

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FOREST POND

THIS DECLARATION, made this 18th day of July 1993, by Forest Pond Associates,
L.L.C. (hereinafter referred to as "Developer"),

WITNESSETH:

WHEREAS, Developer is the owner of all of that tract of real property located in Mallard Creek Township, Mecklenburg County, North Carolina, and being more particularly shown and described on "Exhibit A" attached hereto and on that certain map or plat entitled Boundary Survey of Mallard Creek Road Property by Yarbrough-Williams & Associates, Inc., dated November 18, 1994 and revised December 2, 1994 ("Boundary Survey"), reference to said plat being hereby specifically made, and

WHEREAS, Developer, proposes to sell and convey certain lots out of the property shown on the aforesaid plat to be used for residential purposes and to develop said lots: and

WHEREAS, Developer, prior to selling and conveying the aforesaid residential lots, desires to impose upon such lots certain mutual and beneficial restrictions, covenants and conditions and charges (hereinafter collectively referred to as "Restrictions") for the benefit and complement of all of the residential lots in the Subdivision in order to promote the best interests and protect the investments of Developer and the purchaser or purchasers who own fee simple title to such lots, (the "Owners");

NOW, THERETOFORE, Developer here by declares that all lots out of the property shown on the aforesaid plat entitled Boundary Survey and any additional property adjacent or near the Subdivision, as may by subsequent amendment be added to and subjected to this Declaration, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to the following restrictions (the "Restrictions"). This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration. The Developer reserves in each instance the right to add additional restrictive covenants in respect to lands to be conveyed in the future, or to limit therein the application of the Declaration.

ARTICLE I

DEFINITIONS

As used herein,

A. "Articles" mean the Articles of the Incorporation of Forest Pond Homeowner's association, Inc.

B. "Association: means Forest Pond homeowner's Association, Inc. a North Carolina non-profit corporation. The "Board of Directors" or "Board" shall be the elected body governing the Association and managing the affairs of the Association.

C. "By-laws" means the By-laws of Forest Pond Homeowner's Association, Inc.

D. "Common Areas" means all real and personal property, together with those areas within dedicated portions of the subdivision, which may be deeded to or acquired by the Association and the Association shall accept the deed or other instrument conveying such Common Area to it.

E. "Common Expenses" means and includes the actual and estimated expenses for maintaining and operating the Common Areas as more particularly set forth under "Community Expenses" in Article 5 hereof and operating the Association for general purposes, which expenses are the sole responsibility of the Association, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the By-laws and the Articles of Incorporation of the Association.

F. "Dedication" means the act of committing a portion of the subdivision to the purposes of Declaration by the recording of a plat showing such area.

G. "Developer" means Forest Pond Associates, L.L.C., its successors, or assigns.

H. "Lot" means a separately numbered tract of land lying within the subdivision and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "dedicated." The Owner of all of a numbered Lot may combine such numbered Lot, with a part or parts of another such numbered Lot which he owns and which is adjacent thereto and the aggregate shall be considered as one Lot for the purpose of these Restrictions.

I. "Member" means all those owners who are members of the Association.

J. "Subdivision" means Forest Pond.

ARTICLE 2

APPLICABILITY

These Restrictions shall apply to all Common Areas, all subdivided numbered Lots to be made from the property shown on the aforesaid plat or map, and all additional plats or maps of the subdivisions of any additional adjacent areas acquired by the Developer, (hereafter referred to as "Lot" or "Lots"), which Lots are for residential purposes only. These Restrictions shall not be applicable to any unnumbered lands or

lands designated on the plat as “Reserved” or other lands of Developer, and Developer is withholding these parcels from these Restrictions pursuant to its general scheme of development, the absence of Restrictions thereupon being intended to allow Developer maximum flexibility in the determination of the development of such parcels.

ARTICLE 3

ORGANIZATION

A. An Association named Forest Pond Homeowner’s Association has been or will be formed pursuant to rules and requirements of the Nonprofit Association Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purpose is to own, manage, maintain and operate the Common Areas and facilities located herein; and to make and enforce rules and regulations governing the Owners’ use and occupation of Lots.

B. Each record Owner of each Lot within the Subdivision and the Developer, its successors and assigns shall be a member of the Association. The Declarant, by this Declaration, and the owners of the individual Lots by the acceptance of the individual deeds thereto, covenant and agree with respect to the Association:

1. That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Association;
2. That each of them shall be subject to the rules and regulations of the Association with regard to ownership of a Lot; and
3. That any unpaid assessment, whether general or special, levied by the Association in accordance with these Restrictions, the Articles or the By-laws shall be lien upon the Lot upon which such assessment was levied, and shall be a personal obligation of the Owner of the Lot at the time the assessment fell due.

C. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which shall not be separated from ownership of said Lot.

D. The Association shall have one (1) regular type of voting membership and one (1) type of special voting membership which provides the Developer, its successors and assigns with the power to elect a portion of the Board of Directors. The Association shall have one (1) regular voting class of members (Type “A” members) who shall all be Owners. Each member of such class shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot and there shall be no fractional voting. The association shall have one (1) special voting class who shall be the Developer (Type “B” member). This Type B voting class provides the Developer with certain powers to elect a portion of the Board of Directors as set forth in Article IV of the By-laws.

ARTICLE 4

MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Common Areas of the Subdivision shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the By-laws of the Association, but may be delegated or contracted to managers or management services.

ARTICLE 5

FUNCTIONS OF ASSOCIATION

A. Ownership and Maintenance of Properties. The Association shall be authorized to own and/or maintain (subject to requirements of Mecklenburg County, North Carolina) Common Properties, Restricted Common Properties, Intended Common Properties, Intended Restricted Common Properties, equipment, furnishings and improvements devoted to the following uses:

1. For roads, roadways, roadway medians and parkways along said roads or roadways, cul-de-sac islands, and neighborhood or other area entrances throughout the Properties;
2. For sidewalks, walking paths or trails, bicycle paths and bridle paths through the Properties.

B. The Association shall be authorized (unless prohibited by requirements of the County of Mecklenburg, North Carolina) but not required, to provide the following services:

1. Cleaning and maintenance of all roads, roadways, roadway medians, parkways, cul-de-sac islands, neighborhood and trails, Common Properties, Restricted Common Properties, Intended Common Properties, Intended Restricted Common Properties, Open Space Areas, and Private Open Space Areas within the Properties, and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would effect the appearance of the Properties as a whole;
2. Landscaping and beautification of roads, roadways, roadway medians, parkways, cul-de-sac islands, neighborhood and other areas.
3. The service necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document.
4. To provide liability and hazard insurance covering improvements and activities on the Common Properties and Restricted Common Properties.

ARTICLE 6

COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

A. All amounts expended by the Association in operating, administering, managing, repairing, replacing and improving the Common Areas of the Subdivision; all amounts expended by the Association in insuring the Common Areas in the Subdivision to the extent and in the amounts required by the applicable City of Charlotte Code in effect from time to time; all amounts expended by the Association in legal, engineering, or architectural fees; all similar fees which may be incurred by the association from time to time in performing the functions delegated to the Association by these Restrictions; and all amounts expended in any form by the Association in enforcing these Restrictions, the Articles or the By-laws.

B. All amounts expended by the Association in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the By-laws.

C. All amounts declared to be Community Expenses in the By-laws or in these Restrictions.

D. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Common Areas in the Subdivision.

ARTICLE 7

ANNUAL GENERAL ASSESSMENT

A. The Declarant for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so-expressed in such deed) is deemed to covenant and agrees to pay to the Association annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and subject to the provisions of the Paragraph 6 of the Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

B. Until June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment shall be One Hundred Eighty and No/100 Dollars (\$180.00) per Lot payable annually but subject to change by the Board of Directors.

1. From and after June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment

may be increased each year not more than five percent (5%) above the assessment for the previous year or the increase in the Consumer Price index from the base thereof in 1994 without any vote of the membership.

2. From and after June 1 of the second year immediately following the conveyance of the first Lot to an Owner, the maximum general assessment may be increased an amount greater than ten percent (10%) of the assessment for the previous year, provided the proposed increase is approved by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

3. The Board of Directors may fix the annual general assessment at an amount not in excess of the maximum allowed.

4. Once the annual general assessment has been set, notice of the annual general assessment shall be given all members. After the initial notice of the assessment, such assessment shall become due and payable as provided by the Board of Directors.

C. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 2 above shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

D. The annual general assessments levied by the Association shall be used exclusively to improve, maintain and repair the Common Areas, to pay the expenses of the Association, to pay the cost lighting the Common Areas, to pay the cost of insurance the Association determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon the Common Areas.

E. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments upon any specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

F. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not effect the assessment. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lien therefore, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

G. Working Capital Fund. At the time of closing of the sale of each house, a sum equal to at least two (2) months assessment for each unit shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses and to acquire additional equipment or services deemed necessary

or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE 8

SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the By-laws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to providing funds to pay extraordinary Community Expenses which exceed the general assessments on hand to pay same and providing a contingency fund for payment of special improvements and extraordinary expenses. Furthermore, certain assessments may be assessed against specific Lots. In the event the Owner of a Lot fails to comply with the provisions of Article 13 hereof, the Association may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

ARTICLE 9

LIEN FOR ASSESSMENTS

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the maximum rate allowed by law per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessments are levied. The Association may record notice of the same in the Office of the Clerk of Superior Court of Mecklenburg County or file a suit to collect such delinquent assessments and charges. The Association may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

ARTICLE 10

COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BY-LAWS OF THE ASSOCIATION

In the case of failure of a Lot Owner to comply with the terms and provisions contained in the Declaration, the Articles or the By-laws of the Association, the following relief shall be available:

A. The Association, an aggrieved Lot Owner or Owners within the Subdivision of behalf of the Association, or any Lot Owner on behalf of all the Lot Owners within the

Subdivision shall have the right to bring an action and recover sums due damages, injunctive relief, and/or such other and further relief appropriate.

B. The Association shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.

C. If the violation is the nonpayment of any general or special assessment, including any interest charge or late fees, as the Board shall determine, the Association shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees and invitees of the Common Areas in the Subdivision for any period during which an assessment against the Lot remains unpaid.

D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failures of the Association or any Person to enforce any restriction contained in these Restrictions, the Articles or the By-laws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

ARTICLE 11

PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, AND EXEPTIONS AND RESERVATIONS BY DECLARANT

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, and the Developer shall have a perpetual easement over and upon the Common Areas and other open spaces within the Subdivision for each and every purpose or use to which such Common Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Association shall have the right to promulgate reasonable rules and regulations respecting the use of same.

2. The Association shall have the right to suspend the voting rights of a Lot Owner and his right to use the Common Areas within the Subdivision for any periods during which any due assessment against such Owner's Lot remains unpaid as is provided in Article 9 hereof, and for a period to exceed sixty (60) days for any infraction of its published Rules and Regulations.

3. The Association shall have the right to charge reasonable admission and other fees to members for certain uses of any recreation facility situated upon the Common Areas.

4. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge any revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its authorized functions and services; provided that any such mortgage is with the prior consent of two-thirds (2/3) of the Members of the Association. Notwithstanding any mortgage being placed on the property of the property of the Association, the documents comprising such mortgage shall provide that the mortgagee's rights in and to the use of the property are subordinated to the rights of the Homeowners.

B. The Association hereby reserves the right to (an hereinafter may) grant easements for ingress, egress and regress over, under, above, around, or through the Common Areas for utilities for the purposes for the benefit of the Subdivision and any Lots now or hereafter located thereon. Provided, however, that no such grant of easement shall have a material adverse effect upon the use, enjoyment or value of any Lot.

C. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

D. Developer shall have the right, at its election, for a period of seven (7) years from the date of recordation of this Declaration, without the consent of any Owner or Owners, to bring within the coverage and operation of these Restrictions additional properties adjacent to or near the Subdivision as may be developed in the future. The addition to property authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Mecklenburg County, North Carolina, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or appropriate in the sole judgment of the Developer to reflect the different character, if any, of the added properties and as are not inconsistent with the plan, intent and spirit of this Declaration.

E. Easements and rights of way over and upon each Lot and the Common Areas for drainage and the installation and maintenance of utilities services are reserved exclusively to Developer for such purposes as Developer may deem incident and appropriate to its overall development plan, such easements and rights of way being shown or noted on the aforesaid recorded plat of the Subdivision, which plat is incorporate by reference and made a part hereof for a more particular description of such easements and rights of way. The easements and right of way areas reserved by Developer on each Lot and the Common Areas pursuant hereto shall be maintained continuously by the Owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope rations or create erosion problems. Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

F. The rights of the use of utility and service easements and rights of way areas as provided and defined herein for any type of cable transmission system is reserved exclusively to Developer, and no other cable transmission service company or organization shall be permitted to service any Lot or combination of Lots except with the expressed permission of Developer.

ARTICLE 12

ARCHITECTURAL STANDARDS AND ARCHITECTURAL STANDARDS COMMITTEE

All initial approval or disapproval with respect to architectural and aesthetic construction matters shall be vested in the Developer, who shall approve or disapprove such matters in conjunction with the standards set forth in (Sections (A) – (H)) below and any other standards Developer, in its sole discretion, may wish to implement. When the Developer no longer desires to hold such authority or control, the Developer shall delegate and assign its rights to the Architectural Standards Committee (ASC or the “Committee”). Such Committee shall consist of five (5) members who will be appointed by the Board of Directors. All five (5) members of the Committee shall be appointed and removed, at any time and without cause, by the Board of Directors (during the period of time that Developer exercises its rights under this Article 12, any reference to “Committee” in (A) – (H) below shall mean, where applicable, the Developer).

A. No construction, which term shall include within its definition clearing, excavation, grading, exterior painting and other similar work, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Committee has been obtained.

B. The Committee shall have exclusive jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof, together with all modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved including without limitation fences and outbuildings. The Committee shall prepare and, on behalf of the Board of Directors, shall promulgate architectural standard guidelines (“guidelines”) and application and review procedures (“procedures”). The guidelines and procedures shall be those of the Association and the Committee shall have the sole and exclusive authority to prepare and to amend the guidelines and procedures available to Owners, builders and developers who seek to engage in development of or construction upon the Lots and who conduct their operations strictly in accordance therewith.

C. The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions or the guidelines; if the design, color scheme or location upon such Lot or Lots of the proposed adjacent structures; if the plans and specification submitted are incomplete; or in the event of the Committee deems the plans, specification or detail, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to the Declaration or the Owners thereof.

D. The Committee shall approve or disapprove plans or specifications and details submitted in accordance with procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided, however, that plans, specifications and details revised in accordance with Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans or specifications and

detail within thirty (30) days after submission of the same to the Committee, approval, for the purposes of this Article, shall be deemed to have been given by the Committee.

E. The Committee or its agent, shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details. Upon completion of the construction in accordance with the approved plans, specifications and details, the Community shall issue a certificate of completion to the Owner.

F. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence or permitted appurtenant structures, or to paint the interior of the same any color desired.

G. Neither the Developer nor the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

H. The requirements of this Article shall constitute a lien or encumbrance on any Lot on which construction is completed, and any subsequent purchaser thereof who allows a violation to be a continuing violation shall continue to be subject to such lien or encumbrance. The requirements of this Article shall not apply to Developer with regard to the original erection or construction of a dwelling on a Lot.

ARTICLE 13

RESTRICTIONS ON USE AND OCCUPANCY

A. No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on one numbered Lot other than one (1) detached, single family residence dwelling and such outbuildings as are usually accessory to a single family residence dwelling, including a private enclosed garage with space for not more than three (3) automobiles and, if permissible by local code and/or ordinance, a second story for guests and/or servants quarters, which garage shall not be rented separately for remuneration. Unenclosed carports, or similar storage structures, shall not be erected, placed or permitted to remain on any Lot.

B. Any dwelling constructed on a Lot subject to these Restrictions shall contain not less than eleven hundred (1100) square feet of fully enclosed and heated floor area devoted to living purposes (exclusive of roofed and unroofed porches, terraces, garages and any outbuildings).

C. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except within the minimum building set back lines as set forth by the applicable development/zoning ordinances relating thereto. An Owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may, if permitted by local code and/or ordinance, construct a dwelling and /or other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, all such structures to comply with the minimum building set back lines from the actual boundary lines of the subject Owner's property, and thereafter such combinations of Lots or portions shall be treated for all purposes under these Restrictions as a single Lot.

D. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to a sewer system owned and operated by governmental authorities. No outside toilet shall be constructed or permitted on any Lot except during construction as herein expressly provided.

E. The design, size and location of containers for the collection and removal of garbage, trash and other like household refuse shall be subject to and shall require the approval of the Committee.

F. The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:

1. No mobile home, trailer, camper, tent, or temporary house, temporary garage or other temporary outbuilding shall be placed or erected on any Lot, providing, however, that the Committee may grant permission for temporary structures for storage of materials during construction. No such temporary structure as may be approved shall be used at any time as a residence.

2. Once construction of a dwelling or other improvement is started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months for commencement.

3. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanlike manner and quality. The exterior of all dwellings and permitted structures shall be either natural wood, stone, Masonite, stucco, brick, and any other exterior material the Developer deems appropriate. The covering for all roofs shall be wood shake shingles or Architectural style shingles or, if approved by the Committee, similar dimensional and style shingles. No used structures shall be relocated or placed on any Lot and no structures shall have an exterior constructed of concrete blocks, asbestos or asphalt siding. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling on the Lot. The requirements of the Committee shall control all improvements to any Lot as is therein specified.

4. Except structures erected by the developer, no structure erected upon any Lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained from the Committee.

5. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

6. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot or other area in the Subdivision.

7. Any dwelling or improvement on any Lot which is destroyed in whole or part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.

8. No stripped, partially wrecked or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.

9. No vehicle of any Member of any type shall be parked on any street in the Subdivision. No truck nor other vehicle on any Member in excess of one ton load capacity nor any mobile home, trailer, camper, similar vehicle or boat shall be parked or kept overnight or longer, on any Lot, in such a manner as to be visible to the occupants of other Lots or the users of any street or recreation area.

10. All fuel storage tanks shall be buried below the surface of the ground and all outdoor receptacles for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible to the occupants of other Lots or the users of any street to recreation area.

11. All outdoor poles, clotheslines and similar equipment shall be screened or so placed as not to be visible to the occupants of other Lots or the users of any street or recreation area.

12. All recreational equipment and personal property other than automobiles or bicycles must be stored in such a manner as not to be visible from any street or to the occupants of other Lots.

13. No mail or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located upon any Lot except such receptacle of standard design as shall have been approved by the Committee.

14. No sign (excluding typical "For Sale" and building identification signs or similar signs), billboard or other advertising structure of any kind may be erected or maintained upon any Lot or Common Area; provided, however, that construction identification signs approved by the Committee showing the Lot number and name of the builder may be exhibited upon the Lot during the period of construction.

15. No radio station or short wave operator of any kind shall operate from any Lot or residence without the prior written approval of the Committee. All radio and television antenna installations shall be approved in writing by the Committee before the antenna is installed.

16. All dwelling connections for all utilities including, but not limited to, water, electricity, gas, telephone and television shall be run underground from the proper connection points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority.

17. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets in a reasonable number may be kept provided they are not kept, bred, or maintained for any commercial purpose, and provided, further, that such pets do not constitute a danger or nuisance to other Lot Owners or to the neighborhood as determined by the Board of Directors.

18. The erection of fences, swimming pools and outbuildings, shall require approval of the Committee as provided in Article 12 hereof.

19. Entrances to enclosed garages may face in any direction provided that all such garages shall have a door or doors that completely close off the garage entrance and such doors or doors shall remain completely closed except during periods of actual use of such garage entrance.

20. No window air-conditioning units shall be installed in the side of any structure in such a manner as to be visible from any street or recreational area.

21. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other Lot Owners of the neighborhood.

22. No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without approval as required in Article 12 hereof.

Notwithstanding any of the foregoing, the Developer reserves, in its sole and exclusive discretion, the right to waive any and all violations of the Restrictions contained in this Article 13.

ARTICLE 14

AMENITIES AND FACILITIES

Every park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat (other than greenways dedicated to the City of Charlotte) of the Subdivision, shall be considered private and for the sole and exclusive use of the Owners of Lots within the Subdivision. Neither Developer's execution nor the recording of any plat nor any other act of Developer with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public or any such areas, facilities or amenities.

ARTICLE 15

WAIVER

No provision contained in these Restrictions, the Articles or the By-laws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

ARTICLE 16

VARIANCES

The Board of Directors in its discretion and subject to local law or ordinance may allow reasonable variances and adjustments of these Restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Association.

To be effective, a variance hereunder shall be recorded in the Mecklenburg County Register of Deeds Office; shall be executed on behalf of the Association; and shall refer specifically to this Declaration.

ARTICLE 17

DURATION AND AMENDMENT

A. The Covenants and Restrictions contained in this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of one (1) year and shall inure to the benefit of and be enforceable by the Association, the Developer or the Owner of any land subject hereto, their respective legal representative, heirs, successors and assigns. This Declaration may be amended in full or in part by an instrument signed by not less the sixty-six and 2/3 percent (66 2/3%) of the Lot Owners, provided, that no amendment shall alter any obligation to pay Community Expenses to benefit the Common Areas, as herein provided, or affect any lien for the payment of same. To be effective any amendment must be recorded in the office of the Register of Deeds of Mecklenburg County, North Carolina and a marginal entry of same must be signified on the face of this document. So long as the Developer, as a Type "B" member, is entitled to elect a majority of the Board of Directors of the Association, no Amendment of the Declaration shall be made without the consent of the Developer.

B. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

ARTICLE 18

MERGER

In the event that the Association votes to merge into another similar non-profit association as set forth in Article XII Section 3 of the By-laws of the Association and by such merger, the Subdivision becomes encumbered and governed by the surviving Association's Covenants, Conditions, Rules and Restrictions as if they had existed and encumbered the Properties as of the date of recording hereof, from the date of recordation of any such merger documents, this Declaration shall be deemed to be no longer burdening upon the Properties. Notwithstanding anything contained herein to the contrary, debts due and outstanding by a Member to the Association prior to the date any merger effected pursuant to this Article shall survive as a debt of said Lot Owner to the surviving non-profit association.

ARTICLE 19

TERMINATION

In the event that this Declaration is otherwise declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, all Common Areas belonging to the Association at the time of such adjudication shall (i) be held by a new non-profit association to be created by the Developer without the consent of members, said association to own and manage the Common Areas for the benefit of Lot Owners or (ii) be deeded to the City of Charlotte. If the Common Areas are owned by a new non-profit homeowners association, said association shall own and operate the properties as set forth below:

- A. Each Lot located within the Properties shall be subject to an annual general assessment which shall be paid by the Owner of each such Lot or Parcel to the association. The amount of such annual general assessment and its due date shall be determined by the association, but the amount of such annual general assessment on any particular Lot shall not exceed the amount actually assessed against that Lot in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (B.) below;
- B. The maximum annual general assessment which may be charged by the new association hereunder on any particular Lot may be automatically increased each year by an amount of ten percent (10%) or the percentage increase between the first and last months of the thirteen (13) month period terminating at the end of the third (3rd) quarter of the previous assessment year in the Consumer Price Index, U.S. City Average, All Items (1967-100) (hereafter "CPI") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas", whichever of these two (2) percentage figures is larger. The actual amount of such increase in the maximum annual assessment on such Lot for the previous year multiplied by the larger of the two (2) percentage factors set forth above. If the CPI is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.
- C. Any past due annual general assessment together with interest thereon at the maximum annual rate allowed by law from the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time of annual general assessment became past due, and it shall also constitute and become a charge and continuing lien on the Lot and all improvements thereon, against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.
- D. The new association shall be required to use the funds collected as annual general assessments for the operation, maintenance, repair, and upkeep of the Common Areas. The new association shall not have the obligations to provide for operation, maintenance, repair, and upkeep of the Common Areas once the funds provided by the annual general assessment have been exhausted.

- E. The new association shall have the right to convey title to the Common Properties and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and by the Charlotte City Code and affirmatively acknowledges its acceptance of the duties imposed hereby.

ARTICLE 20

CAPTIONS

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot; said Owners are jointly and severally liable for the obligations here in imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

ARTICLE 21

ASSIGNABILITY OF RIGHTS AND LIABILITIES

Developer shall have the right to sell, lease, transfer, assign, license, and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of same in any manner.

ARTICLE 22

LIBERAL CONSTRUCTION

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.