

Drawn by and Mail to: Griffin & Brunson, LLP  
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JUDY G. PRICE, Register of Deeds  
Union County, Monroe, North Carolina

DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR HIGHGATE SUBDIVISION

THIS DECLARATION, is made on the date hereinafter set forth by HARRINGTON/DOWD REALTY COMPANY, a North Carolina Corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain property in Union County, North Carolina, which is more particularly described on that certain map recorded in Map Book G at Pages 8-11 in the Office of the Register of Deeds for Union County (the "Property"). Declarant desires to provide for the creation on the Property shown on said map a residential community of single-family residences to be named HIGHGATE (the "Development").

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and enhance the value and amenities of all properties within the Development. Declarant further desires to construct and provide for the maintenance and upkeep of any Common Area within the Development for the common use and benefit of all Property Owners, hereinafter referred to as ("Owners"); including, but not limited to, the Entrance Monument and Recreational Facilities; and for the maintenance and upkeep of the Roads prior to acceptance by governmental authorities for public maintenance; and to provide for the maintenance and upkeep of any other Common Areas as may be included in the Development from time to time pursuant to any amendment or supplement to this Declaration.

Declarant desires to provide for a system whereby all Owners (or, with respect to Common Area dedicated to the use and benefit of only certain Owners, to the exclusion of other Owners, the Owners benefiting from such Common Areas) will pay, in accordance with an established budget set by the Board of Directors of the HIGHGATE HOMEOWNERS ASSOCIATION, INC., for the maintenance and upkeep of any Common Area. Declarant further desires to provide for a system whereby all Owners will pay for the cost of maintenance and upkeep of the Roads (prior to their acceptance for public maintenance) and for the cost of maintenance and upkeep of such other Common Areas as all Owners are entitled to use and enjoy.

To these ends, Declarant desires to subject the Property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of: (a) owning, maintaining, and administering the Common Areas, except as may be otherwise provided in this Declaration; (b) administering and enforcing the covenants and restrictions contained herein and that may be placed on this Property and on Additional Property (as defined below); and (c) collecting and disbursing the assessments and charges hereinafter created, in order to efficiently preserve, protect and

enhance the values and amenities in the Development, including the Com ensure the specific rights, privileges, and easements in the Common provide for the maintenance and upkeep of the Common Areas and the Roa in the Declaration.

To that end, Declarant has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit "A", and incorporated herein by reference, HIGHGATE HOMEOWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws attached hereto as Exhibit "B" and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby declares that all of the Property described herein shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, or in the HIGHGATE HOMEOWNERS ASSOCIATION, INC. documents or as set forth in a separate document duly recorded in the Office of the Register of Deeds of Union County, North Carolina; all of which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any such right, title or interest in the Property or any part thereof.

## ARTICLE I DEFINITIONS

SECTION 1.1 "Additional Property" shall mean and refer to that parcel of real estate described on Exhibit "C" attached hereto and incorporated herein by reference, all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of Section 2.2 of this Declaration.

SECTION 1.2 "Approved Builder" shall mean any builder which may be selected by Declarant to buy Lots and construct homes for sale in the Subdivision.

SECTION 1.3 "Architectural Committee" shall mean and refer to the HIGHGATE Architectural Control Committee appointed by the Declarant or the Board of Directors of the Association to oversee the development and enforcement of the architectural control standards and restrictions with respect to the Development and to perform certain other functions described in the Declaration.

SECTION 1.4 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit "A" hereto and incorporated herein by reference.

SECTION 1.5 "Association" shall mean and refer to HIGHGATE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

**SECTION 1.6** "Board of Directors" or "Association Board" shall mean and refer to the "Executive Board" which is the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

**SECTION 1.7** "Bylaws" shall mean and refer to the Bylaws for the Association attached as Exhibit "B" hereto, and incorporated herein by reference.

**SECTION 1.8** "Common Area" shall mean and refer to all real property shown and designated on the Map as "Common Area," "Common Area Space" or "COS," and any other property designated as Common Area in this Declaration or any amendment or supplement hereto, including, but not limited to: (i) any real property or easements owned by the Association for the common use and enjoyment of the owners; (ii) any Entrance Monument; and (iii) the Recreational Facilities. The Common Area shall be owned by the Association for the common use and benefit of the Owners, subject to the easements, terms, covenants, conditions and restrictions described in the Declaration. References throughout the Declaration to Common Area or to any Entrance Monument and related landscaping and entrance signage or to Recreational Facilities are illustrative only and are not a representation by the Declarant or the Association that all or any part of such components will be constructed or installed by Declarant or the Association at any future time.

**SECTION 1.9** "Declarant" shall mean and refer to HARRINGTON/DOWD REALTY COMPANY, and such of its successors and assigns to whom the rights of Declarant hereunder are transferred by written instrument recorded in the Office of the Register of Deeds for Union County.

**SECTION 1.10** "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements for HIGHGATE SUBDIVISION, as same may be amended, supplemented, renewed or extended from time to time in the manner herein provided.

**SECTION 1.11** "Lot" shall mean and refer to any separately numbered single family Lots depicted on the Map, but not including any Common Area.

**SECTION 1.12** "Map" shall mean and refer to: (i) the map(s) of HIGHGATE SUBDIVISION recorded, or to be recorded in the Office of the Register of Deeds for Union County; (ii) any maps of any portions of the Additional Property which are subjected in the future to this Declaration pursuant to Section 2.2 hereof; and (iii) any revisions, supplements or amendments of such map or maps recorded in the Office of the Register of Deeds for Union County.

**SECTION 1.13** "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

**SECTION 1.14** "Mortgage" shall mean and refer to any mortgage constituting a first lien on a Lot.

**SECTION 1.15** "Mortgagee" shall mean and refer to any mortgage constituting a first lien on a Lot.

**SECTION 1.16** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot, including Declarant if it owns a Lot, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 1.17** "Modification Committee" shall mean a committee established and appointed by the HIGHGATE Architectural Control Committee to review and approve any modifications, changes, additions or improvements to any existing improved Lot. If this committee is established by the HIGHGATE Architectural Control Committee, it shall have all the rights and powers that are reserved for the HIGHGATE Architectural Control Committee.

**SECTION 1.18** "Property" shall mean and refer to the property shown on the Map, including the Common Areas and Lots, excluding any public rights-of-way shown thereon.

**SECTION 1.19** "Recreational Facilities" shall mean and refer to all recreational facilities constructed upon that portion of the Common Area designated as "Recreational Facilities" on the Map.

**SECTION 1.20** "Roads" shall mean and refer to any public roads located within the Subdivision as shown on the Map.

**SECTION 1.21** "Subdivision" shall mean and refer to HIGHGATE SUBDIVISION, as the same is shown on the Map(s), now recorded or to be recorded.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF  
HIGHGATE HOMEOWNERS, INC.**

**SECTION 2.1 Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and which is and shall be within the jurisdiction of the Association, is located in Union County, North Carolina, and is the Property as defined herein and is more particularly described and shown on the Map(s), now recorded or to be recorded, known or to be known as the HIGHGATE SUBDIVISION.

**SECTION 2.2 Additions to the Property.** Additional Property may be annexed to the Property and made subject to this Declaration by the filing of one or more supplemental declarations in the Office of the Register of Deeds for Union County. Subject to the below paragraph, such annexation must be approved by a majority of each class of Members.

Notwithstanding the above, Additional Property may be annexed by the Declarant without the consent of Members at any time (and from time to time) within ten (10) years of the date of this instrument by the execution and recording of one or more supplementary Declarations. Such supplementary Declarations shall designate such portions of the Additional Property being annexed, and shall designate which portions of such property are Lots and which are Common Areas. Any such supplementary Declaration may contain complementary additions to this Declaration to reflect any different characteristics of the Additional Property being annexed. Should Declarant elect to improve and develop all or part of the Additional Property, Declarant shall have the right to impose covenants and restrictions on all or part of the Additional Property that Declarant elects to improve or develop.

### ARTICLE III PROPERTY RIGHTS

SECTION 3.1 OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a 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 following provisions:

(a) the right of the Association to impose reasonable limits upon the number of guests who may use these facilities, and to restrict the use of certain Common Areas to certain designated Owners, as shall be described in this Declaration, including any amendments or supplements;

(b) the right of the Association to suspend the voting rights and right to the use of the Recreational Facilities by 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 (which suspension shall not relieve such Owner from its obligation to pay assessments as described in this Declaration);

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by eighty percent (80%) of each class of Members and has been recorded in the Office of the Register of Deeds for Union County; provided, however, that the Declarant or the Association shall have the right to dedicate the Roads for public maintenance without prior approval or a vote of the Members;

(d) the right of the Association to impose reasonable regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

(e) the right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money secured by a mortgage against the Common Area for the purpose of improving the Common Area and facilities thereon. No mortgage of the Common Area shall be effective unless an instrument agreeing to such mortgage of Common Area is signed by eighty percent (80%) of each class of Members;

(f) the right of the Association to exchange portions of the Common Area with the Declarant for substantially equal areas of the properties for the purpose of eliminating unintentional encroachments of Improvements onto portions of the Common Area or any other purpose or reason;

(g) the right of the Declarant or the Association to grant utility, drainage, and other easements of record across the Common Area, provided they do not materially affect the use of the Common Area for its intended purpose; and

(h) the provisions of Article VIII of this Declaration.

SECTION 3.2 DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his rights or enjoyment of the Common Area to his family, his guests, or invitees.

SECTION 3.3 LEASES OF LOTS. Any lease agreement between an Owner and a Lessee for the lease of such Owner's residence on its Lot shall provide that the terms of the lease shall be subject in all respect to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and Bylaws of the Association, and that any failure by the Lessee to comply with the terms of such documents shall be a default under the terms of the lease. All leases of Lots shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot.

SECTION 3.4 DECLARANT'S COVENANT TO CONVEY TITLE TO COMMON AREA. Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Area owned by Declarant (except the Common Area that forms a part of any Lot or the Roads) upon the later to occur of: (a) the one hundred and twentieth (120<sup>th</sup>) day after the conveyance of the first Lots in the Subdivision, or (b) the one hundred and twentieth (120<sup>th</sup>) day after completion by Declarant of all improvements upon such Common Area, including the Entrance Monument, Recreational Facilities, and any utilities facilities. The Common Area shall be free from any monetary liens but subject to easements of record including any easements established by this Declaration and expressly subject to an easement in favor of the Declarant to construct the Entrance Monument, Recreational Facilities, and any utilities facilities on the Common Area. Similarly, Declarant will convey to the Association such additional Common Area as is annexed in the future upon the later to occur of: (a) the one hundred and twentieth (120<sup>th</sup>) day after the conveyance of the first Lots within such Additional Property, or (b) the one hundred and twentieth (120<sup>th</sup>) day after completion by Declarant of all improvements upon such Common Area. The

Association shall accept the conveyance of all such Common Area pursuant to this section. All Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public, with the exception of the Roads which are dedicated, or are offered to be dedicated, to public use and will eventually be accepted for public maintenance by the North Carolina Department of Transportation or other governmental entity.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

SECTION 4.1 MEMBERSHIP. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Articles of Incorporation and the Bylaws attached as Exhibits "A" and "B" hereto.

SECTION 4.2 VOTING RIGHTS. The voting rights of the Members shall be appurtenant to the ownership of Lots. The Association shall have two classes of voting membership:

Class A Members. Class A Lots shall be all Lots except Class B Lots as defined below. Class A Members shall be entitled to one (1) vote for each Class A Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

Class B Members. The Class B Lots shall be all Lots owned by Declarant or an Approved Builder which have not been conveyed to purchasers who are not affiliated with the Declarant or an Approved Builder. The Declarant and the Approved Builders shall be entitled to six (6) votes for each Class B Lot owned. The Class B membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) the date on which the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership and no Additional Property remains which may be made subject to the terms of this Declaration;
- (b) the expiration of ten (10) full years after the recordation of this Declaration; or
- (c) when Declarant elects by notice to the Association in writing to terminate all Class B memberships.

**ARTICLE V**  
**COVENANT FOR MAINTENANCE AND ASSESSMENTS.**

**SECTION 5.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Each Owner of any Lot, including any Approved Builders, and including the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay (a) to the Association: (i) ("Annual Assessments" and "Supplemental Annual Assessments"); (ii) special assessments for Capital Improvements ("Special Assessments"); and (iii) special individual assessments as more particularly described below ("Special Individual Assessments"), such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of assessments for Public Improvements to or for the benefit of the Common Area (together with any late penalties therefor) if the Association shall default in the payment of either or both for a period of six (6) months as hereinafter provided. The Annual, Supplemental Annual, Special and Special Individual Assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to such Owner's successors in title (provided such successors are bona fide third purchasers for value with no continuing relationship with Owner) unless expressly assumed by them.

**SECTION 5.2 PURPOSE OF ASSESSMENTS.**

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and in particular for the Improvement, maintenance and repair of facilities devoted to this purpose and related to the use and enjoyment of the Common Area and any Recreational Facilities, including but not limited to: the cost of repairs, replacements and additions; the cost of labor, equipment, materials, arrangements and supervision; the payment of taxes assessed against the Common Area; the maintenance of water mains in and upon the Common Area; the maintenance of open spaces, drives and parking areas within the Common Area, and any other areas which only the Association is required to maintain; the procurement and maintenance of insurance in accordance with this Declaration and the Bylaws of the Association; the maintenance of any Entrance Monument located on any Lot or Common Area, as shown on the Map; landscaping and lighting of the Entrance Monument, Common Area, road medians and islands and entrance ways, the lighting of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the costs associated with duties of the Architectural Control Committee; the employment of attorneys, accountants, professional management companies and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of Capital Improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible pursuant to the terms of this Declaration. In addition to the foregoing, assessments made prior to the



transfer of the Common Area to the Association may be used for any of the above-described purposes in connection with such Common Area prior to its transfer.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of Improvements to the Common Area and those other portions of the Property which the Association may be expressly obligated to maintain. Such reserve fund is to be established out of the Annual and Special Assessments.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operation and managing the Common Area, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset which may be used in the operation and management of the Common Area.

### SECTION 5.3 ANNUAL ASSESSMENT.

(a) By November 15 of each calendar year, the Board of Directors shall adopt an approved annual budget, and within 30 days after adoption of the proposed budget for the planned community, the Board of Directors shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the votes of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

(b) The Declaration may provide for a period of Declarant control of the Association, during which period a Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Directors.

(c) Not later than the termination of any period of Declarant control, the Lot Owners shall elect a Board of Directors of at least three (3) members, at least a majority of whom shall be Lot Owners. The Board of Directors shall elect the officers. The Board of Directors and officers shall take office upon election.

#### SECTION 5.4 SPECIAL ASSESSMENTS.

(a) In addition to the Annual Assessments authorized above, the Association may levy, in any calendar year, a Special Assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair, replacement or addition of a Capital Improvement, provided such assessment shall have the assent of two thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. All Special Assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

(b) In addition to the Annual Assessments and the Special Assessments for Capital Improvements authorized above, the Board of Directors shall have the power, after ten (10) day's notice and an opportunity to be heard, to levy a Special Individual Assessment applicable to any particular Lot Owner (i) for the purpose of paying the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Area, or the Roads (prior to their acceptance for public maintenance), and the Recreational Facilities, occasioned by an act or omission of the Owner, members of such Owner's family, or such Owner's agent, guests, employees or invitees and not as a result of ordinary wear and tear or (ii) for the payment of fines, penalties or other charges imposed against any Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules and regulations promulgated by the Association or Declarant pursuant to this Declaration or the Bylaws not to exceed One Hundred and Fifty Dollars (\$150.00) nor more than One Hundred and Fifty Dollars (\$150.00) for each day after the decision that the same violation again occurred. The due date of any Special Individual Assessment levied pursuant to this Section 5.4 (b) shall be fixed in the Board of Directors' resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board of Directors shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least ten (10) days prior to the date such Special Individual Assessment is due.

SECTION 5.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 5.4(a). Written notice of any meeting called for the purpose of taking any action (to the extent that a meeting is required hereby) under Section 5.4(a) shall be mailed or delivered to all Members not less than ten (10) 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 twenty (20%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called subject to the same notice requirement upon an affirmative vote of a majority of the votes then represented in person or by proxy, and the required quorum at each subsequent meeting shall be one half (50%) of the required quorum at the

preceding meeting. No such subsequent meeting shall be held more than six months following the preceding meeting.

#### SECTION 5.6 RATE OF ASSESSMENTS.

(a) Except as set forth in subsection (b) below, both Annual and Special Assessments must be fixed at a uniform rate for all Lots not owned by Declarant and shall be collected on an annual basis or such other basis as is approved by the Board of Directors. Special Individual Assessments shall be established, assessed and collected as described in Section 5.4(b).

(b) Annual and Special Assessments for each Lot owned by Declarant or an Approved Builder and unoccupied as a residence shall be one half (1/2) of the Annual and Special Assessments for each Lot in the Subdivision occupied as a residence.

SECTION 5.7 EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any past due Annual, Supplemental Annual, Special or Special Individual Assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same. Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Union County in the manner provided by law. The association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale. The lien under this section is prior to all liens and encumbrances on a Lot except: (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court; and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. The above shall not affect the priority of mechanics' or materialmen's liens. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 5.8 EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for Public Improvements to or for the benefit of the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the Development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments (including any late payment penalties) in an amount determined by dividing the total taxes and/or assessments and/or penalties due the governmental authority by the total number of Lots in the Development. If such sum

is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner. This section shall not become applicable until Class B Membership ceases to exist.

SECTION 5.9 SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any Mortgage. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to a Mortgage, 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 becomes due prior to such sale or transfer. Provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be an Annual or Special Individual Assessment, as applicable, collectible pro rata from all Owners, notwithstanding the fact that such pro rata portions may cause the Annual Assessment or Special Individual Assessment to be in excess of the Maximum Annual Assessment permitted hereunder. No such sale or transfer shall relieve such Lot from liability for any assessments 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.

## ARTICLE VI

### ARCHITECTURAL CONTROL AND PROCEDURE

SECTION 6.1 RESIDENTIAL USE RESTRICTIONS. Each map shall have its own set of Residential Use Restrictions which shall apply to the Property on that map only. As new Property is annexed into HIGHGATE and a new map is recorded of HIGHGATE, a set of Residential Use Restrictions for such map shall be enacted by Declarant and the Property shown on such map shall be Additional Property as set forth in Section 2.2 above. Once such Property on such map is annexed by Declarant as Additional Property, it shall be subject to all rules, regulations, and stipulations as though it had been the original Property, excepting only that its Residential Use Restrictions may vary according to the specific map.

SECTION 6.2 GENERAL. Anything contained herein to the contrary notwithstanding, no Improvements, including without limitation, site preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the HIGHGATE Property or erection of changes in or additions to fences, hedges, walls and other structures, or construction of any swimming pools, play equipment or other improvements, shall be commenced, erected or maintained on any Lot until the HIGHGATE Architectural Control Committee appointed as hereinafter provided, has approved the plans and specifications therefore and the location of such Improvements.

### SECTION 6.3 COMPOSITION.

(a) General. Except as set forth in subparagraph (b) below, the members of the HIGHGATE Architectural Control Committee shall be annually appointed or reappointed by the Board of the Association, and will be composed of at least two (2) and not more than seven (7) individuals (the exact number of members of the HIGHGATE Architectural Control Committee to be designated by the Association Board from time to time), each generally familiar with residential and community development design matters and knowledgeable about the Associations' concern for a high level of taste and design standards within the HIGHGATE Property. In the event of the death or resignation of any Member of the HIGHGATE Architectural Control Committee, the Association Board shall have full authority to designate and appoint a successor. Members of the HIGHGATE Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the Association Board. No member of the HIGHGATE Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such members) arising out of services performed pursuant to this Declaration.

(b) Declarant's Rights. Notwithstanding anything contained herein to the contrary, the approvals of the HIGHGATE Architectural Control Committee shall remain with the Declarant, or its successors and assigns, until such time as a house has been built and is being used as such on each Lot. Provided, however, the Declarant may elect to relinquish such right of approval at any time. Thereafter the right of approval set forth herein shall be vested in the HIGHGATE Architectural Control Committee, whose composition will be as set forth in subparagraph (a) above.

SECTION 6.4 REVIEW FEE AND ADDRESS. A review fee of Five Hundred Dollars (\$500.00) shall be imposed for the initial review of plans and specifications for Improvements to be located on an Owner's Lot. The fee includes the preliminary review, the final review, and, if necessary, up to two (2) resubmissions. The address of the HIGHGATE Architectural Control Committee will be the same as the Declarants' or assigns, 6701 Fairview Road, Charlotte, NC 28210. Following the initial review and two (2) resubmissions, if other resubmissions are necessary, the HIGHGATE Association Board will impose another fee of Two Hundred Dollars (\$200.00) for each resubmission thereafter of the plans and specifications. Notwithstanding the foregoing, if nonconforming plans and specifications are submitted, for any reason, the Association Board may impose, in addition to the above described fees, an additional fee of One Hundred Dollars (\$100.00), for submitted nonconforming plans and specifications. The nonconforming request will be returned with written notice specifying the nonconforming item(s) and without a total review.

SECTION 6.5 PROCEDURE AND DESIGN GUIDELINES. No Improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and

specifications therefor, including site plans, drainage plans, and landscape plans therefor, have been submitted to and approved in writing by the HIGHGATE Architectural Control Committee by the following procedure:

(a) Final plans and specifications for all Improvements proposed to be constructed on a Lot shall be submitted in duplicate to the HIGHGATE Architectural Control Committee along with the review fee as defined above for approval or disapproval. The HIGHGATE Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the HIGHGATE Architectural Control Committee, one complete set of plans and specifications will be retained by the HIGHGATE Architectural Control Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the HIGHGATE Architectural Control Committee pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved", with comments noted on the plan and/or accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Any modification or change to the Approved set of plans and specifications must again be submitted in duplicate to the HIGHGATE Architectural Control Committee for its inspection and approval. The HIGHGATE Architectural Control Committee's approval or disapproval, as required herein, shall be in writing. Once the HIGHGATE Architectural Control Committee has approved the plans and specifications for Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within twelve (12) months following the date of approval of the plans and specifications therefor by the HIGHGATE Architectural Control Committee, such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Lot in question, the plans and specifications therefore must again be submitted and approved by the HIGHGATE Architectural Control Committee pursuant to this Article VI, including the payment of an additional Architectural Control Committee review fee; the additional fee to be established by the Architectural Control Committee Board when the request is received.

(b) The HIGHGATE Architectural Control Committee may from time to time publish and promulgate Architectural DESIGN GUIDELINES which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. The HIGHGATE Architectural Control Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such Design Guidelines shall supplement these covenants, conditions and restrictions and are incorporated herein by reference. The HIGHGATE Architectural Control Committee may refuse approval of plans, location, exterior color or finish or specifications for any reason including purely

aesthetic reasons, which in the sole discretion of the HIGHGATE Architectural Control Committee shall be deemed sufficient.

SECTION 6.6 JURISDICTION. The HIGHGATE Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Lot which may, in the reasonable opinion of the HIGHGATE Architectural Control Committee, adversely affect the living enjoyment of one or more Owners or the general value of the HIGHGATE Property or the Project.

SECTION 6.7 MODIFICATION COMMITTEE. The Architectural Control Committee may set up a committee to review and approve modifications, changes, additions or Improvements to existing improved lots. This Committee, if established, shall have all the rights and powers that are reserved for the HIGHGATE Architectural Control Committee.

SECTION 6.8 ENFORCEMENT.

(a) The Association shall have the specific right (but not the obligation) to enforce the provisions contained in this Article of this Declaration and/or to prevent any violation of the provisions contained in this Article of this Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of this Declaration.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvement) if such Improvements were commenced or constructed in violation of the Article. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such Improvements were commenced or constructed.

SECTION 6.9 DEFINITION OF "IMPROVEMENT". The term Improvement shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior Improvement exceeding One Thousand Dollars (\$1,000.00) in cost which may not be included in any of the foregoing. The definition of Improvement does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvement does include both original Improvements and all later changes and repairs to Improvements.



**SECTION 6.10 FAILURE OF THE HIGHGATE ARCHITECTURAL CONTROL COMMITTEE TO ACT.** If the HIGHGATE Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within twenty (20) days after receipt thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the HIGHGATE Architectural Control Committee, and provided the HIGHGATE Architectural Control Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after additional written request to act on such items is delivered to the HIGHGATE Architectural Control Committee following the passage of such first above-described twenty (20) day period, it shall be conclusively presumed that the HIGHGATE Architectural Control Committee has approved such conforming plans and specifications and other submittals, EXCEPT that the HIGHGATE Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration, or the Residential Use Restrictions filed with each map, except where variances shall be expressly permitted herein. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the HIGHGATE Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance. The HIGHGATE Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

**SECTION 6.11 LIMITATION OF LIABILITY.** Neither the HIGHGATE Architectural Control Committee, nor the members thereof, nor the Association, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Every person who submits plans or specifications, and every Owner of any Property agrees that he will not bring any action or suit against Declarant, the Association, the HIGHGATE Architectural Control Committee, the Board, or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, remises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

**SECTION 6.12 VARIANCES.** Upon submission of a written request for same, the HIGHGATE Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install Improvements which are at variance with the setback requirements, architectural standards, or similar provisions of this Declaration, or the Residential Use Restrictions filed with each map, or the respective maps, or any Supplemental Declaration which may be promulgated in the future; provided, however, that any variance in the setback requirements shall be subject



to the limitations on variances set forth herein or in the individual Restrictions concerning such Lots. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the HIGHGATE Architectural Control Committee has not expressly, and in writing, approved such request within thirty (30) days of the submission of such request. No member of the HIGHGATE Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the HIGHGATE Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder, against any other Owner.

SECTION 6.13 NO LIABILITY FOR DESIGN DEFECTS. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the HIGHGATE Architectural Control Committee, the members thereof, or the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

SECTION 6.14 MISCELLANEOUS. No member of the HIGHGATE Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this Article. The Association shall reimburse members of the HIGHGATE Architectural Control Committee for reasonable out-of-pocket expenses associated with its activities hereunder.

## ARTICLE VII

### MAINTENANCE

SECTION 7.1 DUTY OF MAINTENANCE. The Owner of each Lot in the HIGHGATE Property shall have the duty and responsibility, at such Owner's sole cost and expense, to keep that part of the HIGHGATE Property so owned, including without limitation, the Improvements, Utility Easements, Monument Easements, Drainage Easements and/or other rights-of-way incident thereto, in accordance with the terms and provisions of this Declaration and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (1) Prompt removal of all litter, trash, refuse, wastes or construction debris;
- (2) Lawn mowing on a regular basis;

- (3) Tree and shrub pruning;
- (4) Watering by means of a lawn sprinkler system and hand watering as needed;
- (5) Keeping exterior lighting and mechanical facilities in working order;
- (6) Keeping lawn and garden areas alive;
- (7) Removing and replacing any dead plant material;
- (8) Keeping vacant land well maintained and free of trash and weeds;
- (9) Keeping parking areas and driveways in good repair;
- (10) Ensuring all sediment & erosion control measures are maintained and keeping the street free of construction mud and debris.
- (11) Complying with all governmental health and police requirements;
- (12) Repainting of Improvements as needed; and
- (13) Repair of exterior damage to Improvements; it being understood and agreed that if any Improvements are damaged or destroyed by fire, or other casualty, the Owner of the Lot on which such Improvements are situated must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the HIGHGATE Architectural Control Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Supplemental Declaration applicable thereto) or remove such damaged Improvements and restore the Lot to its condition existing prior to the construction of such Improvements, within six (6) months following the date such damage or destruction occurs.

**SECTION 7.2 ENFORCEMENT.** If any Owner has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Board, or the Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required to fulfill his duties and responsibilities. Should any such person fail to fulfill his duty and responsibility within such ten (10) day period, then the Association, acting through their authorized agent or agents, or Declarant, acting through its authorized agent or agents, jointly and severally

shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. Further provided, that in cases of emergencies necessitating immediate repairs or other remedial action, the Association or Declarant may effect such remedy without the requirement of prior notice to the respective Owner. The Owner of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or Declarant, as applicable in performing such work computed at the highest lawful rate of interest per annum from the date(s) such amounts are expended until repaid to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder. He shall reimburse the Association, or Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expenses by the Association or Declarant. The Association may issue a special assessment against such Owner pursuant to the provisions hereof.

## ARTICLE VIII

### EASEMENTS

SECTION 8.1 UTILITIES. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on the Map. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for benefit of the Town of Weddington and Union County (and any other person or firm providing services to the Property under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

SECTION 8.2 ENTRANCE MONUMENT AND SIGN EASEMENTS. Easements for the maintenance of subdivision signs, together with surrounding landscaping and lighting, are reserved as indicated on the Map. Declarant hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over any portions of Common Area or Lots designated as "Monument, Sign & Entrance Area" on the Map, to maintain, repair and replace the subdivision sign and any lighting fixtures or landscaping thereon (collectively, the "Entrance Monument"). The cost of all such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article V hereof. In addition to the easements granted above, Declarant hereby gives, grants and conveys to the Association

an easement of ingress, egress and regress over other portions of such Common Area or Lots as shall be reasonably necessary to effectuate the purposes stated above.

SECTION 8.3 BINDING EFFECT. The easements granted and reserved in this Declaration shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

#### ARTICLE IX INSURANCE

SECTION 9.1 BOARD OF DIRECTORS. The Board of Directors shall obtain and maintain at all times insurance of the type and kind required by law and in no less than the amounts or kinds as set forth below:

(a) Fire and Casualty. All Improvements and all fixtures included in any Common Area, including but not limited to, the Roads (prior to acceptance by governmental authorities for maintenance) and any additional Common Areas located in the Subdivision and all personal property and supplies belonging to the Association shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such Improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and all perils covered by a standard "all risk" insurance policy. All such policies shall provide that adjustment of loss shall be approved by the Board of Directors and the insurance company. In addition to the provision for endorsements set forth herein, the fire and casualty insurance described herein shall contain the following provisions:

- (i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and
- ii) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association, or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property and public liability insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the

Association or the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or Members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners and Mortgagees from collection of the proceeds.

(b) Public Liability. The Board of Directors shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Area, and customary for the activities and obligations of property owners' associations for projects similar to the Development, covering each member of the Board of Directors, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Area and out of the activities of the Association; provided, however, that in no event shall the amounts of such public liability insurance ever be less than one million dollars (\$1,000,000) per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance 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. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than one million dollars (\$1,000,000) per occurrence for claims for bodily injury and property damage.

(c) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board of Directors in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as required by law and/or as the Board of Directors shall determine from time to time desirable.

SECTION 9.2 PREMIUM EXPENSE. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Article V hereof.

SECTION 9.3 SPECIAL ENDORSEMENTS. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Association;

(b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least forty five (45) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

**SECTION 9.4 GENERAL GUIDELINES.** All insurance policies purchased by the Board of Directors shall be with a company licensed to do business in the State of North Carolina and holding a rating of "A-10" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association, or its designee, or its designated first lien holder. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

**SECTION 9.5 OWNER'S PERSONAL PROPERTY.** The Association or the Declarant shall not be liable in any manner for the safekeeping or conditions of any personal property belonging to or used by any Owner or his family, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor the Declarant shall be responsible or liable for any damage or loss to, or of, any personal property of any Owner, his family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all such personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

## ARTICLE X RIGHTS OF MORTGAGEES

**SECTION 10.1 APPROVAL OF MORTGAGEES.** Unless at least seventy five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Development then subject to the full application of this Declaration have given their prior written approval, the Association shall not:

(a) except as otherwise specifically provided herein, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause); or

(b) except as otherwise specifically provided herein, change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner; or

(c) fail to maintain fire and extended coverage insurance on insurable improvements in any Common Area in the Subdivision (with the exception of the Roads) on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in Article IX; or

(d) use the proceeds of any hazard insurance policy covering losses to any part of any Common Area located in the Subdivision for other than the repair, replacement or reconstruction of such damaged Common Area located in the Subdivision.

SECTION 10.2 ADDITIONAL RIGHTS. Any Mortgagee shall have the following rights, to wit:

(a) to be furnished at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;

(b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;

(c) to be given prompt written notice of non-payment of assessments levied hereunder which could result in the creation of a lien, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

(d) to be given prompt written notice of any casualty loss to the Common Area (if any), including the Roads (prior to acceptance by the North Carolina Department of Transportation) or loss by eminent domain or other taking of any Lot encumbered by a Mortgage held by the Mortgagee;

(e) to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(f) to be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property; and

(g) to be given prompt written notice of any action which requires the consent of all or any portion of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this Article XI to be applicable to it, it shall serve or cause to be served written notice of such desire upon the Association by certified mail, return receipt requested, addressed to the Association and

sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

SECTION 10.3 BOOKS AND RECORDS. Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

SECTION 10.4 PAYMENT OF TAXES AND INSURANCE PREMIUMS. The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any Common Area within the Subdivision and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

## ARTICLE XI GENERAL PROVISIONS

SECTION 11.1 ENFORCEMENT. The Declarant, the Association, any Approved Builder or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or Bylaws of the Association. In the event that the Declarant, any Owner, or the Association resorts to litigation to remedy a violation of this Declaration, such Owner, Declarant, or the Association, as applicable, shall be entitled to recover court costs, attorneys' fees and expenses incurred in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the offending Owner's Lot. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 11.2 SEVERABILITY. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.



SECTION 11.3 AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless during the last year of such initial or then current renewal term the Owners of seventy five percent (75%) of the Lots agree in writing to terminate this Declaration at the end of such a term. This Declaration may be amended during the first thirty (30) year period by an instrument signed by Members holding not less than seventy five percent (75%) of the votes in the Association, and thereafter by an instrument signed by Members holding not less than sixty seven percent (67%) of the votes in the Association. Any amendment must be properly recorded in the Office of the Register of Deeds for Union County. Anything to the contrary notwithstanding, as long as Declarant owns any Lot, or owns any Additional Property to the Subdivision, no amendment to this Declaration shall be effective unless and until written consent thereto is obtained from the Declarant and recorded in the Union County Register of Deeds.

SECTION 11.4 FEDERAL LENDING REQUIREMENTS. Notwithstanding Section 11.3 above, this Declaration is hereby deemed amended or modified if such is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Fannie Mae or other such similar agency.

Any such amendment must be with the consent and approval of such agency and Declarant and must be properly recorded.

SECTION 11.5 AMPLIFICATION. The provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association, but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws on the other, be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the Provisions of this Declaration control anything in the Articles of Incorporation or Bylaws to the contrary.

SECTION 11.6 TOTAL OR PARTIAL DESTRUCTION OF IMPROVEMENTS. In the event of a total or partial destruction of any Improvements on the Common Area, and if available proceeds of insurance carried pursuant to this Declaration are sufficient to cover eighty five percent (85%) of the repair or reconstruction, the Common Area shall be promptly repaired and rebuilt unless within one hundred and twenty (120) days from the date of such destruction, seventy five percent (75%) or more of the Owners entitled to vote at a duly called meeting determine that such reconstruction shall not take place. If the insurance proceeds are less than eighty five percent (85%) of the cost of reconstruction, reconstruction may nevertheless take place if, within one hundred and twenty (120) days from the date of destruction, the Owners of seventy five percent (75%) or more of the Owners entitled to vote at a duly called meeting elect to rebuild.

SECTION 11.7. CHANGES TO MASTER PLAN FOR PROJECT. Nothing contained herein shall be deemed to incorporate by reference the contents of any plans or proposals prepared by Declarant with respect to the development of the Project, and Declarant reserves the right to change any such plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and Declarant's plans for the project shall not bind Declarant or its successors and assigns to adhere to such plans or proposals in the development of the Project or any part thereof.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

HARRINGTON/DOWD REALTY COMPANY

(CORPORATE SEAL)

By

V. Kenneth Dowd, Jr., President

ATTEST:

William E. Harrington, Jr., Secretary

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Patricia Parizo a Notary Public of the County and State aforesaid, certify that William E. Harrington, Jr. personally came before me this day and acknowledged that he is Secretary of Harrington/Dowd Realty Company, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by William E. Harrington, Jr. as its Secretary.

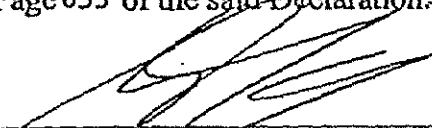
WITNESS my hand and official stamp or seal, this 18 day of April, 2000.

Patricia Parizo  
Notary Public

My Commission Expires: 10-5-2003


CONSENT AND SUBORDINATION

Frank R. Knox, Trustee and Branch Banking and Trust Company, owner and holder of the Note secured by the Deed of Trust, dated April 17, 2000 from Harrington/Dowd Realty Company to Frank R. Knox, Trustee for Branch Banking and Trust Company, recorded in the Union Public Registry in Book 1380 at Page 633 hereby consent to the foregoing Declaration and, further, hereby subordinate the lien of the aforesaid Deed of Trust in Book 1380 at Page 633 of the said Declaration.

  
\_\_\_\_\_  
Frank R. Knox, Trustee (SEAL)

BRANCH BANKING AND TRUST COMPANY

By:   
\_\_\_\_\_  
Vice President

ATTEST:  
  
\_\_\_\_\_  
Secretary

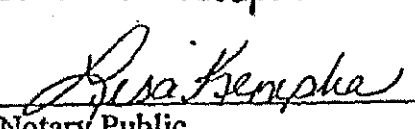
(CORPORATE SEAL)

STATE OF NORTH CAROLINA

COUNTY OF

I, Wesa Kempke Notary Public of the County and State aforesaid, certify that Frank R. Knox, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 18<sup>th</sup> day of April, 2000.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 11/11/2001

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG *Cabarrus*

I, Glutchen L Hilton a Notary Public of the County and State aforesaid, certify that Thad Downs personally came before me this day and acknowledged that he is Assist Secretary of Branch Banking and Trust Company, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by him as its Assist Secretary.

WITNESS my hand and official stamp or seal, this 18 day of April, 2000.

Glutchen L Hilton  
Notary Public

My Commission Expires: 9/26/2004

Drawn by and Mail to: Griffin & Brunson, LLP  
301 South McDowell Street, Ste 907  
Charlotte, NC 28204 (GG 2802-001)

COPY  
Filed for record  
Date: 5-25-2001  
Time: 10:45 a'clock  
Aldy C. Price, Register of Deeds  
Union County, North Carolina  
Bk 1381 Pg 471

SUPPLEMENTAL DECLARATION TO THE  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR HIGHGATE SUBDIVISION AS SHOWN IN  
BOOK 1381 AT PAGE 306 AND THAT CERTAIN AMENDMENT  
THERE TO AS FOUND IN BOOK 1429 AT PAGE 671 BOTH OF THE  
UNION COUNTY, NORTH CAROLINA PUBLIC REGISTRY

THIS SUPPLEMENTAL DECLARATION, is made pursuant to Article II, Section 2.2 of those certain Declaration of Covenants, Conditions, Restrictions and Easements for HIGHGATE Subdivision as found in Book 1381 at Page 306 of the Union County, North Carolina Public Registry.

NOW THEREFORE, this Supplemental Declaration is made to subject additional property as found in Map Cabinet G, File 496, Map Cabinet G, File 497, Map Cabinet G, File 498, Map Cabinet G, File 499, all of the Union County, North Carolina Public Registry, said maps showing the lots and blocks as well as the and common areas, to those certain Declarations of Covenants Conditions, Restrictions and Easements for HIGHGATE Subdivision as found in Book 1381 at Page 306 and the Second Amendment thereto as found in Book 1429 at Page 671 both of the Union County, North Carolina Public Registry.

THE DECLARANT is making this Supplemental Declaration and submitting the Property as described in above Cabinets and Files in said county to said Declarations pursuant to the authority contained in those Declarations as found in Book 1381 at Page 306 of the Union County, North Carolina Public Registry.

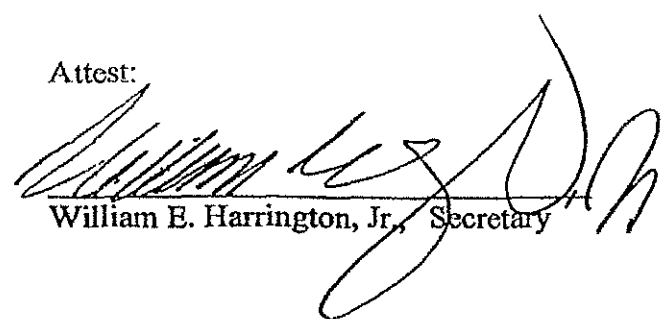
This 24 day of MAY, 2001

HARRINGTON/DOWD REALTY COMPANY

BY:   
J. Kenneth Dowd, Jr., President

(AFFIX CORPORATE SEAL)

Attest:

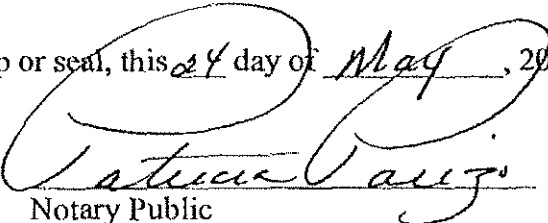
  
William E. Harrington, Jr., Secretary

NORTH CAROLINA

Gaston COUNTY

I, Patricia Parizo, a Notary Public of the County and State aforesaid, certify that William E. Harrington, Jr., personally appeared before me this day and acknowledged that he is Secretary of Harrington/Dowd Realty Company, a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 24 day of May, 2001.

  
Notary Public

My Commission Expires: 10-5-2003

GG 2802-001. 5/23/01

SECOND AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR HIGHGATE SUBDIVISION PERTAINING TO  
SIGNS AND GARAGES

COPY

THIS SECOND AMENDMENT to those certain Declarations is made on the day hereinafter set forth by HARRINGTON DOWD REALTY COMPANY (hereinafter referred to as "DECLARANT").

WHEREAS, DECLARANT, pursuant to Section 11.3 of the Declaration recorded in Book 1381 at Page 306 of the Union County, North Carolina Public Registry, is the owner of more than seventy-five per cent (75%) of the lots of Highgate Subdivision and, therefore, pursuant to Section 11.3 entitled "Amendment" is empowered to amend said Declaration; and

WHEREAS, Residential Use Restrictions as Supplemental Declaration of Highgate Subdivision have been duly recorded in the Union County, North Carolina Public Registry in Book 1381 at Page 291 and Book 1415 at Page 264; and

WHEREAS, A First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Highgate Subdivision Pertaining to Antenna Placement Procedures and Guidelines was duly filed for record July 12, 2000 in Book 1415 at Page 256 of the Union County, North Carolina Public Registry; and

WHEREAS, with all the filings and refilings the situation has become very confused, and the DECLARANT wishes to clarify the situation and have only those certain Declaration of Covenants, Conditions, Restrictions and Easements for Highgate Subdivision as now recorded at Book 1381 at Page 306 of the Union County Public Registry, as well as this instrument constitute the entire Declaration of Covenants, Conditions, Restrictions and Easements for Highgate Subdivision through the date of the recording of this instrument.

NOW, THEREFORE, BE IT RESOLVED THAT the certain Residential Use Restrictions and Supplemental Declaration of Highgate Subdivision recorded in Book 1381 at Page 291, re-recorded in Book 1415 at Page 264 and the First Amendment to Declaration recorded in Book 1415 at Page 256, all of the Union County, North Carolina Public Registry are hereby NULL AND VOID; and in their place and stead are substituted this instrument which, upon recording and along with the initial Declaration of Covenants as recorded in Book 1381 at Page 306, will constitute the entire Declaration of Covenants, Conditions, Restrictions and Easements for Highgate Subdivision to date. Said Residential Use Restriction and Supplemental Declaration of Highgate Subdivision shall now read as follows:

THIS DECLARATION OF RESIDENTIAL USE RESTRICTIONS OF  
HIGHGATE SUBDIVISION is made this date by HARRINGTON/DOWD REALTY

Filed for record BK 1489 PG 671  
Date 8-17-2000  
Time 10:00 o'clock A. M.  
JUDY G. PRICE, Register of Deeds  
Union County, Monroe, North Carolina

COMPANY, a North Carolina Corporation, hereinafter referred to as "DECLARANT", and any and all persons, firms or property or any of the property hereinafter made subject to this Declaration.

WITNESSETH:

WHEREAS, DECLARANT is the owner of certain property in Union County, North Carolina, known as Highgate Subdivision, more particularly described by the plat thereof recorded in Map Book G at Page 8, 9, 10, 11, 105, and 106 in the Office of the Register of Deeds for Union County, reference to which recorded plat(s) is hereby made for more complete descriptions;

WHEREAS, DECLARANT has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of the property made subject to these Residential Use Restrictions for the benefit and protection of the property, and for the mutual protection, welfare and benefit of the present and the future owners thereof;

WHEREAS, DECLARANT desires to provide for the preservation of the values of Highgate Subdivision made subject to these Residential Use Restrictions and for the preservation and maintenance of the Common Property established by the Declaration and by the supplements thereto.

NOW, THEREFORE, in accordance with the recitals above which are hereby referenced, DECLARANT declares that all of the property described on said recorded plat herein above described is a Supplemental Declaration and is hereby made subject to the Declaration of Covenants, Conditions, and Easements for Highgate Subdivision, the Articles of Incorporation of Highgate Homeowners Association, Inc., and the Bylaws thereof; and that these Residential Use Restrictions be duly recorded in the Union County Register of Deeds Office, and declare that such property shall be held, sold and conveyed subject also to the additional following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of Highgate Subdivision as it now exists and is hereafter expended and that such easements, restrictions, covenants and conditions shall burden and run with said real property and be binding upon all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties now or hereafter subjected to these Residential Use Restrictions or any part thereof, and shall inure to the benefit and burden the property of each owner thereof and their respective heirs, successors and assigns.

The HIGHGATE Architectural Control Committee may from time to time publish and promulgate architectural DESIGN GUIDELINES which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. The HIGHGATE Architectural Control Committee shall be responsive to technological advances or general changes in architectural designs and materials, and related conditions in future years, and use its best



efforts to balance the equities between matters of taste and design (on the one hand), and use of private property (on the other hand). Such Design Guidelines shall supplement these covenants, conditions and restrictions, and are incorporated herein by reference. The HIGHGATE Architectural Control Committee may refuse approval of plans, location, exterior color or finish, or specifications for any reason including purely aesthetic reasons, which in the sole discretion of the HIGHGATE Architectural Control Committee shall be deemed sufficient.

Final plans and specifications for all Improvements proposed to be constructed on a Lot shall be submitted in duplicate to the HIGHGATE Architectural Control Committee along with the review fee as defined below for approval or disapproval. The HIGHGATE Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the HIGHGATE Architectural Control Committee, one complete set of plans and specifications will be retained by the HIGHGATE Architectural Control Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the HIGHGATE Architectural Control Committee pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved", with comments noted on the plan and/or accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Any modification or change to the approved set of plans and specifications must again be submitted in duplicate to the HIGHGATE Architectural Control Committee for its inspection and approval. The HIGHGATE Architectural Control Committee's approval or disapproval, as required herein, shall be in writing. Once the HIGHGATE Architectural Control Committee has approved the plans and specifications for Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within twelve (12) months following the date of approval of the plans and specifications therefor by the HIGHGATE Architectural Control Committee, such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Lot in question, the plans and specifications therefor must again be submitted and approved by the HIGHGATE Architectural Control Committee pursuant to this Article VI/Architectural Control and Procedure including the payment of an additional Architectural Control Committee review fee. The additional fee shall be established by the Architectural Control Committee Board when the request is received.

A review fee of Five Hundred Dollars (\$500.00) shall be imposed for the initial review of plans and specifications for Improvements to be located on an Owner's Lot. The fee includes the preliminary review, the final review, and, if necessary, up to two (2) resubmissions. The address of the HIGHGATE Architectural Control Committee will be the same as the DECLARANTS' or assigns, 6701 Fairview Road, Charlotte, NC 28210. Following the initial review and two (2) resubmissions, if other resubmissions are necessary, the HIGHGATE Association Board will impose another fee of Two Hundred

efforts to balance the equities between matters of taste and design (on the one hand), and use of private property (on the other hand). Such Design Guidelines shall supplement these covenants, conditions and restrictions, and are incorporated herein by reference. The HIGHGATE Architectural Control Committee may refuse approval of plans, location, exterior color or finish, or specifications for any reason including purely aesthetic reasons, which in the sole discretion of the HIGHGATE Architectural Control Committee shall be deemed sufficient.

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Dollars (\$200.00) for each resubmission thereafter of the plans and specifications. Notwithstanding the foregoing, if nonconforming plans and specifications are submitted, for any reason, the Association Board may impose, in addition to the above described fees, an additional fee of One Hundred Dollars (\$100.00), for submitted nonconforming plans and specifications. The nonconforming request will be returned with written notice specifying the nonconforming item(s) and without a total review.

The HIGHGATE Property (and each Lot situated therein), shall be occupied and/or used as follows:

Section 1. Residential Purposes Only. Each Lot shall be used exclusively for single-family, non-transient residential purposes, and garages and parking spaces shall be used exclusively for the parking of passenger vehicles or light (i.e. non-commercial) vans or pick-up trucks (as set forth in Section 16 below) therein or thereof provided; however, DECLARANT shall have the right to use up to three (3) Lots designated from time to time by DECLARANT, and/or assigns, for the purpose of construction and operation of a sales and marketing center(s) for the HIGHGATE Property. No planes, trailers, boats, campers, abandoned cars or trucks (exclusive of vans or light pick-up trucks) shall be parked or housed in garages and parking spaces except as otherwise provided in Section 11 of this Article. No trade or business of any kind shall be conducted upon a Lot or any part thereof except by DECLARANT as described hereinabove. Except those to be utilized by DECLARANT as described hereinabove, no structure shall be erected, placed, altered, used, or permitted to remain on any Lot other than one detached single-family private dwelling and one private garage for not more than four (4) vehicles. Each residence constructed upon a Lot shall include a garage that is consistent with the overall architectural design of the residence on the Lot in question as determined by the HIGHGATE Architectural Control Committee. No Lot and no Improvements may be used for a hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon, or part of any Lot or part of any Improvement thereon, must be for a term of at least sixty (60) days, be in writing, and must provide that the tenant is obligated to observe and perform all of the terms and provisions applicable to such Lot and/or Improvements.

Section 2. Obstructions, etc. There shall be no obstruction of the HIGHGATE Maintenance Areas, or any Common Area, nor shall anything be kept or stored in the HIGHGATE Maintenance Areas or Common Area nor shall anything be altered, or constructed, or planted in, or removed from the HIGHGATE Maintenance Area, or Common Area, without the prior written consent of the DECLARANT or HIGHGATE Architectural Control Committee.

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done, or kept on his Lot, or in the HIGHGATE Maintenance Area, or Common Area, which will result in the cancellation of, or increase any cost of, any insurance carried by the Association, or which would be in violation of any law. No waste shall be disposed of, or stored, in the HIGHGATE Maintenance Area, or Common Area. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable

zoning ordinances), and other governmental rules and restrictions in regard to such Owner's Lot(s).

Section 4. Signs. No sign of any kind shall be displayed on any Lot or Tract except for the sign(s) that have been approved by the DECLARANT or approved in writing by the HIGHGATE Architectural Control Committee. The HIGHGATE Architectural Control Committee shall have the power, but not the obligation, to adopt and issue from time to time sign guidelines, as part of the Architectural and Landscaping Guidelines, to assist the HIGHGATE Architectural Control Committee in reviewing and approving proposed signs to be erected on the Property.

Section 5. Nuisances. Nothing shall (i) be done in any part of the HIGHGATE Property, nor shall (ii) any noxious or offensive activity be carried on; nor shall (iii) any outside lighting or loudspeakers or other sound-producing devices be used which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

Section 6. Attachments. No permanent attachments of any kind or character whatsoever (including, but not limited to, television, solar energy-related systems, and radio antennas) shall be made to the roof or exterior walls of any residence on a Lot. However, satellite dishes measuring no more than 18 inches in diameter may be approved under the provisions of Section 26 (o) below.

Section 7. Damage to the Common Area. Each Owner shall be liable to the Association, and/or the DECLARANT, for any damage to the Maintenance Area and/or Utility Easement or any Common Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees, to the extent that the damage shall not be covered by insurance.

Section 8. Rules of the Association. All Owners and occupants of any Lot shall abide by all rules and regulations adopted by the Association Board from time to time. The Association Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association, and/or the DECLARANT for all damages and costs, including attorneys' fees. The Association Board shall not have the power to impose restrictions, assessments, fees, rules or limitations on DECLARANT unless and until there shall have occurred the recordation of the HIGHGATE Plats, in which case any such Board-approved regulations shall apply equally to all Lots owned by DECLARANT.

Section 9. Animals. No animals, livestock, or poultry shall be raised, bred or kept in any portion of the HIGHGATE Property except that dogs, cats, or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage, or destruction of HIGHGATE Property or refuse. No dog run may be

constructed or maintained on any Lot unless such dog run has been consented to in writing by the HIGHGATE Architectural Control Committee.

Section 10. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Waste of any nature shall not be kept on any part of the HIGHGATE Property except on a temporary basis.

Section 11. Recreational Items. No recreational vehicles or equipment, including a motorboat, houseboat, motor home, or other similar vehicle, or any camper vehicle may be maintained, stored or kept on any portion of the HIGHGATE Property, except in enclosed garages, or in areas specifically designated by the Board.

Section 12. Play Equipment. No play equipment, including, without limitation, basketball backboards, basketball hoops, and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any dwelling, or otherwise installed on any Lot unless approved in advance by the HIGHGATE Architectural Control Committee. Children's play and similar equipment shall not be allowed to remain overnight within any front yard of any Lot. No play equipment such as metal or wooden swing sets, or children's climbing apparatus, or the like, shall be permitted on any Lot unless approved by the HIGHGATE Architectural Control Committee and such equipment is located in the rear yard. Elements of a planned park or playground, swing sets, and similar outdoor play structures and equipment must be located where they will have a minimum impact on adjacent Lots, and where they will be screened from general public view. Such play equipment shall be generally located in the middle third of the rear portion of any Lot.

Section 13. New Construction. Construction of new buildings shall only be permitted on Lots; it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting same into a dwelling house.

Section 14. Limitation of Parking of Vehicles. No vehicle of any size which transports inflammatory or explosive cargo may be kept on the HIGHGATE Property at any time. No vehicles that are not in a condition to be normally operated may be stored, or situated, on any Lot for more than thirty (30) days unless stored in an enclosed garage. The Owner of each Lot will be responsible for providing on such Lot, sufficient parking area for all vehicles normally parked, and/or situated on such Lot.

Section 15. No Temporary Structure. No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a dwelling house; provided the DECLARANT, or its assigns, reserves the right to allow temporary construction, and/or sales offices on no more than three (3) Lots during the construction/sales period.

Section 16. Water/Sewer Systems. No individual water or sewer supply system shall be permitted on any Lot unless specifically approved by the HIGHGATE Architectural Control Committee.

Section 17. Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point thirty-five (35) feet from the intersection of the street lines or, in the case of a rounded street property corner, from the intersection of the street property lines, as extended. These sight line limitations are also shown on the HIGHGATE Plats. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Section 18. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot located within the HIGHGATE Property must be continued with reasonable diligence to completion, and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. Prior to commencement of construction on any Lot, the Owner shall provide a gravel driveway with a minimum of five (5) inches of #5 crushed stone base from the paved street to the site of the actual house construction area. No construction materials of any kind may be stored within the street right-of-way. Any damage to the street, curb, or sidewalk, or any part of any Maintenance Area, or any utility system caused by the Owner, or Owner's builder, shall be repaired by such responsible Owner. The Owner of each Lot shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. DECLARANT may provide for the cleaning of public and private areas due to the activities of the Owner or Owner's builder, and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning plus twenty percent (20%) overhead costs. Builder shall, consistent with standard construction practices, keep all portions of the Lot free of unsightly construction debris, and shall at all times during construction either provide dumpsters for the containment of garbage, trash, or other debris which is occasioned by the construction of Improvements, or take other measures consistent with standard construction practices necessary to keep the Lot free of garbage, trash, or other debris which is occasioned by the Construction Improvements.

Section 19. No Subdivision of Lots. No Lot shall be subdivided by sale, lease or otherwise, so as to reduce the total Lot area as shown on the recorded map or plan. The foregoing shall not apply to DECLARANT or Harrington-Dowd Realty Company, where applicable.

Section 20. Hoses and Pipes. Except for the temporary use of hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no hose, water pipe, sewer pipe, gas pipe, drainage pipe, television cable, or other similar transmission line shall be installed or maintained upon any Lot above the surface of the

ground, unless such installation is expressly approved by the HIGHGATE Architectural Control Committee.

Section 21. Vegetable Gardens. Vegetable gardens shall not be permitted on any Lot unless placed in the rear portion of such Lot in such a manner as to not constitute a nuisance to any adjoining Owner; however, the foregoing shall not be deemed to authorize or permit any garden or activity related thereto which is prohibited by other provisions of this Declaration.

Section 22. Lawn Furniture. In general, no lawn furniture or decorative items such as statuettes, or renderings of animate, or inanimate objects shall be placed or maintained in the front or side yards of any Lot, or wall, unless approved in advance in writing by the HIGHGATE Architectural Control Committee.

Section 23. Window Coverings. Bed sheets, plastic sheets, newspapers, plastic storm windows, or other similar window treatments shall not be hung, or placed in or on any window on any dwelling located on any Lot.

Section 24. Location of Improvements. Buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure within the confines of each Lot. To assure that structures will be located with regard to the topography of each Lot, taking into consideration the location of large trees, and other aesthetic and environmental considerations, the HIGHGATE Architectural Control Committee shall have the right to control absolutely, and solely to decide (subject to the provisions of zoning ordinances of the appropriate governmental authorities) the precise site and location of any building or structure on any Lot for reasons which may in the sole and uncontrolled discretion and judgment of the HIGHGATE Architectural Control Committee be deemed sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner of the Lot in question to recommend a specific site. The provisions of this Section shall in no way be construed as a guarantee that the view, privacy, sunlight, or breeze available to a building or structure on a given Lot shall not be affected by the location of a building or structure on an adjacent Lot.

Section 25. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot, and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable, and shall be complied with in regard to the Lots.

Section 26. Construction of Improvements and Design Guidelines. Notwithstanding anything contained within this Declaration to the contrary, it shall be prohibited for any Owner to undertake: (i) any construction of any Improvement, which shall include, in addition to the actual erection of a dwelling and its appurtenances, any staking, clearing, excavation, grading or other site work; (ii) any landscaping, plantings or removal of plants, trees or shrubs; or; (iii) any modification, change or alteration of a Lot or dwelling

thereof, whether functional or decorative, unless and until the value and size thereof, materials to be used in construction, exterior color scheme, exterior lighting plans, specifications and details thereof and Lot plans showing the proposed location of the dwelling, garage, and driveways upon the Lot, and final Lot grades, and Lot landscaping plans, shall have been approved in writing and all applicable review fees and escrow deposits have been paid to the HIGHGATE Architectural Control Committee, and copies of said plans, specifications and details shall have been lodged permanently with said HIGHGATE Architectural Control Committee. Generally, homes will be traditional or "transitional" in design and substantially of brick, stone, stucco or other material approved by the HIGHGATE Architectural Control Committee.

(a) Floor Areas, Stories. The total heated floor area of the main dwelling house on each Lot, exclusive of porches, terraces, garages, basements, attics, and outbuildings, shall not contain less than the following:

<u>Type of Home</u>	<u>Square Footage</u>
1 ½ or 2 story	3000
1 story	2500

Notwithstanding the foregoing Restrictions, the HIGHGATE Architectural Control Committee shall have the right, because of special design characteristic restrictive topography, Lot dimensions, or unusual site-related conditions, to allow, or require variances from such minimum total heated floor area restrictions of up to ten percent (10%) of such minimum areas by a specific written variance.

(b) The DECLARANT expressly reserves unto the HIGHGATE Architectural Control Committee the sole and exclusive right to approve grades and slopes on all Lots and to approve the grade at which any dwelling shall hereafter be erected, or placed thereon so that the same shall conform to a general plan, subject only to compliance with the regulations of public authorities having control thereof.

(c) Building Setback Lines. The main building on each Lot shall not be located on any Lot nearer to the Lot boundary line than the building setback line specified below unless a greater setback is required by applicable zoning laws and other governmental requirements or the recorded maps;

- (i) Front Setback - 50 feet from the front HIGHGATE Property line of the Lot in question;
- (ii) Side Setback - 15 feet from side boundary lines except that for corner lots the side setbacks for the street side of the Lot shall be 25 feet;
- (iii) Rear Setback - 40 feet from rear boundary line.



Notwithstanding the foregoing Restrictions, the HIGHGATE Architectural Control Committee shall have the right, because of restrictive topography, Lot dimensions, house designs, or unusual site related conditions, to allow or require variances from such setbacks. However, in no event will a variance be granted which would cause a violation of any governmental regulations, including, but not limited to, zoning. Further, in the event of an unintentional violation of such building line restrictions, the DECLARANT reserves the right, by and with the mutual consent of the owner at such time as the Lot or Lots directly affected thereby, to change such building line restrictions accordingly by a specific written and recordable amendment to the Declaration; provided, however, any such change shall not exceed ten percent (10%) of the marginal requirements of such building line restrictions, and does not violate any governmental regulation.

(d) Foundations. Unless specifically waived in writing by the HIGHGATE Architectural Control Committee, all foundations must be raised and have a crawl space. Slab-on-grade foundations generally will not be permitted, except for garages, patios, unheated porches, basements, and storage areas.

(e) Chimneys. Exterior Chimneys shall be full foundation based, and constructed of brick, stone, stucco or other material approved in writing in advance by the HIGHGATE Architectural Control Committee. Chimneys shall have a design and location, and shall be constructed of a material that is appropriate to the house. Exposed metal flues and wood chases shall not be used. Chimney cap covers are required for prefabricated metal flues. Direct vent fireplaces are discouraged if the location is a side elevation, and direct vent fireplaces shall not be permitted on front elevation.

(f) Ceiling Heights. A minimum of nine (9) foot ceilings is required on all floors unless specifically waived in writing by the HIGHGATE Architectural Control Committee.

(g) Roofs. Roofs and roof pitches shall be in proportion to the size and shape of the house. Except as specifically approved otherwise in writing by the HIGHGATE Architectural Control Committee, the minimum roof slope for the main house structure shall be eight (8) vertical to twelve (12) horizontal. Acceptable roofing materials are (i) wood shingles; (ii) wood shakes; (iii) natural or man-made slate; (iv) tile; or (v) minimum twenty-five (25) year warranty, variegated (not solid) color, architectural (sculpted) style composition (fiberglass) shingles. All specific roof materials to be used must be approved in writing by the HIGHGATE Architectural Control Committee as part of the final Building Plans and Specifications prior to commencement of construction. Eaves and rakes shall be accented by multiple fascia boards, cove and crown moldings or gutters. Roof frames must be well organized, and must demonstrate the same character on all sides of the residence. No roof shall extend continuously to cover both single and two-story sections of a residence. The primary objective of this architectural guideline is to avoid the appearance of a single-story facade with a two-story rear elevation.

(h) Windows and Shutters, Doors. Windows shall generally be the same type and style all around the house. Thermal pane windows are preferred, and exterior storm windows generally will not be permitted. Wood windows are preferred; however, vinyl/aluminum windows will be considered, provided the style and profile are visually similar to wood windows. Unless specifically waived in writing by the HIGHGATE Architectural Control Committee, no window, or door casing, or decorative treatment shall abut any frieze board. Bay windows shall be carried down to grade, or visual support of cantilevered conditions must be expressed. When bay windows are stacked in a two-story configuration, the blank panel between all facets shall be accented.

(i) Gutters and Downspouts. Gutters and downspouts shall be used at all eave lines, unless deemed inappropriate. All exterior down pipes (except copper down pipes) shall be blended with the color of the exterior trim of the residence.

(j) Garages. Every house shall have an attached garage for not less than two (2) vehicles and shall be finished inside. Generally, "sideload" or "rearload" garages are recommended and front entry garages are discouraged. However, front entry garages may be allowed if (a) in addition to a two (2) bay "sideload" garage and provided the entrance to the front entry garage is located further back on the lot than the entrance to the "sideload" garage, and the front entry garage structure is attached to the main building structure on the lot; or (b) a detached front entry garage may be allowed if the garage is located on the rear portion of the lot and the front entrance thereof is located further back on the lot than the back building line of the house structure. Additional screening or other requirements may be imposed by the HIGHGATE Architectural Control Committee if a "frontload" garage is built. Courtyard style entry attached garages are acceptable as long as architectural details are provided to show that, in the sole discretion of the HIGHGATE Architectural Control Committee, an overwhelmingly blank façade is avoided. Garage doors are required for all garages, and the garage doors must be paneled and/or detailed to provide an appropriate scale. All garage doors must have operating remote control door openers. Carports are not allowed.

Anything above to the contrary notwithstanding, the HIGHGATE Architectural Control Committee shall have the authority to approve the plans for, and the location of, any garage to be built on any lot, in its sole discretion, whether it complies or not with the above specifications. The building of any garage on any lot in any location shall not be commenced until first approved in writing before the HIGHGATE Architectural Control Committee.

(k) Porches and Decks. Porches and decks shall be designed with substantial, well proportioned railing, flooring, and support posts meeting applicable building code requirements. Porches and decks shall blend with the style and material of the house (e.g., stucco deck fascia and piers with stucco house). Porch and deck support columns constructed of masonry shall be minimum 12" X 12", and porch and deck support columns constructed of wood shall be minimum 6" X 6" (with base and capital detailing). Decks six (6) feet or higher shall be appropriately screened with lattice and/or sufficient Landscape Improvements.

(l) Exterior Materials and Colors. Exterior materials shall be substantially of brick, stucco, stone, cedar shake, or, if approved in advance, in writing, by the HIGHGATE Architectural Control Committee, horizontal siding, or other materials coming on the market, which is the sole discretion of the HIGHGATE Architectural Control Committee, and provide similar high quality aesthetic appeal and long term value both in utility and appearance. If approved by the HIGHGATE Architectural Control Committee, the horizontal siding used must be fully back-supported to maintain a straight and even outer surface, and must be fully and properly finished. Natural weathering of exterior wood materials is not desired. Masonry, stone or stucco used as a veneer material on the facade of a residence shall continue around the front corners of such residence to a logical point of termination. The use of multiple combinations of exterior materials will be carefully reviewed on an individual basis by the HIGHGATE Architectural Control Committee.

(m) Exterior Utility Service Connections/HVAC Equipment. All exterior utility service connections and HVAC (Heating and Air Conditioning) equipment must be provided in unobtrusive and inconspicuous locations. All electric meters, and main panels, gas meters, and HVAC equipment must be screened from view. This may be accomplished by providing a screen wall on the side of the dwelling, or through approved Landscape Improvements and/or a screen wall, either of which must be approved by the HIGHGATE Architectural Control Committee.

(n) No Clothes Lines. No clothes lines of any description will be permitted on any portion of the Lot.

(o) Attachments; Satellite Dishes and Antennae. No permanent attachment of any kind or character whatsoever shall be made to the roof or exterior walls of any building on any Lot, or otherwise placed or maintained on any Lot unless such attachments or devices are approved in advance in writing by the HIGHGATE Architectural Control Committee. NOTWITHSTANDING THE ABOVE, , the following Antenna Placement Procedures and Guidelines be adopted replacing anything previously recorded in conflict:

#### I. General

Except for Covered Antennas (as defined herein), which are subject to the Federal Communications Commission Over-the-Air Reception Devices Rule, no antenna used to transmit or receive video, radio or short-wave broadcast signals of any kind may be placed, installed or operated by any individual within the community without prior application to and written approval of the Board or the Architectural Control Committee ("Committee"), as appropriate.

#### II. Exception for Antennas Installed within a Building and Not Visible From Outside the Building

An antenna of any type may be installed totally within an individually owned building so long as the antenna is not visible from outside the building and the installation complies with all applicable health, safety, building code and licensing requirements.

III. Exception for Covered Antennas Placed on Individually Owned Exclusive Use Property

(a) In accordance with Federal law (Section 207 of the Telecommunications Act of 1996 and 47 C.F.R. § 1.4000 of the Rules of the Federal Communications Commission), the placement of (1) a direct broadcast satellite ("DBS") antenna that is one meter or less in diameter, (2) a multipoint distribution service ("MDS") antenna that is one meter or less in diameter or diagonal measurement, (3) a television broadcast signal ("TVBS") antenna, and (4) an antenna mast measuring not more than 12 feet in height above the roof line (collectively, the "Covered Antennas") on (i) individually-owned property or (ii) property in which the owner (or tenant) has a direct or indirect ownership (or leasehold) interest and which is within the exclusive use or control of such owner or tenant is permitted subject to prior notification of installation and subject to the restrictions and guidelines set forth in Section IV of this Resolution.

(b) Before installing a Covered Antenna, owners and tenants must notify the Committee in writing of their intent to install a Covered Antenna and provide relevant information about the Covered Antenna by completing the Antenna Placement Notification Form attached as Exhibit "A" to this Instrument. Prior approval is not required to install a Covered Antenna.

IV. Guidelines for the Installation, Use and Maintenance of Covered Antennas.

(a) Location: If there is more than one location where an acceptable quality signal can be received, the Covered Antenna must be placed in the location that is least visible to persons not on the owner's property. Preferred locations in order of preference are: (1) rear yards, (2) rear patios, decks or balconies, (3) rear roof, (4) side yard adjacent to gas meters or mechanical equipment, or (5) front yard; in all cases preferable fully screened by shrubbery. Preferred roof locations are adjacent to a chimney or on the rear roof just above the gutter line or just below the ridge line of the roof. Preferred patio locations are adjacent to an exterior wall or fence. The preferred location on a deck or balcony is within the

interior space of the deck or balcony below the height of the railing.

If the only location where an acceptable quality signal can be received is a highly visible location, then the Covered Antenna must be appropriately camouflaged or screened, to the extent signal quality is not diminished so extensively that reception is unreasonably impaired, by paint or other means which do not unreasonably delay or increase the cost of the installation. The Board or the Committee may require disguising the Covered Antenna (e.g., as a rock or umbrella), camouflaging the Covered Antenna by painting or reducing visibility by screening. The Board or the Committee has the right but not the obligation to pay the cost of reasonable additional screening of any visible Covered Antenna, to the extent such screening does not unreasonably impair signal quality or unreasonably delay installation.

(b) Installation: The installation of any Covered Antenna must comply at all times with all applicable building codes and industry safety standards (e.g., not within two feet of electric power lines.) The Covered Antenna must be affixed to its location in a safe and secure manner. Acceptable installation techniques for common Covered Antennas are as shown on the Installation Details furnished by the antenna manufacturer, unless a different Installation Detail is attached as an exhibit to this Resolution.

- (i) Any damage caused by the installation of the Covered Antenna shall be repaired at the sole expense of the owner immediately following the installation.
- (ii) Cabling and grounding wire shall be installed in the least visible manner possible. When a Covered Antenna is located on the ground, cabling and wire shall be installed underground whenever possible unless doing so would be unreasonably costly (See Section VII).
- (iii) If it is possible (without unreasonable delay, expense or signal impairment) to install the cable without penetrating an exterior surface (roof, window or wall) by using "ribbon cable" or a through-the-glass device, then the installation may not penetrate (make a hole through) such building components except in single family detached homes.
- (iv) If a contractor is installing the Covered Antenna, the contract shall (i) be appropriately licensed as

required by law, (ii) employ personnel trained in the proper installation of such equipment and (iii) upon request, furnish evidence of all required insurance coverages

(c) Maintenance:

- (i) Maintenance of Covered Antennas shall be the responsibility of the owner. The Covered Antenna (and associated camouflaging and screening) shall be maintained in a manner that its appearance and condition remains consistent with the original appearance and condition of the Covered Antenna. Any damage, dislodgment, or wear and tear of the Covered Antenna that is visible by persons not on the owner's property shall be repaired by the owner as soon as practicable.
- (ii) If an owner fails to maintain a Covered Antenna property, the Committee shall notify the owner, in writing, that the Covered Antenna requires maintenance or repair and that such maintenance or repair must be completed within thirty days after such notification (or such lesser period as may be established by the Committee for safety reasons or other good cause shown). If any required repair or maintenance is not performed by the owner within the time period allowed, the Association may complete such maintenance and repair and assess the reasonable cost of such work to the owner.
- (iii) If a Covered Antenna must be removed to allow the Association to perform necessary maintenance or repair, the owner shall be responsible for the removal of such Covered Antenna within seven days (or such shorter period as may be reasonably necessary under the circumstances) after notice of such maintenance or repair. If the owner fails to remove the Covered Antenna prior to the commencement of necessary maintenance or repairs, then the Association shall remove such Covered Antenna and assess the reasonable cost of such removal to the owner. If the owner pays the cost, the Association shall reinstall the Covered Antenna when the maintenance or repair has been completed. The Association shall not be liable for damage to the Covered Antenna during such removal or reinstallation except due to the

Association's gross negligence or willful misconduct.

- (iv) If the installation of or access to the Covered Antenna requires passage over restricted access common property in a manner that may be hazardous to the owner or tenant or may damage the restricted access common property, then the Association may, at its option, perform required maintenance at the reasonable expense of the owner or tenant.

(d) Guidelines for TVBS Antenna Placement:

If the signal received by an indoor or attic TVBS antenna is sufficient to receive acceptable quality signal for local off-the-air programming, installation of an outdoor antenna is prohibited. If an exterior installation is necessary, the use of the least obtrusive antenna possible, which will receive acceptable quality signal (such as the 12-inch or 18-inch circular dish antenna) is required unless doing so would be unreasonably costly (see Section VII). Any installation of an outdoor TVBS antenna shall conform to all guidelines set forth in Section IV of this Resolution.

V. Safety Restrictions for Mast-Mounted Antennas

No antenna shall be mounted on a mast measuring more than twelve feet in height above the roof line or one and one-half times the distance to the property line without prior application to and the written consent of the Committee. The Committee shall approve the proposed installation once it has determined that all applicable building codes, industry safety standards and local permitting requirements have been following and complied with, and that no other installation could receive an acceptable quality signal without a mast of that height. All antenna masts shall be the minimum height necessary to receive an acceptable quality signal.

VI. Determination of Sufficiency of Reception

To the extent required, the Committee shall employ a knowledgeable, independent consultant to determine the acceptability of broadcast signals received in various locations on any owner's property and recommend a placement that: (1) insures an acceptable quality signal (if such reception is possible on such owner's property), (2) maximizes the safety of the installation and (3) minimizes the visibility of the antenna.

## VII. Cost

If the individual installing a Covered Antenna believes that compliance with these requirements cannot be accomplished at a reasonable cost, such individual may advise the Association of that fact and the Association may, at its option, share the cost of compliance.

## VIII. Relocation and Removal

- (a) If a Covered Antenna has been installed prior to the date of general distribution of this resolution, the Association may require the owner or tenant served by that antenna to relocate the antenna in compliance with the provisions of this resolution; provided, however, that signal quality is not materially diminished, the relocation is scheduled at the reasonable convenience of the owner or tenant and service is not disrupted for more than twenty-four hours.
- (b) If a Covered Antenna is installed prior to the Association providing the same service through a common antenna system, the Association may require its removal; provided, however, that the cost of the same service to the owner or tenant is no more than the cost of using the existing individual antenna, the changeover is scheduled at the reasonable convenience of the owner or tenant and service is not disrupted for more than twenty-four hours. Further, the Association may not charge such owner or tenant any portion of the cost of installation of the central antenna and the Association shall reimburse the owner or tenant for the cost of the Covered Antenna, prorated over a useful life of five years. In either case, the cost of relocation or removal shall be at the expense of the Association.
- (c) If a Covered Antenna is installed after the date of general distribution of this resolution, the Association may require its relocation if not in compliance with this resolution; if a Covered Antenna is installed after the Association provides the same service through a common antenna system, the Association may require its removal. In either case, the cost of relocation or removal shall be at the reasonable expense of the owner or tenant.



(IX) Enforcement

- (a) If an individual installs an antenna not permitted by this Resolution, the Committee shall enforce the Association's rules in accordance with Policy Resolution No. 1.
- (b) If an individual installs a permitted antenna not in compliance with this Resolution (other than the prior notification requirement), then the Committee shall require the individual to comply.
- (c) If an individual installs a permitted antenna in compliance with this Resolution but fails to provide prior notification, the Committee shall not penalize the individual nor pursue any other enforcement action.

(p) Mail Boxes. The Association reserves the right to establish uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes and their supporting posts erected upon any property in the HIGHGATE Property or the Project. House numbers shall be displayed on the dwelling and/or mailbox as approved by the HIGHGATE Architectural Control Committee.

(q) Pools, Therapy Pools and Spas. The size, shape, and setting of pools (including standard swimming pools, therapy pools, and spas) must be carefully designed to be compatible with the surrounding natural and man-made environment. In locating swimming pools, therapy pools and spas, the following shall be considered:

1. Indoor/Outdoor relationship;
2. Setbacks imposed by the applicable Building Envelope;
3. Views both to and from the pool area;
4. Terrain (grading and excavation); and
5. Fencing and privacy screening.

Pools, decks, and related equipment will not be allowed outside of the Building Envelope area. Provided, however, pool decks may encroach into the rear setback area imposed by the Building Envelope, but no closer than 25 feet to any Lot boundary line. Pool and pool equipment enclosures must be architecturally consistent and harmonious with the residence and other structures on the Lot in terms of their placement, mass, and detail. Pools, decks, and related equipment, and pool and pool equipment enclosures shall be screened or treated so as to avoid distracting noise and views.

(r) Exterior Lighting. Exterior lighting must be approved by the HIGHGATE Architectural Control Committee as part of the Building Plans and Specifications and must comply with all governmental regulations, including, but not limited to any outdoor lighting ordinance of the town of Weddington. Unless otherwise approved by the HIGHGATE Architectural Control Committee, such lighting shall be limited to the area

of the building envelope. Also, such lighting must not result in excessive glare, or interfere with the privacy of nearby dwellings all as determined by the HIGHGATE Architectural Control Committee in its sole discretion.

(s) Tennis Courts. Tennis courts will be permitted only when they can be constructed so as not to infringe upon view corridors, and can be naturally screened from adjacent Lots. A site plan showing the tennis court location, with proposed grading and screening, shall be provided for review by the HIGHGATE Architectural Control Committee. The minimum setback for a tennis court from any Lot boundary line is twenty-five (25) feet. The design and color of fencing materials for tennis courts must blend naturally into the surrounding area, and plant materials must be added to soften the visual impact. Tennis court fencing shall be vinyl coated chain link, and shall be black in color. Tennis court wind screens must be kept to moderate heights. Tennis court surface colors shall be restricted to colors such as soft reds and greens, and not be highly reflective. Night lighting of tennis courts shall not be permitted.

(t) Fences and Walls. Walls and fences shall be considered an extension of the architecture of the residence, and a transition of the architectural mass to the natural forms of the Lot. All wall and fence designs shall be compatible with the total surrounding environment. Special consideration must be given to design, placement, impact, and view of the wall or fence from neighboring Lots. Fences and walls shall be considered as design elements to enclose and define courtyards, pools, and other private spaces, provide security, and relate building forms to the landscape. Fences and walls must be run or curved where practical between existing trees to avoid unnecessary cutting of existing trees. The location, materials, size, and design of all fences and walls must be approved in advance in writing by the HIGHGATE Architectural Control Committee prior to installation. Privacy fences or walls which inhibit visibility (i.e. whether a solid masonry wall or wood fence) are permitted only to enclose the unused rear Building Envelope area inside the required setbacks. Wood fencing is not encouraged but may be acceptable if the detailing and design are cosmetically appealing. Wood privacy fencing may be allowed only if used along a boundary line that is not a common boundary with another lot of HIGHGATE, regardless of whether or not such adjoining lots are in the same phase of HIGHGATE, and then only if approved by the HIGHGATE Architectural Control Committee in its sole discretion. Walls shall be constructed of solid masonry or wrought iron with columns, using the same materials as found in the architecture of the residence. Wood privacy fence columns must be brick, stucco, or stone. Once an approved finished fence or wall has been erected on a side or rear Lot boundary line which is a common boundary line with another Lot, that approved fence or wall design and material(s), will be the only approved fence or wall design and material(s) that may be erected on that common Lot line. No double fencing will be allowed on side or rear Lot lines. A retaining wall that is attached to the residence on a Lot shall utilize the same materials as the residence wall that it adjoins. In the event a fence or wall is erected along a side-line or rear-line of a Lot, then the Lot adjoining said side-line shall have an easement appurtenant to use any land from the property line to the fence as a lawn, and also to connect to such fence with another fence provided such connection is approved in writing, both as to location and kind, by the HIGHGATE Architectural Control

Committee prior to said connection(s). Further it is hereby specifically agreed that: (i) such easement, both as to the lawn and the connecting fence, shall terminate if and when said fence along the lot line is removed; and (ii) that such easement shall never ripen into fee simple title. The HIGHGATE Architectural Control Committee shall allow only one (1) fence along a side line within ten (10) feet of any side-lot line.

Section 27. Landscaping, Sediment/Erosion Control, Street Cleaning and Subdivision Damage.

The Association reserves the right through it's Architectural Control Committee to promulgate and amend from time to time landscape guidelines which shall establish approved standards, methods, and procedures for landscape management in the HIGHGATE Property, and such authorized standards, methods and procedures may be utilized by the Owners without prior written approval by the Association, provided, however, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without the prior written approval of the Architectural Control Committee of the Association. Approval for the removal of trees located within twenty (20) feet of the main dwelling, or accessory building, or within twenty (20) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the property.

(a) General. Except for the building pad, driveways and sidewalks on each Lot, the disturbed surface of each Lot shall be of grass, or other live foliage, and/or ground cover, and shall be neatly maintained at all times. The Association reserves the right to require an escrow account(s) for landscaping improvements, street cleaning, erosion control, and subdivision damage to be funded by each Owner, to be maintained by, or on the behalf of, the Association upon submission by the Owner of building plans, and all required exhibits for approval by the HIGHGATE Architectural Control Committee. The amount of such reserve shall be determined upon the signing of the Contract of Sale for the Lot in question. The reserve(s) shall be held by the Association, or its designate, until such time as the Owner shall complete all the requirements of the escrow agreement(s) related to the Owner's Lot pursuant to the submission by the Owner to be approved in writing by the HIGHGATE Architectural Control Committee. The Owner of the Lot shall make a written request to the HIGHGATE Architectural Control Committee for final inspection and release of any escrow funds, less any outstanding expenses attributed to the Lot.

(b) Street Cleaning. Streets will be cleaned during construction by the Association, and each builder/owner will be charged proportionally for the expense for each Lot that has been approved to start construction. The street cleaning expense charged to each builder/owner will continue until the final inspection is requested by the builder/owner, and is approved by the HIGHGATE Architectural Control Committee. The street cleaning expense will be charged directly to and paid from the escrow account for each Lot. Other expenses incurred by the Association, if any, for removing mud, trash, and/or construction debris will be charged directly to the builder/owner as provided

for in this Declaration, for this violation. In the event more than one builder/owner caused the violation, the expense incurred will be charged proportionally for each Lot.

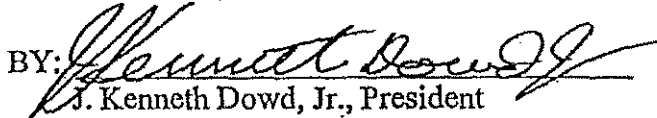
(c) Erosion Control. Sufficient sediment control measures including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection, and temporary seeding, to the extent deemed reasonably necessary by the DECLARANT, and/or the HIGHGATE Architectural Control Committee, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

(d) Landscape Plan. Detailed landscaping plans must include at a minimum, the plant type, size, and location. The front elevations must be landscaped, and plantings installed, before the final inspection is requested or approval granted. A waiver of up to 90 days may be granted by the HIGHGATE Architectural Control Committee if weather conditions warrant. If a delay is approved by the HIGHGATE Architectural Control Committee, the owner will be notified in writing, and be required to increase the escrow account with the HIGHGATE Architectural Control Committee for an amount equal to the cost of the landscaping plan for the front elevation, and in the case of a corner Lot, the cost of front and the applicable street side elevations. All landscaping material used on any elevation that can be viewed from the street must be mature plantings. (Refer to the Landscape Guidelines for specific sizes).

IN WITNESS WHEREOF, the DECLARANT has duly executed the within instrument this 15 day of August, 2000.

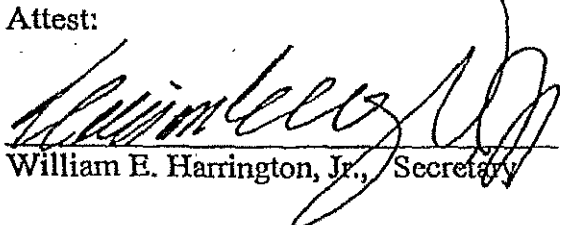
HARRINGTON/DOWD REALTY COMPANY

BY:

  
J. Kenneth Dowd, Jr., President

(AFFIX CORPORATE SEAL)

Attest:

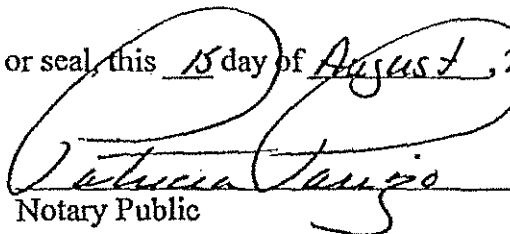
  
William E. Harrington, Jr., Secretary

NORTH CAROLINA

Coaston COUNTY

I, Patricia Parizo, a Notary Public of the County and State aforesaid, certify that William E. Harrington, Jr., personally appeared before me this day and acknowledged that he is Secretary of Harrington/Dowd Realty Company, a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 15 day of August, 2000.

  
Notary Public

My Commission Expires: 10-5-2003

GG 2802-001. 8/11/00

EXHIBIT "A"

HIGHGATE HOMEOWNERS ASSOCIATION, INC.

ANTENNA PLACEMENT NOTIFICATION FORM

TO: Highgate Homeowners Association, Inc.  
6701 Fairview Road  
Charlotte, NC 28210

FROM: Owner's Name: \_\_\_\_\_  
Tenant's Name (if not owner): \_\_\_\_\_  
Property Address: \_\_\_\_\_  
\_\_\_\_\_

I wish to notify you that I am installing a Covered Antenna on my Lot in accordance with Policy Resolution No. \_\_\_\_\_ of Highgate Homeowners Association, Inc.

1. TYPE OF ANTENNA: ☐ Direct Broadcast Satellite Antenna (DBS)  
Diameter \_\_\_\_\_ inches
- ☐ Multipoint Distribution System Antenna (MDS)  
Size: \_\_\_\_\_ inches
- ☐ Off-the-air Television Antenna (TVBS)
2. MAST: ☐ Yes ☐ No
- ☐ Height of mast above roof line:  
\_\_\_\_\_ feet \_\_\_\_\_ inches
- ☐ Height of mast: \_\_\_\_\_ feet \_\_\_\_\_ inches and  
distance to property line: \_\_\_\_\_ feet \_\_\_\_\_ inches
3. LOCATION: ☐ Inside House (including attic)
- ☐ Rear Yard ☐ Front Yard ☐ Side Yard
- ☐ On Ground ☐ Patio, Deck or Balcony
- ☐ Roof at Drip Edge ☐ Roof Below Ridge Line
- ☐ Roof on Chimney ☐ Roof Above Ridge Line
4. SCREENING: ☐ Yes ☐ No ☐ Partial

I have received the Association's Antenna Placement Guidelines and will install my antenna in compliance with such Guidelines. If my antenna installation does not comply with the Guidelines, I will relocate or reinstall my antenna at my expense to comply with the Guidelines provided that compliance does not preclude reception of an acceptable quality signal or impose an unreasonable expense.

\_\_\_\_\_  
Signature of Owner (or Tenant)

OK 3314 Pg 139  
Filed for record  
Date 12-22-2003  
Time 2:20 o'clock P.  
JUDY G. PRICE, Register of Deeds  
Union County, Monroe, North Carolina

## DECLARATION OF CONSERVATION EASEMENT AND RESTRICTIONS

THIS DECLARATION OF CONSERVATION EASEMENT AND RESTRICTIONS ("Declaration") is made December 11, 2003 by HIGHGATE HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation ("Association"), for the benefit of the TOWN OF WEDDINGTON, NORTH CAROLINA ("Town").

A. The Association is the owner of approximately 27.816 acres of land located in the Town of Weddington, Union County, North Carolina, as more particularly described on Exhibit A attached hereto ("Property").

B. Pursuant to Section 5.7 of the Town's Zoning Ordinance ("Ordinance"), the Association has agreed to provide for the dedication of open space and conservation land.

C. Having determined that it is in the best interest of the Association and its members to do so, the Association desires to declare that the Property is subject to certain covenants and restrictions as set forth herein.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Association declares as follows:

1. Declaration of Restrictions. The Association hereby declares that, notwithstanding the zoning classification of the Property, and in addition to any other restrictions applicable to the Property, the Property shall be held, sold and conveyed subject to the restrictions set forth on Exhibit B attached hereto ("Restrictions").

2. Maintenance Plan. The Association shall maintain and repair the Property, at the Association's sole expense, in accordance with: (i) the Declaration of Covenants, Conditions, Restrictions and Easements for Highgate Subdivision recorded in Book 1381, Page 306 of the Union County Public Registry (as supplemented and amended, the "Master Declaration"); and (ii) any Maintenance Plan or Maintenance Agreement agreed to by the Town and the Association in accordance with the requirements of the Ordinance.

3. Conservation Easement. This Declaration shall not prohibit the transfer of a conservation easement interest in the Property to a qualified land conservation organization acceptable to the Town and the Association. The form of such conservation easement shall be subject to the prior written approval of the Town and the Association. Additionally, the Town may, in its discretion, assign its rights hereunder to a land conservation organization without the consent of the Association or any member thereof.

4. Enforcement. This Declaration is intended for the benefit of the Town and the members of the Association. Accordingly, the Town and each member of the Association shall

have the right, but not the obligation, to enforce any violations of the terms of this Declaration and the Restrictions contained herein.

5. Grant of Easement. The Town and its contractors and agents are hereby granted a non-exclusive, perpetual easement to enter upon the Property in order to confirm compliance with the terms of this Declaration and to enforce the Town's rights hereunder. The reservation of the foregoing easement shall not obligate the Town to exercise such easement rights or rights of enforcement.

6. Warranty of Title. The Association represents and warrants that: (i) the Association is seized of the Property in fee simple and has the right to restrict the same in fee simple; (ii) title to the Property is marketable and free and clear of all liens; and (iii) the Association will warrant and defend the title to the Property against the lawful claims of any person or entity.

7. No Security Interest; No Liens. Notwithstanding the terms of the Master Declaration and the By-Laws of the Association, the Association (i) shall not grant a security interest in the Property; and (ii) shall promptly pay and discharge, or cause to be paid and discharged, on or before the due date, any claim or obligation (including ad valorem taxes) which if not paid or discharged would result in a future lien on the Property which would have priority over this Declaration.

8. Association Officers and Directors. As required by the Ordinance, each year, the Association shall provide the Town a list of the Board of Directors and the Officers of the Association. Such list shall include the address and telephone number of each Director and Officer. Delivery of the list required by this Section 8 shall be effective upon receipt by the Town. In the case of a notice delivered by (i) pre-paid personal delivery, (ii) pre-paid messenger, pre-paid express or air courier or similar courier or (iii) United States first class certified or registered mail, postage pre-paid, return receipt requested, addressed to the Town as provided below, the notice shall be deemed received on the delivery date indicated by the United States Postal Service or courier service on the return receipt or on the date such delivery is refused or marked "undeliverable," or if the party is served personally, on the date of personal delivery. The Town may from time to time designate a different address by giving notice in the manner herein provided, such designation being effective under this Section 8 from and after the day of receipt of notice thereof. The initial notice address for the Town shall be: Town of Weddington, 1924 Weddington Road, Weddington, North Carolina 28104, Attn: Zoning Administrator.

9. Binding Effect; Perpetual Easements and Restrictions. This declaration shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. The burden of the Restrictions shall run with the title to the Property. The benefit of the Restrictions shall run to the benefit of the Town and shall run with the title to the adjacent property owned (now or in the future) by the members of the Association. The Restrictions shall be binding on any party (now or in the future) having any right, title or interest in the Property. This Declaration and the easements and restrictions set forth herein are intended to be perpetual. Without limiting the foregoing, this Declaration is intended to constitute a



"conservation agreement" as that term is used in N.C.G.S. Section 47B-3 and any successor statute.

10. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property (or portion thereof) to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or easements of the Town shall inure to the benefit of any third-party, nor shall any third-party Person be deemed to be a beneficiary of any of the provision contained herein.

11. Amendment. This Declaration shall not be amended without the following: (a) the affirmative vote in favor of any such amendment of one hundred percent (100%) of the members of the Town Council; and (b) written consent to any such amendment of one hundred percent (100%) of the Members of the Association and one hundred percent (100%) of the owners of lots within the subdivision known as Highgate (for the purposes of this Declaration, "owners" shall mean the record owner, whether one or more persons or entities, of fee simple title to a lot, but shall exclude those having such an interest merely as security for the performance of an obligation). Any amendment to this Declaration must be in writing and must be properly recorded in the Union County Public Registry.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Association has executed this Declaration as of the date first written above.

HIGHGATE HOMEOWNERS ASSOCIATION,  
INC.,  
a North Carolina non-profit corporation

By: [Signature]

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that J. Kenneth Dowd, Jr. personally came before me this day and acknowledged that he (or she) is \_\_\_\_\_ President of HIGHGATE HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, and that he (or she), as \_\_\_\_\_ President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial seal, this the 11 day of December, 2003.

[Signature]  
Notary Public

My Commission Expires: 09/10/2006

[NOTARIAL STAMP-SEAL]

## EXHIBIT A

### PROPERTY

- 1) That Common Open Space of Highgate, Phase 1A, Map 1 identified as C.O.S. 3.567 Acres as shown on plat recorded in Cabinet G, File 8, Union County Public Registry, which Common Open Space was granted to the Association in that Deed recorded at Book 1578, Page 593 of the Union County Public Registry; and
- 2) All Common Open Space of Highgate, Phase 1A, Maps 2 through 7, as shown in Cabinet G, Files 9, 105, 106, 496, 497, 498 and 499 in the Union County Public Registry, as such plats may be amended or revised, which Common Open Space was granted to the Association in that Deed recorded at Book 1578, Page 593 of the Union County Public Registry; and
- 3) All that Common Open Space of Highgate, Phase 1A, Map 2 (Revision) as shown on plat recorded in Cabinet H, File 7, Union County Public Registry, which Common Open Space was granted to the Association in that Deed recorded at Book 1859, Page 513 of the Union County Public Registry; and
- 4) That property described in Deed recorded at Book 1865, Page 140 and subsequently re-recorded at Book 5314 Page 134, and more particularly described as follows:

Beginning at a found 5/8" iron rod, said 5/8" iron rod being the southwesterly corner of Lot 60 of Highgate Subdivision, Phase 1A, Map 7, as the same is shown on a map thereof recorded in Plat Cabinet G, File 499 of the Union County Register of Deeds, and running thence with the northerly line of the said Lot 60, N. 87-43-25 E. 43.32 feet to a set 1/2" iron pipe; thence a new line running N. 41-58-45 W. 172.76 feet to a set 1/2" iron pipe; thence running with the southerly line of the said Lot 60 N. 60-44-50 W. 18.66 feet to a point in the creek; thence running with the westerly line of the said Lot 60 N. 38-49-50 W. 88.21 feet to the point and place of beginning, and containing .111 acres (4833 square feet), as shown on survey by William A. Soiset, N.C.R.L.S., dated June 27<sup>th</sup>, 2002.

## EXHIBIT B

### RESTRICTIONS

No use or development shall be allowed on the Property except as follows:

- a. Conservation of open land in its natural state (for example, forestlands, fields, or meadows);
- b. Agricultural uses (as defined in the Town of Weddington Zoning Ordinance), including raising crops or livestock, nurseries, and associated buildings, excluding residences, provided that such buildings are specifically needed to support an active, viable agricultural or horticultural operation, and are architecturally compatible with the neighborhood setting. Specifically excluded, but not limited to, are commercial livestock operations involving swine, poultry, and mink;
- c. Pastureland for horses;
- d. Horse farms or academies;
- e. Forestry, in keeping with established best management practices for selective harvesting and sustained-yield forestry;
- f. Neighborhood uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses;
- g. Non-commercial recreation areas, such as playing fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required conservation land or five acres, whichever is less. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than ten parking spaces. Notwithstanding the above, golf courses, their parking areas, and associated structures, shall not be allowed on any required conservation lands;
- h. Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation area;
- i. Easements for drainage, access, sewer or water lines, or other public purposes; and
- j. Underground utility rights-of-way. Above-ground utility and street rights-of-way may traverse conservation lands but portions of the Property located within such above-ground rights of way shall not count toward the minimum required conservation land.

Filed for record B/C 3314 89149  
Date 12-22-2003  
Time 2:31 o'clock P  
JUDY G. PRICE, Register of Deeds  
Union County, Monroe, North Carolina

## DECLARATION OF CONSERVATION EASEMENT AND RESTRICTIONS

THIS DECLARATION OF CONSERVATION EASEMENT AND RESTRICTIONS ("Declaration") is made December 11, 2003 by HARRINGTON/DOWD REALTY COMPANY, a North Carolina corporation ("Harrington/Dowd"), for the benefit of the TOWN OF WEDDINGTON, NORTH CAROLINA ("Town") and HIGHGATE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation ("Association").

A. Harrington/Dowd is the owner of approximately 34.289 acres of land located in the Town of Weddington, Union County, North Carolina, as more particularly described on Exhibit A attached hereto ("Property").

B. Pursuant to Section 5.7 of the Town's Zoning Ordinance ("Ordinance"), Harrington/Dowd has agreed to provide for the dedication of conservation open space.

C. Having determined that it is in the best interest of Harrington/Dowd, the Association and its members to do so, Harrington/Dowd desires to declare that the Property is subject to certain covenants and restrictions as set forth herein.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Harrington/Dowd declares as follows:

1. **Declaration of Restrictions.** Harrington/Dowd hereby declares that, notwithstanding the zoning classification of the Property, and in addition to any other restrictions applicable to the Property, the Property shall be held, sold and conveyed subject to the restrictions set forth on Exhibit B attached hereto ("Restrictions").

2. **Maintenance Plan.** The Association shall maintain and repair the Property, at its sole expense, in accordance with: (i) the Declaration of Covenants, Conditions, Restrictions and Easements for Highgate Subdivision recorded in Book 1381, Page 306 of the Union County Public Registry (as supplemented and amended, the "Master Declaration"); and (ii) any Maintenance Plan or Maintenance Agreement agreed to by the Town and the Association in accordance with the requirements of the Ordinance.

3. **Conservation Easement.** This Declaration shall not prohibit the transfer of a conservation easement interest in the Property to a qualified land conservation organization acceptable to the Town and the Association. The form of such conservation easement shall be subject to the prior written approval of the Town and the Association. Additionally, the Town may, in its discretion, assign its rights hereunder to a land conservation organization without the consent of Harrington/Dowd, the Association or any member thereof.

4. **Enforcement.** This Declaration is intended for the benefit of the Town and the members of the Association. Accordingly, the Town and each member of the Association shall

have the right, but not the obligation, to enforce any violations of the terms of this Declaration and the Restrictions contained herein.

5. Grant of Easement. The Town and its contractors and agents are hereby granted a non-exclusive, perpetual easement to enter upon the Property in order to confirm compliance with the terms of this Declaration and to enforce the Town's rights hereunder. The reservation of the foregoing easement shall not obligate the Town to exercise such easement rights or rights of enforcement.

6. Warranty of Title. Harrington/Dowd represents and warrants that: (i) Harrington/Dowd is seized of the Property in fee simple and has the right to restrict the same in fee simple; (ii) title to the Property is marketable and free and clear of all liens other than those liens listed on Exhibit C attached hereto and incorporated herein by reference; (iii) Harrington/Dowd will warrant and defend the title to the Property against the lawful claims of any person or entity; and (iv) Harrington/Dowd shall convey title to such Property to the Association free and clear of all liens other than those liens listed on Exhibit C attached hereto and incorporated herein by reference, and shall cause such Property to be annexed as "Common Area" pursuant to the Master Declaration prior to the conveyance of any Lot designated on the phase 2 Maps referenced on Exhibit A attached hereto.

7. No Security Interest; No Liens. Notwithstanding the terms of the Master Declaration and the By-Laws of the Association, the Association (i) shall not grant a security interest in the Property; and (ii) shall promptly pay and discharge, or cause to be paid and discharged, on or before the due date, any claim or obligation (including ad valorem taxes) which if not paid or discharged would result in a future lien on the Property which would have priority over this Declaration.

8. Association Officers and Directors. As required by the Ordinance, each year, the Association shall provide the Town a list of the Board of Directors and the Officers of the Association. Such list shall include the address and telephone number of each Director and Officer. Delivery of the list required by this Section 8 shall be effective upon receipt by the Town. In the case of a notice delivered by (i) pre-paid personal delivery, (ii) pre-paid messenger, pre-paid express or air courier or similar courier or (iii) United States first class certified or registered mail, postage pre-paid, return receipt requested, addressed to the Town as provided below, the notice shall be deemed received on the delivery date indicated by the United States Postal Service or courier service on the return receipt or on the date such delivery is refused or marked "undeliverable," or if the party is served personally, on the date of personal delivery. The Town may from time to time designate a different address by giving notice in the manner herein provided, such designation being effective under this Section 8 from and after the day of receipt of notice thereof. The initial notice address for the Town shall be: Town of Weddington, 1924 Weddington Road, Weddington, North Carolina 28104, Attn: Zoning Administrator.

9. Binding Effect; Perpetual Easements and Restrictions. This declaration shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. The burden of the Restrictions shall run with the title to the Property. The benefit of the Restrictions shall run to the benefit of the Town and shall run with the title to the adjacent

property owned (now or in the future) by the members of the Association. The Restrictions shall be binding on any party (now or in the future) having any right, title or interest in the Property. This Declaration and the easements and restrictions set forth herein are intended to be perpetual. Without limiting the foregoing, this Declaration is intended to constitute a "conservation agreement" as that term is used in N.C.G.S. Section 47B-3 and any successor statute.

10. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property (or portion thereof) to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or easements of the Town shall inure to the benefit of any third-party, nor shall any third-party Person be deemed to be a beneficiary of any of the provision contained herein.

11. Amendment. This Declaration shall not be amended without the following: (a) the affirmative vote in favor of any such amendment of one hundred percent (100%) of the members of the Town Council; and (b) written consent to any such amendment by the Association and one hundred percent (100%) of the owners of lots within the subdivision known as Highgate (for the purposes of this Declaration, "owners" shall mean the record owner, whether one or more persons or entities, of fee simple title to a lot, but shall exclude those having such an interest merely as security for the performance of an obligation). Any amendment to this Declaration must be in writing and must be properly recorded in the Union County Public Registry.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Harrington/Dowd and the Association have executed this Declaration as of the date first written above.

HARRINGTON/DOWD REALTY COMPANY,  
a North Carolina corporation

By: [Signature]  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that J. Kenneth Dowd, Jr., personally came before me this day and acknowledged that he (or she) is \_\_\_\_\_ President of HARRINGTON/DOWD REALTY COMPANY, a North Carolina corporation, and that he (or she), as \_\_\_\_\_ President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and notarial seal, this the 11 day of December, 2003.


[Signature]  
Notary Public

My Commission Expires: 09/10/2006

[NOTARIAL STAMP-SEAL]



HIGHGATE HOMEOWNERS ASSOCIATION,  
INC., a North Carolina nonprofit corporation

By:   
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, a Notary Public of Mecklenburg County, State of North Carolina, do hereby certify that J Kenneth Dowd, Jr. personally came before me this day and acknowledged that he (or she) is \_\_\_\_\_ President of HIGHGATE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, and that he (or she), as \_\_\_\_\_ President, being authorized to do so, executed the foregoing instrument on behalf of the nonprofit corporation.

Witness my hand and notarial seal, this the 11 day of December, 2003.

  
Notary Public

My Commission Expires: 09/10/2006

[NOTARIAL STAMP-SEAL]

**EXHIBIT A**  
**PROPERTY**

That real property located in Union County, North Carolina, and described as follows:

**Conservation Open Space Conservation Land – 1.427-Acre Tract**

Commencing at the northwest corner of the Common Open Space recorded in Highgate Phase 1 Map 6 at the Union County Register of Deeds in Plat Cabinet G at File 498; Thence S51-02-35W 10.66' to a point; Thence with the arc of a circular curve to the right having a radius of 317.50' an arc length of 268.71' and subtended by a chord of S75-17-20W 260.76' to the Point of Beginning. Thence S07-42-59E 244.48' to a point; Thence S60-56-44W 184.42' to a point; Thence with the arc of a circular curve to the right having a radius of 377.50' and arc length of 293.34 and subtended by a chord of N12-43-35W 286.01' to a point; Thence N09-32-04E 58.81' to a point; Thence with the arc of a circular curve to the right having a radius of 25.00' an arc length of 39.27' and subtended by a chord of N54-32-04E 35.36' to a point; Thence S80-27-56E 155.00' to the Point of Beginning.

**Conservation Open Space Conservation Land – 7.351-Acre Tract**

Beginning at an iron found the northwest corner of the Common Open Space recorded in Highgate Phase 1 Map 6 at the Union County Register of Deeds in Plat Cabinet G at File 498; Thence from said point of Beginning with the westerly line of the Common Open Space and of Lots 36-41 recorded in Highgate Phase 1 Map 6 at the Union County Register of Deeds in Plat Cabinet G at File 498 and of Lots 42 & 43 of Highgate Phase 1 Map 7 recorded at the Union County Register of Deeds in Plat Cabinet G at File 499 four calls; 1) S20-15-29E 280.69' to a point; 2) S20-35-37E 311.72' to a point; 3) S24-09-05E 1013.81' to a point; 4) S38-57-25E 204.87' to a point the southwestern corner of Lot 43 of Highgate Phase 1 Map 7; Thence S51-02-35W 4.85' to a point; Thence with the arc of a curve to the right having a radius of 232.50' an arc length of 196.77' and subtended by a chord of S75-17-19W 190.95' to a point; Thence N80-27-56W 42.50' to a point; Thence N09-32-04E 180.00' to a point; Thence N80-27-56W 160.00' to a point; Thence S09-32-04W 180.04' to a point; Thence with the arc of a circular curve to the left having a radius of 400.00' an arc length of 33.95' and subtended by a chord of N83-43-20W 33.94' to a point; Thence N09-02-44W 399.34' to a point; Thence N15-59-45W 113.18' to a point; Thence N20-50-39W 190.00' to a point; Thence S69-09-21W 160.00' to a point; Thence N20-50-39W 20.00' to a point; Thence N69-09-21E 160.00' to a point; Thence N20-50-39W 285.00' to a point; Thence N12-30-23W 76.92' to a point; Thence N03-30-38W 95.00' to a point; Thence N11-11-54E 196.44' to a point; Thence N12-53-17W 89.72' to a point; Thence N35-22-59W 89.72' to a point; Thence N63-38-10W 192.75' to a point; Thence N65-04-53E 188.07' to the Point of Beginning.

**Conservation Open Space Conservation Land – 25.511-Acre Tract**

Beginning at an iron found the northwest corner of the Common Open Space recorded in Highgate Phase 1 Map 7 at the Union County Register of Deeds in Plat Cabinet G at File 499; Thence from said point of Beginning; S38-57-24E 335.00' to a point; Thence S52-38-51E 671.50' to a point; Thence S42-32-55E 620.09' to an iron found in the rear line of Lot 76 of Steeple Chase; Thence in a southeasterly direction with the rear of Lots 76, 12, 11, 10, 9, 8 of Steeple Chase S07-52-36E 1178.84' to an iron found; Thence with the rear of Lot 7 of Steeple Chase S07-40-02E 104.28' to a iron found; Thence with the northwesterly line of the W.C. Cleveland property S57-51-15W 305.46' to a point on the northerly right-of-way of Weddington School Road, an existing 60' Public right-of-way; Thence with the northerly right-of-way of Weddington School Road 3 calls 1) N48-43-23W 231.10' to a point; 2) with the arc of a circular curve to the right having a radius of 1879.79' an arc length of 452.36' and subtended by a chord of N41-50-19W 451.26', to a point; 3) N34-56-46W 325.63' to a point; Thence leaving the right-of-way of Weddington School Road N55-03-14E 40.00' to a point; Thence S34-56-46E 200.00' to a point; Thence S73-42-57E 102.43' to a point; Thence N87-29-09E 157.01' to a point; Thence N38-12-32E 157.01' to a point; Thence N19-30-19E 145.38' to a point; Thence N37-28-06W 123.25' to a point; Thence N50-38-01W 181.48' to a point; Thence N34-34-39W 381.60' to a point; Thence S39-21-35W 200.90' to a point; Thence with the arc of a circular curve to the left having a radius of 820.00' an arc length of 25.27' and subtended by a chord of N42-18-03W 25.27' to a point; Thence N39-21-35E 231.70' to a point; Thence N03-24-04E 233.40' to a point; Thence N01-10-18W 98.80' to a point; Thence N27-59-14W 212.99' to an existing concrete monument; Thence N67-44-49W 402.10' to an existing concrete monument; Thence N66-38-31W 250.05' to a point; Thence N57-08-37W 90.56' to a point; Thence N07-42-59W 244.48' to a point; Thence with the arc of a circular curve to the left having a radius of 317.50' an arc length of 268.71' and subtended by a chord of N75-17-20E 260.76' to a point; Thence N51-02-35E 10.66' to an iron found at the Point of Beginning.

## EXHIBIT B

### RESTRICTIONS

No use or development shall be allowed on the Property except as follows:

- a. Conservation of open land in its natural state (for example, forestlands, fields, or meadows);
- b. Agricultural uses (as defined in the Town of Weddington Zoning Ordinance), including raising crops or livestock, nurseries, and associated buildings, excluding residences, provided that such buildings are specifically needed to support an active, viable agricultural or horticultural operation,, and are architecturally compatible with the neighborhood setting. Specifically excluded, but not limited to, are commercial livestock operations involving swine, poultry, and mink;
- c. Pastureland for horses;
- d. Horse farms or academies;
- e. Forestry, in keeping with established best management practices for selective harvesting and sustained-yield forestry;
- f. Neighborhood uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses;
- g. Non-commercial recreation areas, such as playing fields, playgrounds, courts, and bikeways, provided such areas do not consume more than half of the minimum required conservation land or five acres, whichever is less. Parking facilities for the same shall also be permitted, and they shall generally be gravel-surfaced, unlighted, properly drained, provide safe ingress and egress, and contain no more than ten parking spaces. Notwithstanding the above, golf courses, their parking areas, and associated structures, shall not be allowed on any required conservation lands;
- h. Water supply and sewage disposal systems, and stormwater detention areas designed, landscaped, and available for use as an integral part of the conservation area;
- i. Easements for drainage, access, sewer or water lines, or other public purposes; and
- j. Underground utility rights-of-way. Above-ground utility and street rights-of-way may traverse conservation lands but portions of the Property located within such above-ground rights of way shall not count toward the minimum required conservation land.

EXHIBIT C

Encumbrances

That Deed of Trust to B B & T Collateral Service Corporation, Trustee for Branch Banking & Trust Company, recorded at Book 1909, Page 238 of the Union County Public Registry.

**CONSENT AND SUBORDINATION TO  
DECLARATION OF CONSERVATION EASEMENT AND RESTRICTIONS**

BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation ("Bank"), owner and holder of the Note secured by that Deed of Trust dated September 5, 2002, and recorded in Book 1909, Page 238, Union County Registry ("Deed of Trust"), and B B & T Collateral Service Corporation, trustee under the Deed of Trust ("Trustee"), hereby consent to the terms and provisions of the Declaration of Conservation Easement and Restrictions by Harrington/Dowd Realty Company, a North Carolina corporation, for the benefit of the Town of Weddington, North Carolina and Highgate Homeowners Association, Inc., a North Carolina non-profit corporation, dated December 11, 2003, ("Declaration"). Bank and Trustee agree that the lien, operation and effect of the Deed of Trust and any related security instruments and the interest of Bank therein, are subject and subordinate, in all respects, to the terms and provisions contained in the Declaration, and that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish the Declaration.

This Consent and Subordination to Declaration of Conservation Easement and Restrictions shall be binding upon Bank and Trustee, their successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has duly executed this Consent and Subordination to Declaration of Conservation Easement and Restrictions as of this 17 day of December, 2003.

BRANCH BANKING & TRUST COMPANY,  
a North Carolina banking corporation

By: Michael G. Carle  
Name: Michael G. Carle  
Title: Vice President

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Eva Fossumsky, a Notary Public of Mecklenburg County, State of North Carolina, certify that Michael G. Carle personally appeared before me this day and acknowledged that he/she is Vice President of Branch Banking and Trust Company, a North Carolina banking corporation, and that he/she as Vice President, being authorized to do so, executed the foregoing instrument on behalf of the banking corporation.

Witness my hand and official seal this 17 day of December, 2003.

Eva Fossumsky  
Notary Public

My Commission Expires: 4/12/2004

(SEAL)

  
B B & T Collateral Service Corporation,  
Trustee

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Eva Rosamofsky, a Notary Public of Mecklenburg  
County, State of North Carolina, certify that B B & T Collateral Service Corporation,  
Trustee, personally appeared before me this day and acknowledged the due execution of the  
foregoing instrument.

Witness my hand and official seal this 17 day of December, 2003.

Eva Rosamofsky  
Notary Public

My Commission Expires: 4/12/2004

(SEAL)