess of the Assessment Cap for that year.

Section 4.7. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part: (a) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including but not limited to fixtures and personal property related thereto; (b) the cost of paying special governmental assessments; or (c) any other cost or expense, payment of which through special assessment is approved by two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. There shall be no limit on the amount of any such special assessments.

Section 4.8. Special Individual Assessments. In addition to the regular annual Assessments and the Special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot or Villa rather than on all Lots or Villas, special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained in the Bylaws for an Owner's violation of the terms and conditions of this Declaration, the provisions of the Rules and Regulations, any liquidated damages or summary charges imposed under authority contained herein or in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement thereof, or the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws, all of the foregoing of which shall comprise "Special Individual Assessments."

Section 4.9. Uniform Rate of Assessments. Both annual and special assessments levied by the Association must be fixed at a uniform rate for each Lot, but such rates may be based on the occupiable or heated area within each Villa (in the case of utility charges), the replacement value or assessed value of each Villa (in the case of insurance premiums), or some other reasonable criteria. Notwithstanding the foregoing, Declarant shall not have a requirement for Class B Lots as defined in Section 4.2(b), provided, however, from and after the date of conversion of Class B Lots to Class A Lots, Declarant shall pay twenty-five percent (25%) of the rate for Class A Lots for Lots owned by Declarant.

Section 4.10. Date of Commencement of Annual Assessments; Due Dates. The annual assessments levied by the Association shall commence as to each Lot upon the date of closing for each Villa Owner. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of each 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 subject thereto. The due dates shall be established by the Board, and unless otherwise determined by the Board, annual assessments shall be collected monthly with 1/12 of the annual assessment due and payable on the first day of each calendar month.

Section 4.11 Effect of Nonpayment of Assessments; Remedies of the Association. If any annual or special assessment, or monthly installment thereof, is not paid within fifteen (15) days after its due date, the Board may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In that event, the Association may file a notice of lien in the Office of the Register of Deeds for Union County, thereby creating a lien on that Lot in accordance with the procedures set forth in N.C.G.S. §47C-3-116, and the Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against his Lot to collect said assessment. In addition, interest, reasonable attorneys' fees not to exceed fifteen percent (15%) of the amounts due, and costs of such action or foreclosure shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association or its agents the right and power to bring such action or foreclosure. Any such foreclosure shall be accomplished in an action brought in the name of the Association in the manner that a foreclosure of a mortgage or deed of trust would be brought, or as otherwise expressly provided by law, and each Owner grants to the Association a power of sale in connection with any such charge or lien. The lien provided for in this

Section 4.10 shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire and hold, lease, mortgage and convey the same. 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.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Area or any other services or facilities which is provided by the Association (except the right of access to the Owner's Lot and the right of access to utility service for such Lot) may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any Rules or Regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board after a hearing for a period not to exceed sixty (60) days. Such hearing shall only be held by the Board after giving such Owner ten (10) days' prior written notice specifying each alleged violation and setting the time, place and date of the hearing, determination of the violation and the time of suspension shall be made by a majority vote of the Board.

Section 4.12. Subordination of the Lien to Mortgages. The lien of the assessments provided of herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by a lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Mortgage, his heirs, successors and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.13. Exempt Property. The following parts of the Property shall be exempt from assessment liens of the Association: (a) the Common Area; and (b) any part of the Property dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any public authority).

Section 4.14. No Obligation to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own. Declarant may, as its discretion: (1) advance funds to the Association from time to time as required, which advances shall be applied against future assessments, if any, due by Declarant, or (2) lend funds to the Association, which loans shall be repayable

with interest at a rate no higher than the prime rate of interest listed in the "Money Rates" table of The Wall Street Journal, and with a maturity date no more than one (1) year from the date of advancement of funds.

Section 4.15. Capital Contribution and Reserve Funds. At the time of the Closing of each Lot and Villa from Declarant to the initial Villa Owner, such Villa Owner shall pay to the Association as an initial capital contribution, the sum of two months of the then monthly assessments, currently \$270.00, which shall be deposited into the reserve fund herein defined.

From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the improvements located on the Common Area or the Property. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

Section 4.16. Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all Rules and Regulations concerning the Property, as well as its own books, records and financial statements, and same shall be available for inspection by Owners or Mortgagees during normal business hours upon at least three (3) business days' prior written notice to the Association.

Section 4.17. Voluntary Conveyance Exception. Except as provided in Section 4.11, the lien for assessments of the Association created in this Article IV shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in Section 4.11. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

Section 4.18. Management and Other Agreements. The Association shall have the right to enter into management and other agreements for the Property with any individual, firm or entity that the Association deems appropriate and in the best interest of the Project. A copy of all such agreements shall be made available to each Owner and Mortgagee upon request. Any management and other

agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. The property manager shall at all times be answerable to the Association and subject to its discretion.

Section 4.19 Failure of Association to Pay Taxes and Special

Assessments on Common Area. If the Association, contrary to its obligation to do so, fails to pay the ad valorem taxes or any special governmental assessments on the Common Area on or before the date one hundred eighty (180) days after such taxes or assessments become delinquent, then such taxes or assessments, together with any interest and penalties thereon, shall be and become a lien, on a pro rata basis, upon all Lots. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments for public improvements.

**ARTICLE V
PARTY WALLS**

Section 5.1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article V, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as a part of the original construction upon each Lot and any replacement thereof. If any portion of any structure originally constructed by Declarant, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 5.1 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

Section 5.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in proportion to their ownership, to the extent such maintenance is not the responsibility of the Association under Article VII.

Section 5.3. Destruction by Fire or Other Casualty. If a party wall is

destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5.4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5.5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5.6. Easement and Right of Entry for Repair Maintenance and Reconstruction. Every owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 5.7. Certification With Respect to Contribution. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this article request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefore.

Section 5.8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article V, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board shall select an arbitrator for the refusing party. All arbitrators chosen shall be either architects, engineers, general contractors or attorneys licensed as such in North Carolina.

ARTICLE VI INSURANCE AND RECONSTRUCTION

Section 6.1. Association Insurance. The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions.

(a) Property Insurance. The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all buildings and improvements located on the Property, including all Villas and all improvements located in the Common Area, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible not in excess of \$10,000.00. Each policy shall show the Association as the named insured, but shall provide that each Owner is an insured person with respect to his Villa, and the Association is an insured person with respect to the Common Area, shall contain clauses providing for waiver of subrogation against any Owner, and any Owner's employees or agents, shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and all Mortgagees; shall provide that no act or omission by any Owner will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each policy shall contain an inflation guard endorsement and a construction code endorsement, if available. Each policy shall provide that adjustment of loss shall be made by the Association as insurance trustee, and shall provide for the issuance of certificates or mortgagee endorsements to all Mortgagees.

(b) Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Area; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and all Mortgagees. The Association shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors,

volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments, or the amount required by any Mortgagee, whichever is greater.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as may be required by any Agency (as same may be amended or modified from time to time), and such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds. In addition, the Association shall maintain flood insurance on any Villa located within a "special flood hazard area," as designated on a Flood Insurance Rate Map published by the Federal Emergency Management Association, or if otherwise required by any Agency.

Section 6.2. Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as an expense of the Association for all purposes. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

Section 6.3. General Standards. All insurance policies maintained by the Association under this Article VI shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in *Best's Insurance Guide*. Upon request, duplicate originals of all such policies shall be furnished to all Owners and Mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and the Mortgagees attesting the fact that such policies and such insurance are in force and effect. The Association also shall furnish to all Owners and Mortgagees evidence that the premiums for the required insurance have been paid on an annual basis.

Section 6.4. Owners' Insurance. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the

Association within thirty (30) days after purchase.

Section 6.5. Distribution of Insurance Proceeds. All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to, the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to any improvements in the Common Area shall be held by the Association and applied in the manner provided in Section 6.6.
- (b) Proceeds on account of damage to Villas shall be held in undivided shares for the Owners of damaged Villas in proportion to the cost of repairing the damage to each such Owner's Villa, which cost shall be determined by the Association.
- (c) In the event a mortgage endorsement or certificate has been issued with respect to a Villa, the share of that Owner shall be held in trust for the Owner and its Mortgagee, as their respective interests may appear.
- (d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in Section 6.6.

Section 6.6. Responsibility for Reconstruction or Repair. If any portion of the Property is damaged by perils covered by the property insurance maintained by the Association in accordance with Section 6.1(e), the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property. If, however, such damage renders two-thirds (2/3) or more of the then-existing Villas on the Property uninhabitable, the Association may, upon the affirmative vote of seventy-five percent (75%) of the votes of the Members and upon the written approval of the holders of seventy-five percent (75%) of the Mortgages then in force with respect to the Lots, elect not to reconstruct or repair such damaged Villas. A meeting shall be called within ninety (90) days after the occurrence of such casualty rendering more than two-thirds (2/3) of the Lots uninhabitable, or, if by such date the property insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment. Upon any such election, the insurance proceeds attributable to such damage shall

be promptly distributed to the Owners whose Villas were damaged, or to their Mortgagees in accordance with the terms of the Mortgage covering that Lot, in proportion to the reasonable cost of repairing damage to such Villas; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lot have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Property.

If (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Property by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Area shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within any Lot shall be accomplished promptly by the Owner of the affected Lot at his expense. If the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on his behalf. The expense of such performance may be assessed against that Lot, and if not paid shall be a lien on the Lot having all of the priorities provided for in this Declaration.

Section 6.7. Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Property, the following provisions shall govern and apply:

(a) Immediately after a casualty which causes damage to any portion of the Property, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(b) If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Lots (with respect to any deficiency in insurance proceeds for damage or destruction to Villas or other improvements on Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Common Area or the improvements thereon) in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of two-thirds (2/3) of the members of the Association voting at a meeting duly called for such purpose.

(c) The proceeds of the property insurance referred to in Section 6.1(a) and the sums deposited with the Association from collections of special assessments proceeds of authorized loans, as provided in Section 6.7(b), shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Property from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. If shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds, and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board.

ARTICLE VII MAINTENANCE OF PROPERTY

Section 7.1. Maintenance by Association. The Association shall be responsible for the operation, maintenance and repair of the Common Area, as provided in Section 3.4. In addition, the Association shall be responsible for the following items of exterior maintenance within each Lot: lawn care, shrubs and beds within each Lot but outside of private fences, maintenance and repair of all walkways and paved areas, periodic repainting of exterior building surfaces on each Villa, and repair and replacement (if necessary) of the following structural elements of each Villa: exterior walls and building surfaces, roofs, front stoops, gutters, and down spouts, including cleaning of gutters and down spouts. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

Section 7.2. Maintenance by Owners. Except for the maintenance required of the Association under Section 7.1, each Owner of a Lot shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within

a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Villa, shall be maintained and kept in repair by the Owner thereof. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Article VII in a manner reasonable satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the building any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with Section 4.11. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and Villa to make emergency repairs necessary for the property maintenance and operation of the Project.

ARTICLE VIII ARCHITECTURAL CONTROL

Section 8.1. Purpose. The Declarant desires to provide for the preservation of the values in St. James with respect to vegetation and any improvements to be constructed, improved or altered, and to that end, will establish an architectural control committee, in accordance with Section 8.3 hereof, in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lot in relation to surrounding structures, natural features and topography.

Section 8.2. Architectural Control. Unless expressly authorized in writing by the Committee, no Villa, fence, wall, driveway, patio, swimming pool, building or other structure or improvement whatsoever shall be constructed or maintained, nor shall the initial landscaping installed with the Villa be materially changed, nor shall any exterior addition or alteration to any Villa (including doors, windows and electrical fixtures), fence, wall, driveway, patio or other building or structure or improvement be started, nor shall any clearing or site work be commenced or maintained upon any Lot within St. James, until plans and specifications thereof showing the shape, dimensions, materials, basic exterior finishes and colors, location onsite, driveway, parking, decorative landscape planting, floor plans and elevations therefore (all of which is hereinafter referred to collectively as the "Plans"), and any application fee set by the Association, shall have been submitted (the Plans in triplicate) to, and approved in writing by, the Committee, as to harmony of external design and location in relation to any surrounding structure, natural features and topography. The Committee shall have the absolute and

exclusive right to refuse to approve any such Plans which are not suitable or desirable is the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. The Committee may promulgate design standards from time to time to be adhered to by the Plans for the Lots, or Villas in St. James. A current copy of all design standards shall be kept on file in the principal office of the Association.

In no event shall the Committee approve any Plans in which the height or setback of the improvements on the Lot or Improved Lot violates the limits established by the Town of Monroe.

Each Lot shall be maintained consistently with the initial landscaping. All material changes to the landscaping installed on a Lot shall be first approved by the Committee. The Committee shall have the authority to create landscaping guidelines with which each Lot shall comply.

Section 8.3. Architectural Control Committee.

a. Membership.

- (i) As to the initial construction of improvements on any Lot prior to conveyance from Declarant to the Villa Owner (the "Initial Construction of Improvements"), the Declarant shall be responsible for the review, approval, and monitoring of construction of improvements. Thus, for the purposes of this Declaration, wherever the Committee is described, regulated or permitted to act hereunder, such provisions shall apply to the Declarant, who will be acting in place of and as the Committee, when such provisions are used in connection with the Initial Construction of Improvements. The right of the Declarant to review and approve new plans pursuant to this section shall cease during times when the Declarant does not own any of the property comprising any portion of St. James, or January 1, 2010, whichever event shall first occur.

- (ii) As to construction not comprising the Initial Construction of Improvements, the Committee shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board. A majority of the Committee may designate a representative to act for it. In the event of death, resignation or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a

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list of the names and addresses of any designated representatives of the Committee, and such list shall be available in the principal office of the Association to any Owner upon request.

b. Procedures.

- (i) At least forty-five (45) days prior to the commencement of any construction, the Plans shall be submitted to the Committee. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the complete Plans and all other required information, the Committee shall notify the Villa Owner in writing as to whether the Plans have been approved. Unless a response is given by the Committee within thirty (30) days, the Plans shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions of a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Villa Owner and the conditions imposed shall become fully a part of the approved Plans. No improvements shall be made except in strict conformity be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further Committee response shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Villa Owner, and the conditions imposed shall become fully a part of the approved Plans. No improvements shall be made except in strict conformity with the approved Plan. The Committee shall have the right to monitor construction of improvements and investigate compliance with the approved Plans, and hereby reserves the right to enter upon any Lot or Improved Lot in order to do so.

- (ii) Villa Owners are responsible for the contractors they hire to perform work on their property. Any contractor damaging Common Areas, improvements or infrastructure of St. James, and the Villa Owner(s) who engaged the services of such

contractor, shall be jointly and severally liable for such damage. The Committee may from time to time, in its sole discretion, require of any contractor or Villa Owner a case or insurance performance bond to guarantee final site clean up and/or extraordinary road repairs necessitated by the actions of the contractor and his workers and subcontractors during the construction of any improvements on the St. James.

- (iii) Any Villa Owner submitting Plans to the Committee and disagreeing with the finding of the Committee may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chairman of the Committee the opportunity to present to the Board specific reasons why the plans were denied, in the presence of the Villa Owner or his agent, and the Villa Owner or his agent may present information challenging the findings of the Committee. The decision of the Committee shall only be overridden by simple majority vote of the Board, but must do so within 45 days of its receipt of the Committee's decision. Notwithstanding the foregoing, decisions regarding the Initial Construction of Improvements pursuant to Section 8.3(a)(i) shall not be appealable to the Board.

- (iv) The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be an individual Assessment, enforceable against the Owner as provided hereinabove. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner and shall be in addition to any fees due for processing any requests for approval.

- (v) All notices required to be given under this Section shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to, Federal Express), and the Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. If the Committee approves the plans,

one set of Plans, denoted as approved (or approved with specified conditions), shall be retained by the Committee, and the other two sets shall be returned to the applicant.

- (v) Construction must be completed in strict accordance with the Plans approved by the Committee. In addition, Villas shall comply with all applicable building, plumbing, electrical and other codes.

ARTICLE IX EASEMENTS

Section 9.1. Construction, Setling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Villa constructed thereon and contributing to the support of an abutting Villa shall be burdened with an easement of support for the benefit of such abutting Villa. If adjoining Villas are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Area resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

Section 9.2. Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Villa to the extent necessary for performance by the Association of its obligations or maintenance, repair, or replacement of such Villa or the Common Area.

Section 9.3. Blanket Easements for Utilities. Declarant, prior to the conveyance of the Common Area to the Association, and the Association, at any time thereafter, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Area. Further, the Association may grant such permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful in the discretion of the Board for the purpose of maintenance and operation of the Project. Notwithstanding the foregoing, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially approved by Declarant or thereafter approved by Declarant as long as Declarant owns a Lot or Lots in the Property.

Section 9.4. Underground Electrical Services. Underground single phase electrical service shall be available to all Lots and, where appropriate, to improvements to be constructed on the Common Area. Metering equipment shall be located on the exterior surface of the walls of any improvement at a point to be

designated by the providing utility company. The providing utility company shall have a ten (10) foot easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service of the Lots. For so long as such underground service is maintained, the electric service to each Lot and the Common Area shall be uniform and exclusively of the type known as single-phase, 120/240 volt, 60 cycle alternating current. Easements for underground service may be crossed by driveways, walkways, patios and parking areas, provided Declarant makes prior arrangement with the utility company furnishing electric service. Such easements for underground services shall be kept clear of all other improvements, including buildings, or other pavings, other than crossing driveways, walkways, patios, or parking areas.

Section 9.5. Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property, or on any other portion of the Entire Parcel. Declarant shall further have an easement for the purpose of the storage of materials, vehicles, tools, and equipment, which are being utilized in such construction. No Owner, or his guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

Section 9.6. Emergency Access. In case of any emergency originating in or threatening any Villa, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Villa for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate. In addition, all police, fire protection, ambulance and all similar persons shall have the right to enter upon the streets, driveways and other parts of the Common Area in the performance of their duties.

Section 9.7. Easements Reservations for Declarant. Each deed from Declarant to the Association conveying all or any part of the Common Area shall be subject to a non-exclusive reserved easement, in favor of Declarant and any other owner of all or any part of the Entire Parcel outside of the Property, for the purpose of pedestrian and vehicular access to and from James Hamilton Road for the use of the utility facilities (such as sewer and water mains and metering facilities) installed by Declarant in connection with its initial development of the Property, and for the installation, operation, repair and replacement of additional utility facilities. All such non-exclusive access and utility easements reserved by Declarant shall be subject to the terms and conditions set forth in Section 3.1. Such easements shall be appurtenant to the remainder of the Entire Parcel outside of the Property.

Section 9.8. Sales Office Easement. Declarant reserves an exclusive

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occupancy or one room in the Clubhouse, including appropriate not-exclusive access, parking, bathroom and other facility use within the Clubhouse. Such occupancy lease shall be without cost to Declarant if Declarant holds title to any portion of the Entire Parcel, but shall include the obligation for a reasonable market rental after St. James is sold out.

ARTICLE X USE RESTRICTIONS

Section 10.1. Residential Use Only. Each Owner shall use his Villa for residential purposes only, and shall not permit his Villa to be used in any unlawful manner. However, to the extent permitted by law, any Owner may use his Villa as a home office provided that such home office use (a) is ancillary to the residential use, (b) does not generate any additional pedestrian or vehicular traffic to or from his Villa or the common Area, and (c) does not cause any disturbance of other residents or occupants of the Property. In addition, Declarant shall have the right to use any portion of the Property as a sales office, construction office, storage area, model Villa, or similar facility in connection with its development of the Property.

Section 10.2. Care and Maintenance. Each Owner shall (a) keep the interior of his Villa including, but not limited to, all appliance and utility systems, and the exterior of the Lot in a safe, neat and clean condition at all times; (b) permit no unsafe or unsanitary conditions in his Villa or on his Lot; (c) comply with any and all obligations imposed upon owners by applicable building and housing codes; and (d) not deliberately or negligently destroy, deface, damage or remove any part of any Villa or the Common Areas, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so, the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as provided in Section 7.2.

Section 10.3. Offensive Activity. No noxious or offensive trade or activity shall be conducted upon any Lot, or in the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner of the Property.

Section 10.4. Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner of the Property.

Section 10.5. Fire Hazards. No Owner shall make any alterations to his Villa or bring or keep anything therein which will increase the risk of fire, conflict

with fire laws or the regulations of the Charlotte Fire Department, or increase the premiums of any insurance policy on the buildings on the Property maintained by the Association.

Section 10.6. Rubbish. All trash, garbage and other waste shall be kept in sanitary containers within each Villa, and the Owner of each Lot shall be responsible for placing such garbage in a roll-out container, and rolling the container out to the designated trash pick-up area on a regular basis. All trash containers or other equipment for storage or disposal of such waste shall be kept in a clean and sanitary condition and shall be located in the garage, except on garbage collection days.

Section 10.7. Utilities. Total electrical usage in any Villa shall not exceed the capacity of the circuits for that Villa as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Villa without permission of the Association. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the owner of the Villa in which they are located.

Section 10.8. Animals. No livestock, poultry or other animals shall be kept or maintained in any Residence or on any Lot, except for common household pets, such as cats and dogs. No pets may be kept or bred for any commercial purposes, and no savage or dangerous pets may be kept on the Property. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. All pets must be housed inside a Villa, and no pet shall be permitted upon the Common Area unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area, or urinate on the shrubbery, and each Owner shall clean up immediately after pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Area caused by his pet. If any owner violates these rules or any additional rules included within the Rules and Regulations more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the owner to remove the pet permanently from the Property upon not less than ten (10 days' written notice).

Section 10.9. Patios/Decks. The rear patios and covered porch on each Villa shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, towels or banners shall not be hung on the patio or balcony railings, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any patio. Any furniture on the patio shall be appropriate outdoor furniture and shall be maintained in a neat, tidy, and good condition. Bird feeders are only permitted within the patio, and also must be maintained in a neat, tidy, and good condition. Barbecue grills may be stored on

the patio, but all other personal property (such as bicycles, lawn care equipment and recreational equipment) shall be stored in a manner so as not to be visible from the Common Areas or other Lots. The size and location of a patio will be specifically limited to the width of the covered porch and no deeper than twelve (12) and the location shall be immediately adjacent to the covered porch. No wood decks will be permitted. The surface material will be concrete, brick, or stone and will be limited to muted colors approved by the association only.

Section 10.10. Signs. No signs of any kind (except one sign per Lot as pre-approved by the Committee containing the words "for rent" or "for sale" and located in the window of the affected Villa, and only after all Lots have been sold by Declarant) shall be displayed to the public view on any Lot or on the Common Area. The provisions of this Section 10.10 shall not prevent the placement of permanent signs identifying the Project at the entrances to the Project, nor shall it prevent Declarant or its agents from placing signs to advertise the Property during the construction and sale period, including signs on the Common Area and on any unsold Lot or Villa. Each villa is permitted to display statuary and or planters within the confines of the front porch or the patio area.

Section 10.11. Fences. No fence, privacy fence, wall, patio enclosure, hedge, garden or mass planting shall be erected, maintained or permitted upon the Property, other than a wrought iron type aluminum fence no higher than 5', which said fence must be mounted on concrete as expressly approved by the Association in accordance with Section 8.1, or those installed by Declarant prior to the initial conveyance of each Lot. Fences are limited to the patio only and shall not be constructed around the yard.

Section 10.12. Clotheslines. No clothesline of any type shall be placed, used or allowed to remain on any Lot.

Section 10.13. Leases. Any lease of a Villa or portion thereof shall be in writing and shall provide that the lease of the Villa shall be subject in all respects to the Declaration, and that any failure by the tenant to comply with all of the terms of the Declaration or the Rules and Regulations shall constitute a default under the lease. No Villa may be leased for a period shorter than six (6) months.

Section 10.14. Antennas/Satellite Dishes. No television antennas, radio receiver or sender antenna or other similar device shall be attached to or ins exterior portion of any Villa or structure, or placed on any Lot or Improved Lot. A satellite dish not to exceed twenty four inches (24") in diameter may be placed on the rear of the home or rear yard so that it cannot be seen from the street.

Section 10.15. Individual Owner Landscaping. Individual Owners will be permitted to plant live annuals, perennials, and small flower bushes in the beds of their individual villa on their property. The Association will not be responsible for the livelihood of any plants installed by individual owners. The Association will not maintain any plants located behind a private fence of an owner.

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Section 10.16. Exterior Shutters, Storm Doors, Screening, Awnings and Window Treatments. No exterior shutters, awnings or screening will be permitted on any villa at any time. Storm doors are prohibited except for the one specific storm door (color, model and make supplied by the Declarant) chosen by the Association, which must be installed professionally. Any window covering or treatment visible from the exterior of the villa must be of solid color that blends with the exterior trim.

Section 10.17. Flags, Statues, Decorations and Ornaments. No flags, statuettes, decorations and ornaments shall be placed on any building, lot or any property in the Project unless such is approved by the Association. This prohibition shall not apply to the display of a current flag of the United States of America on national holidays.

Section 10.18. Use of Common Area in General. No Owner shall obstruct the entrances, streets, sidewalks, driveways, parking areas and other facilities in the Common Area in any way, or use them for other than their intended purposes. The Common Area shall not be used for the storage of supplies, personal property or trash or refuse of any kind except in Common Area trash receptacles placed at the discretion of the Board. There shall be no bicycles, tricycles, wagons, toys or other miscellaneous personal property parked or left in the Common Area at any time. All bicycles shall be parked in the area designated for bicycles. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Villa or upon the Common Areas that despoils the appearance of the Property.

Section 10.19. Fishing, Swimming and Boating. Swimming and boating in the Common Area ponds located within the Project is expressly prohibited. Fishing in the Common Area ponds is only permitted in designated areas as approved by the Association or as provided in the Rules and Regulations.

Section 10.20. Vehicles. No boats, motor homes, trailers, campers, mobile homes, trucks (except pickup trucks used for personal transportation), commercial trucks of any size, recreational vehicles in excess of twelve (12) feet in length or motorized vans used for commercial purposes (as distinguished from vans used solely as passenger vehicles), wrecked vehicles, inoperable vehicles or any vehicle not regularly operated in day to day use shall be parked outside of the garage on the Property at any time. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense.

Section 10.20 (a) Golf Carts. The use of electrical motorized golf carts upon the private roads of the subdivision is permitted. The use combustion engine powered golf carts anywhere within the subdivision is specifically prohibited. No one under the age of 16 years shall be permitted to operate a golf cart within the

subdivision unless accompanied by an adult. The use of golf carts is limited to the private roadways of the subdivision only. The use of or operation of a golf cart upon the sidewalks, pathways or other common areas is specifically prohibited. Golf carts shall be parked only within the garages only with the exception that said carts shall be permitted to be parked temporarily on the paved portion of the driveways of the units. Owners of the lots who maintain or allow the use and garaging of golf carts on their lots shall maintain liability insurance coverage as provided in Section 6.4 herein for all risks associated with the use of such golf carts and agree to indemnify and hold the Association and its members harmless for the negligent use of the golf cart either owned by the lot owner or those allowed to use a golf cart garaged on the owner's lot. The lot owner shall be responsible for the use of the cart that is contrary to the provisions set forth herein. This responsibility shall apply to a golf cart either owned by the lot owner or garaged and maintained on lot owner's property. Such owner shall be liable for fine for improper use as may be set by the Association. Non payment of such fines shall constitute a Special Individual Assessment as provided in Section 4.8 herein

Section 10.21. Parking and Garages. All vehicles must be parked only in the driveways or garages on each Lot, or in other parking spaces designated by the Association, and must not obstruct or interfere with the ingress or egress of others. In particular, no vehicle shall block the private access drive or the driveway of any other owner. All parking in the Common Areas shall be on a first-come, first served basis, and subject to any Rules or Regulations that may be promulgated by the Association. Temporary parking on the side of a street will be allowed on a temporary basis for no more than a few hours. The paved driveway on each Lot may be used only by the owner of that Lot, and his agents and invitees. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense. Garage doors must be closed at all times that automobiles are not entering or exiting.

Section 10.22. Loitering. There shall be no loitering or parties in the Common Area except in the places designated for such activity. There shall be no foul or abusive language, or alcohol consumption, in the Common Area.

Section 10.23. Supervision of Children. Each Owner will provide supervision, by an adult or competent person over 16 years of age, for any child under 8 years of age at all times when they are in the Common Area. Children and persons of any age shall not appropriate any part of the Common Area for their personal use of play area.

Section 10.24. Rules and Regulations. In addition to the restrictions set forth in this Article X, reasonable Rules and Regulations governing the use of the Property may be made and amended from time to time by the Board. Copies of all such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Members upon request.

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Section 10.25. Enforcement. The Association or its agent shall have the right to enforce the provisions of this Article X by assessing fines against any defaulting Owner in accordance with the procedures set forth in the Bylaws, and any such fine shall deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with Section 4.10.

ARTICLE XI DURATION, AMENDMENTS AND TERMINATION

Section 11.1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, the Association and any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods often (10) years.

Section 11.2. Declarant's Right to Unilaterally Amend. Declarant, or its successor or assigns, shall be allowed to unilaterally make any Amendments to this Declaration necessary, in the Declarant's opinion, for compliance with laws or regulations relating to FHA, HUD, VA, the Federal National Mortgage Association or the Office of Interstate Land Sales; necessary to establish the nonprofit qualifications of the Association; to correct any discovered typographical error contained herein; to clarify any ambiguity contained herein; to comply with government directives; to maintain the tax exempt status of the Association; or to add or delete any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of St. James and the Owners therein. This right may be exercised, and shall be effective only upon the recordation of a "Corrected Declaration" in the Offices of the Register of Deeds Union County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

The Declarant may also amend this Declaration by filing an amendment in the Union County Registry, executed by only the Declarant, if at the time of the recording of the amendment the Declarant is still the sole owner of property in St. James. Such Amendment need not be certified by the Association.

Section 11.3. Owner/Member Initiated. An amendment to this Declaration may be proposed upon a majority vote of the Owners, with only one Owner per Lot voting, whether meeting as Owners or by instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all such Owners, and there shall be called a special meeting of the Owners for a date not sooner than ten (10) days nor later than sixty (60) days from date of notice. It shall be required that each Owner be given written notice of such

special meeting stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than sixty (60) days before the date set for such special meeting. Such notices shall be made in compliance with the provisions of Section 13.7 hereof, and after made in compliance therewith shall be deemed to be equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) or more of the votes of each class of Member entitled to vote in order for such amendment to become effective (with the votes being calculated as provided in Section 4.2) At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. If so approved, such amendment of this Declaration shall be properly transcribed and certified by officer(s) of the Association on a form substantially similar to the form attached as Exhibit C, stating that the amendment was duly adopted and approved by the requisite percentage of Owners. The original or an executed copy of such amendment properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Union County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

Without the prior written consent of the Declarant, when Declarant is a Class B Member, there shall not be allowed any Owner/Member-initiated amendments to this Declaration for a period of five years from the effective date hereof, and, in addition, no Owner/Member-initiated amendments may be made for any reason affecting Declarant's rights hereunder. The above limitations shall in no way limit or diminish Declarant's rights to make amendments to any part of the Declaration under the powers reserved in Section 11.2 above.

Section 11.4 Termination. The termination of this Declaration shall require the assent of at least eighty percent (80%) of the votes in the Association, taken at a meeting duly called and held for this purpose, and shall be evidenced by a termination agreement recorded in the Union County Registry and otherwise complying with the terms of North Carolina General Statutes Section 47F-2-118.

ARTICLE XII AGENCY APPROVAL

In the event that any Owner hereafter finances its Lot and Villa through a loan guaranteed or insured by an Agency, or Lots and Villas within St. James are approved by an Agency as being eligible for such loans, then, until all Class B Membership ceases to exist or is converted to Class A Membership as provided in

EX 3769PG644

Article IV hereof, the approval of the Agency shall be obtained prior to an amendment of this Declaration.

ARTICLE XII MISCELLANEOUS PROVISIONS

Section 13.1. Covenants Running with the Land. Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts title to that Lot and Villa subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed, shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 13.2. Construction and Enforcement. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential Villa Community of the highest quality. Any Owner, the Association, Declarant or any Mortgagee may enforce these covenants and restrictions by any proceedings at law or in equity against any person or person violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby.

Subject to the requirements for a court order set forth below, if any structure is built on the Property in violation of this Declaration, the Association, or its designated agents, may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Property) enter upon the Lot where such violation exists, and abate or remove the same at the expense of the Owner; provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall immediately be deemed a special assessment levied by the Association against such violating Owner and such Owner's Lot, shall become a personal obligation of such Owner and shall become a lien upon such Lot enforceable as under the provisions of Section 4.10. Notwithstanding the foregoing, the Association shall not have the right to exercise the foregoing powers without an order from a court of competent jurisdiction if the abatement sought by the Association involves the alteration or demolition of any

improvements within the Property.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the cost of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

Section 13.3. Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 13.4. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 13.5. Time Limits. If any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restriction restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last surviving child of the current members of Lester Presley Development LLC.

Section 13.6. No Liability. Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of any actions performed pursuant to or in accordance with any authority granted or delegated to them by this Declaration.

Section 13.7. Headings. The heading to each Article and Section of this Declaration is inserted only as a matter of convenience for reference and in no way limits or describes the scope of intent of such Article or Section, or this Declaration in general.

Section 13.8. Notice. It shall be the obligation of every Owner to provide to the Association a physical address for notice purposes, and additionally E-Mail and Facsimile addresses, if available. Any notice required to be sent to any Member of Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known physical address of the person who appears as Member or Owner on the records of the

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Association at the time of such mailing, or upon transmittal receipt by the sender to the last registered E-Mail or facsimile address of the Member or Owner. In the event a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed out the Union County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot or Improved Lot to be examined. Notice to anyone of the Owners, if title to a Lot or Improved Lot is held by more than one, shall constitute notice to all Owners of that Lot of Improved Lot.

Section 13.9. Incorporation of Provisions of the Act. The following provisions of the Act are specifically incorporated herein by reference: §47-1-107 (Eminent Domain), 2-121 (Merger or Consolidation of Planned Communities), 3-111 (Tort and Contract Liability), 3-118 (Association Records) and 3-129 (Declaration Limits on Attorney Fees); provided, however, reasonable attorney fees to the prevailing party must be commensurate with the time, effort and result of any said attorney.

EXECUTION AND SIGNATURE PAGE TO FOLLOW ON THE PAGE
NEXT FOLLOWING THIS PAGE

SK 3769PG647

IN WITNESS WHEREOF, Declarant has executed this Declaration under
seal as of the day and year first above written.

DECLARANT:

Lester Presley Development LLC

By: [Signature]
Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA UNION

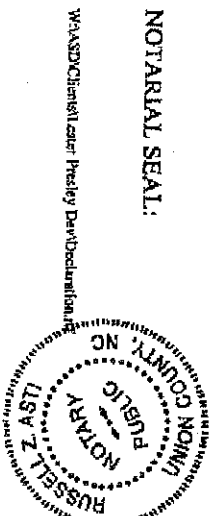
I, Russell Z Asst, a Notary Public of said County and State, do hereby certify
that Keven Presley, Member/Manager of Lester Presley Development LLC, personally
appeared before me this day and acknowledged the execution of the foregoing
instrument on behalf of and as the act of the LLC.

WITNESS my hand and of official seal this the 24 day of April, 2004⁵

My commission expires: 10/21/09

[Signature]
Notary Public

NOTARIAL SEAL:



WASDC\Client\laster Presley Development LLC

NORTH CAROLINA-UNION COUNTY
The foregoing certificate(s) of

RUSSELL Z ASST

[Signature] (s/s) Notary

to be correct.

CORINNA D. CRUM, REGISTER OF DEEDS

By: Corinna D. Crum, RSO
REGISTER

EXHIBIT A
LEGAL DESCRIPTION OF ENTIRE PARCEL

9K 3 7 6 9 PR 64 8

EXHIBIT A
LEGAL DESCRIPTION OF ENTIRE PARCEL

Tract One:

BEGINNING at a point in the center of James Hamilton Road (SR 1511) said point being a corner of Edsel M. Griffin land (Book 304, page 428) and runs thence with the center of the said James Hamilton Road S. 34-41-23 W. 300 feet to an iron stake a corner of the new lines; thence two new lines as follows: (1) N. 54-33-33 W. 729.56 feet to an iron stake; (2) N. 68-43-49 W. 538.18 feet to an iron stake in the old line; thence with the old line N. 13-51-35 E. 114.51 feet to a point on the bank of a creek; thence S. 55-59-56 E. 13.88 feet to a point in the center of said creek; thence with the center of said creek as follows: (1) N. 72-33-13 E. 110.02 feet; (2) N. 15-38-14 W. 52.50 feet; (3) N. 11-14-55 E. 30.23 feet; (4) N. 9-01-16 E. 85.88 feet; (5) N. 24-34-52 E. 57.40 feet; (6) S. 89-59-40 E. 56.36 feet; (7) N. 83-48-57 E. 91.70 feet; (8) S. 27-14-17 E. 27.13 feet; (9) N. 62-14-56 E. 85.83 feet to a point in said creek indicated by an iron stake on the South bank of said creek 8.72 feet distance; thence leaving the said creek with Grady F. Tyson's property line (Book 285, page 916), S. 78-10-15 E. 239.94 feet to Edsel M. Griffin's property corner; thence with two of the said Griffin's lines, as follows: (1) S. 5-41-33 E. 280.50 feet to an iron stake; (2) S. 54-33-33 E. 729.56 feet to the point of BEGINNING and containing 11.078 acres as surveyed by Sidney M. Sandy in December, 1986 and being part of the property described in Deed Book 101, page 563.

Also being that same property conveyed and described in that deed recorded in Book 3314, Page 463 Union County Public Registry.

Tract Two:

BEGINNING AT A POINT IN THE CENTER OF THE JAMES HAMILTON ROAD (SR 1511); SAID POINT BEING THE SOUTHEAST CORNER OF FLOYD EUDY'S PROPERTY AS DESCRIBED IN DEED BOOK 191 AT PAGE 77, AND RUNS THENCE WITH THE EUDY'S LINE N. 65-50-25 W. 335.41 FEET TO AN IRON STAKE; THENCE WITH ANOTHER OF EUDY'S PROPERTY LINES, (DEED BOOK 287, PAGE 806) N. 64-13-45 W. 236.06 FEET TO AN IRON STAKE; THENCE ANOTHER LINE OF SAID PROPERTY S. 18-46-22 W. 200.39 FEET TO AN IRON STAKE, A CORNER OF THE NEW LINE; THENCE WITH THE NEW LINE N. 49-47-58 W. 608.48 FEET TO AN IRON STAKE IN THE OLD LINE; THENCE WITH THE OLD LINE N. 13-51-35 E. 316.84 FEET TO AN IRON STAKE, A NEW CORNER; THENCE TWO NEW LINES AS FOLLOWS: (1) S. 88-43-49 E. 538.18 FEET TO AN IRON STAKE; (2) S. 64-33-33 E. 729.50 FEET TO A POINT IN THE CENTER OF SAID JAMES HAMILTON ROAD; THENCE WITH THE SAID JAMES HAMILTON ROAD, S. 34-41-23 W. 233.42 FEET TO THE POINT OF BEGINNING AND CONTAINING 8.038 ACRES AS SURVEYED BY SIDNEY M. SANDY IN DECEMBER, 1986 AND BEING A PART OF THE PROPERTY DESCRIBED IN DEED BOOK 101, PAGE 563.

Also being that same property conveyed and described in that deed recorded in Book 3355, Page 383 Union County Public Registry.

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EXHIBIT B

PK 3769 PG 649

BK 3769 PG 650

**EXHIBIT C
CERTIFICATION OF VALIDITY OF FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

By the authority of its Board of Directors, the St. James Association, Inc., hereby certifies that the foregoing instrument has been duly adopted and approved by the requisite percentage of Owners of and lenders on Lots in St. James and is, therefore, a valid amendment to the existing covenants, conditions and restrictions St. James.

As of the _____ day of _____, _____ ASSOCIATION, INC.

By: _____

President

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0657

3K 3948 PG 657

Filed for record
Date 10.18, 2005
Time 3:10 of the P. M.
Crystal D. Champ, Register of Deeds
Union County, North Carolina
mbo

(& Acct)

STATE OF NORTH CAROLINA

99441

COUNTY OF UNION

AMENDED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR ST. JAMES

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of the 14th day of ~~April~~ April, 2005, by Lester Pressley Development LLC ("Declarant Lester"), a North Carolina limited liability company and Hobart Smith Construction Co. Inc., ("Declarant Hobart") a North Carolina Corporation

WHEREAS Declarant Lester is the original owner of a parcel of real property containing approximately 20.166 acres of land, located in the Town of Monroe, Union County, North Carolina, the Entire Parcel being more particularly described on Exhibit A attached to the Declaration of Covenants recorded in Book 3769, Page 610 Union County Registry and Declarant Hobart has acquired a portion of said parcel Being Lots 43 through 54 of St. James as shown on a Plat recorded in Plat Cabinet 1, pages 630 and 631 Union County Registry and described in those deeds recorded in Deed Book 3769, page 661 and Book 3807, Page 602 Union County Registry. Both Declarant Lester and Declarant Hobart are the owners of the entire parcel described on Exhibit A attached to the Declaration of Covenants recorded in Book 3769, Page 610 Union County Registry.

WHEREAS a Declaration of Covenants Conditions and Restrictions for St. James ("Restrictions") has been recorded in Book 3769, Page 610, Union County registry and the Declarants herein desire to amend the said Restrictions and have mutually agreed to do so

NOW/ THEREFORE in consideration of the premises the parties agree to amend the said restrictions as follows:

1. Article 1, Section 1.10 of the said Restrictions are hereby amended to

read as follows:

Section 1.10 "Entire Parcel Plat" shall mean and refer to the subdivision map of Phase I parcel, which is recorded in Plat Cabinet I, File 630 and 631 of the Union County Public Registry and any additional corrective or supplemental plats of subdivision of the Entire Parcel.

2. Article IV, Section 4.6 is hereby amended to read as follows:

Section 4.6. Maximum Annual Assessment. Until December 31, 2005, the maximum annual assessment for each Class A Lot (the "Assessment Cap") shall be One Thousand Six Hundred Dollars (\$1,600.00) paid in quarterly installments; except as otherwise provided below:

- (a) From and after December 31, 2005, the Assessment Cap may be increased by the Board, without a vote of the membership, so long as the amount of the increase does not exceed fifteen percent (15%) per annum, calculated on a cumulative basis.
- (b) From and after December 31, 2005, the Board maintains the rights specified in Section 4.6(a); provided, however, the Assessment Cap may be increased above the increase allowed in Section 4.6(a) by a vote of two-thirds (2/3) of the Members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board shall fix the annual assessment for each assessment year at an amount not in excess of the Assessment Cap for that year.

3. Article X, Section 10.9 is hereby amended to read as follows:

Section 10.9. Patios/Decks. The rear patios and covered porch on each Villa shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, towels or banners shall not be hung on the patio or balcony railings, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any patio. Any furniture on the patio shall be appropriate outdoor furniture and shall be maintained in a neat, tidy, and good condition. Bird feeders are only permitted within the patio, and also must be maintained in a neat, tidy, and good condition. Barbecue grills may be stored on the patio, but all other personal property (such as bicycles, lawn care equipment and recreational equipment) shall be stored in a manner so as not to be visible from the Common Areas or other Lots. Except as provided herein the size and location of a patio will be specifically limited to the width of the covered porch and no deeper than twelve (12) feet and the location shall be immediately adjacent to the covered porch. However, in the event that the

Unit is constructed with a storage room that is not part of the covered patio, the patio may be extended to the storage building. The surface material will be concrete, brick, or stone and will be limited to muted colors approved by the association only. Except where the rear entrance of the unit is five feet or more from the lot grade (ground), no wood decks will be permitted on any lot.

4. Article X, Section 10.20(a) is hereby added to the Restrictions and shall read as follows:

Section 10.20 (a) Golf Carts. The use of electrical motorized golf carts upon the private roads of the subdivision is permitted. The use combustion engine powered golf carts anywhere within the subdivision is specifically prohibited. No one under the age of 16 years shall be permitted to operate a golf cart within the subdivision unless accompanied by an adult. The use of golf carts is limited to the private roadways of the subdivision only. The use of or operation of a golf cart upon the sidewalks, pathways or other common areas is specifically prohibited. Golf carts shall be parked only within the garages only with the exception that said carts shall be permitted to be parked temporarily on the paved portion of the driveways of the units. Owners of the lots who maintain or allow the use and garaging of golf carts on their lots shall maintain liability insurance coverage as provided in Section 6.4 herein for all risks associated with the use of such golf carts and agree to indemnify and hold the Association and its members harmless for the negligent use of the golf cart either owned by the lot owner or those allowed to use a golf cart garaged on the owner's lot. The lot owner shall be responsible for the use of the cart that is contrary to the provisions set forth herein. This responsibility shall apply to a golf cart either owned by the lot owner or garaged and maintained on lot owner's property. Such owner shall be liable for fine for improper use as may be set by the Association. Non payment of such fines shall constitute a Special Individual Assessment as provided in Section 4.8 herein.

5. Except as amended the said Restrictions shall remain the same and in full force and effect.

This the 19 day of August, 2005.

EXECUTION OF SIGNATURES AND ACKNOWLEDGEMENT TO FOLLOW
ON THE NEXT PAGE

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LESTER PRESSLEY DEVELOPMENT, LLC

By 
Member Manager

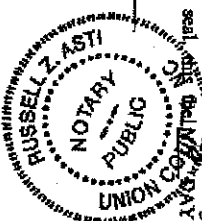
HOBART SMITH CONSTRUCTION CO. INC.

By Kevin Pressley
President

State of North Carolina, County of Union

I, Russell Z. Asti, a Notary Public for said County and State, do hereby certify that KEVIN PRESSLEY, Member Manager of LESTER PRESSLEY DEVELOPMENT, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the company. Witness my hand and official stamp or seal this 21st day of AUGUST, 2005.

My Commission Expires: 10/21/09 Notary Public



STATE OF NORTH CAROLINA
COUNTY OF UNION

I, RUSSELL Z. ASTI, NOTARY PUBLIC, CERTIFY THAT HOBART SMITH PERSONALLY CAME BEFORE ME THIS DAY AND ACKNOWLEDGED THAT HE IS THE PRESIDENT OF HOBART SMITH CONSTRUCTION CO. INC., A NORTH CAROLINA CORPORATION, AND THAT HE, AS PRESIDENT, BEING AUTHORIZED TO DO SO EXECUTED FOREGOING ON BEHALF OF THE CORPORATION.
WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 21TH DAY OF ~~August~~ ^{September}, 2005.

September

NOTARY PUBLIC
MY COMMISSION EXPIRES: 10/21/2009

