

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

STONE HOLLOW II

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS made this the 12th day of October, 2000, by EASTWOOD DEVELOPMENT CORPORATION, a North Carolina corporation, hereinafter referred to as "Declarant" and EASTWOOD CONSTRUCTION CO., INC.

WITNESSETH:

WHEREAS, Declarant, Eastwood Construction Co., Inc., and Eastwood Development Corporation are the owners of the real property which is described in Article II hereof, and desire to create thereon an exclusive residential community of single-family houses to be named STONE HOLLOW, Phase 2; and

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the Common Area, as hereinafter defined; and, to this end desire to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation, protection, and enhancement of the values and amenities in said subdivision and to insure the residents enjoyment of the specific rights, privileges and easements in the Common Area, as hereinafter defined, and to provide for the maintenance and upkeep of the Common Area, to create an organization to which will be delegated and assigned the powers of owning, maintaining, and administering the Common Area and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law, Stone Hollow II Homeowners Association, as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

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

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ARTICLE I

DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to Stone Hollow II Homeowners Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Homeowners Association.

Section 4. "Common Area" shall mean all real property owned by the Homeowners Association for the common use and enjoyment of the owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the plats of Phase 2 of STONE HOLLOW recorded or to be recorded in the Mecklenburg Public Registry and designated thereon as "Common Areas," but shall exclude all lots as hereinafter defined and all public streets shown thereon.

Section 5. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Eastwood Development Corporation and shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Eastwood Development Corporation shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and un conveyed), but no longer.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Homeowners Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HOMEOWNERS ASSOCIATION

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Homeowners Association is located in

Mecklenburg County, North Carolina, and is more particularly described on maps recorded in Map Book 33 at Page 577 and Map Book 33 at page 579 of the Mecklenburg Public Registry.

Section 2. Additions to Existing Property. Additional land may be brought within the scheme of this Declaration in the following manner:

a. Additional land within the area described in the metes and bounds description attached hereto as Exhibit A and incorporated herein by reference may be annexed to the existing property by Declarant, in future stages of development, without the consent of any other lot owner or owners, provided that said annexations must occur within six (6) years after the date of this instrument. Declarant may remove all or any property from said Exhibit A description prior to its annexation by filing a written Declaration of Removal in the Mecklenburg Public Registry.

b. The additions under subsection (a) above shall be made by filing a record Supplementary Declaration of Covenants, Conditions, and Restrictions with respect to the additional properties which shall extend to the scheme of this Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions, and obligations set forth herein.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Lots with respect to voting rights and assessments:

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

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three votes for each

Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots:

(1) When the total number of votes appurtenant to the Class A Lots equal the total number of votes appurtenant to the Class B Lots, or

(2) On December 1, 2005, whichever is earlier.

Section 3. In the event that the Owner of any residence ceases to occupy that residence as his own personal living quarters or in the event that any property within the development is leased for rental purposes to tenants, if voted in a block, shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Homeowners Association.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The right of the Homeowners Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in Mecklenburg County, North Carolina, and to their families, tenants, contract purchasers, and guests, as provided in Section 2 of this Article IV.

(b) The right of the Homeowners Association to suspend the voting rights and rights to the use of the recreational facilities of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class

of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written instrument, provided that this subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties;

(d) The right of the Homeowners Association, with the written assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots (Class A and Class B), to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties as their principal residence in Mecklenburg County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Mecklenburg County, North Carolina.

(c) Guests. Recreational facilities situated upon the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Homeowners Association, as may be established by its Board of Directors, governing said use.

Section 3. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas, including cul-de-sacs and roads, if any, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that Declarant or the Association may offer such cul-de-sacs and roads

for dedication to the appropriate governmental authorities. If accepted for dedication by such government authorities, then the cul-de-sacs or roads shall then be considered dedicated to the use and enjoyment of the public.

Section 4. Owners' Easements for Access and Egress. To the extent that the cul-de-sacs and roads have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot, every Lot shall be conveyed with (and each Lot Owner is hereby conveyed) a perpetual, non-exclusive right to use any cul-de-sac or roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot. Upon dedication and acceptance of such cul-de-sacs and roadways, these easement rights shall terminate with respect thereto.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners Association: (1) monthly assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties in connection with the use and enjoyment of the Common Area, including, but not limited to, the cost of maintenance, repair, replacement, or additions thereto, and playground equipment which the Declarant may cause to be situated on the Common Area, as well as the cost of labor, equipment, materials, management, and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Homeowners Association, when necessary, and such other needs as may arise.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be \$10.00 per Class A Lot and \$2.50 per Class B Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to

immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessments above established may be increased, effective January 1 of each year, without a vote of the membership, but subject to the limitation that any such increase shall not exceed the percentage increase, if any, in the Consumer Price Index (published by the Department of Labor, Washington, D. C.) for all Cities over the immediately preceding twelve (12) month period which ended on the previous October 1.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum monthly assessments may be increased without limitation, if such increase is approved by Members entitled to no less than two-thirds (2/3) of the votes appurtenant to each Class of Lots represented in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the monthly assessments at amounts not in excess of the maximum, but the ratio of the assessment established for each Class A Lot to the assessment established for each Class B Lot shall always be four to one.

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

Section 5. Assessment Rate. Both monthly and special assessments must be fixed at a uniform rate for all Lots within each class and may be collected on a quarterly or annual basis.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 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 (60%) percent of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 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.

Section 7. Date of Commencement of Monthly Assessments; Due Dates; Certificate of Payment. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Homeowners Association of the Common Area.

At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the monthly assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. The due dates for the payment of monthly and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is greater. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Homeowners Association to defray the costs of late payment. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, late payment fee, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage, mortgages, first deed of trust, or deeds of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust, or deeds of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.