

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MORROCROFT ESTATES**

WHEREAS, the undersigned are the Owners of more than seventy-five percent (75%) of the Home Sites under that certain Declaration of Covenants, Conditions and Restrictions for Morrocroft Estates recorded in Book 6114, Page 933, as amended by the First Amendment to Declaration of Covenants, Conditions and Restrictions for Morrocroft Estates recorded in Book 6129, Page 0694 and as supplemented by the Supplemental Declaration of Covenants, Conditions and Restrictions for Morrocroft Estates recorded in Book 6152, Page 678 all recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina (as amended and supplemented, the “Original Declaration”); and

WHEREAS, pursuant to Article XIII, Section 2 of the Original Declaration, the Declaration may be amended by the consent of the Owners of no less than seventy-five percent (75%) of the Home Sites; and

WHEREAS, the undersigned desire to amend the Original Declaration to revise certain provisions thereof by restating the Original Declaration in its entirety, to the end that the Original Declaration is hereby superseded and replaced with the following Amended and Restated Declaration of Covenants, Conditions and Restrictions for Morrocroft Estates.

NOW, THEREFORE, for and in consideration of the recitals set forth above, which recitals are made a substantive part of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Morrocroft Estates (the “Declaration”), the undersigned hereby amend the Original Declaration by declaring that the Original Declaration is superseded and replaced with this Declaration, and that the Property that is subject to the Original Declaration as described therein shall be now held, sold, conveyed and used subject to the Declaration. The Declaration, and the covenants, conditions and restrictions set forth therein and herein shall be covenants running with the land and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representative, successors and assigns, and shall inure to the benefit of each Owner of the Property or any part thereof. Accordingly, the undersigned amend and restate the Original Declaration to read as follows:

THIS AMENDED AND RESTATED DECLARATION is entered into on the date hereinafter set forth by the undersigned Owners of at least seventy-five percent (75%) of the Home Sites in Morrocroft Estates;

ARTICLE I

DEFINITIONS

Section 1.1. “Architectural Review Committee” shall mean a committee of not less than three, nor more than seven, individuals selected by the Association’s Board of Directors to review plans and specifications as provided in **Article X** hereof and to make the determinations provided in said **Article X**.

Section 1.2. “Association” shall mean and refer to Morrocroft Estates Property Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 1.3. “Common Area(s)” shall mean all real property owned by the Association for the common use and enjoyment of the Owners and designated as “Common Open Space,” or “Common Area” or “Community Recreational Facility” as depicted on any Maps.

Section 1.4. “Declarant” shall mean and refer to John W. Harris and Sara H. Bissell and those of their successors and assigns, if any, to whom the rights of Declarant hereunder are specifically transferred by written instrument, subject to such terms and conditions as the Declarant may impose. The term “Declarant” shall also mean and refer to any entity of which any of John W. Harris, Cameron M. Harris and Sara H. Bissell is a partner, joint venturer or shareholder and which is formed to develop all or any part of the Properties. Upon any transfer by Declarant of any or all of its Declarant rights and obligations hereunder, Declarant shall be relieved of any and all liabilities with respect to the rights and obligations so transferred.

Section 1.5. “Designated Maintenance Items” shall mean any brick or stone wall constructed by Declarant on any portion of the Property, any private sanitary sewer/water lines located within any sanitary sewer or waterline easements shown on any recorded plat of any portion of the Property and the following items located within any Private Street Rights-of-Way (as hereinafter defined), Landscape and Easement Areas (as hereinafter defined), Common Area Access Easement (as hereinafter defined), Stream Maintenance Areas (as hereinafter defined and limited) or Common Area all as shown on any Maps:

- (a) Plants (including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass).
- (b) Light poles, fixtures, bulbs, traffic signals, wiring and all equipment related to the use thereof.
- (c) Decorative and screening walls, retaining walls, sitting walls, steps and walking paths.
- (d) Outdoor furniture and benches.
- (e) Medians, pavers, sculpture, works of art, and decorative plaza areas.
- (f) Flag poles, flags, banners and seasonal decorations.
- (g) Private streets, including but not limited to, signage, curbs and gutter, asphalt paving, crushed stone, striping, street signs, and storm drainage.
- (h) Guard houses and equipment, security cameras, gates, fences, and brick or stone walls.
- (i) Any lake, pond, stream, fountain or other water amenity including, but not limited to, pumps, pipes, drains, drainage water and electrical lines, fountain parts, fountain lights or other decorative lighting within a water amenity, water jets, filters, chlorinators, nozzles, weirs, switches and related equipment, casements or housings, gravel stone or concrete beds, walls and other structural housing for water containment and directional control.
- (j) Sprinkler and irrigation systems.

(k) Water lines and sewer lines and all fixtures related thereto not maintained by the Charlotte Mecklenburg Utility Department or other appropriate governmental authority.

(l) Public drainage easements.

Section 1.6. “Home Site” shall mean and refer to any numbered plot of land, with delineated boundary lines, shown upon any Map with the exception of any Common Area, Private Street Rights-of-Way and Community Recreational Facilities. In the event any Home Site is increased or decreased in size by resubdivision, through recordation of a new Map, any such newly platted Home Site shall thereafter constitute a Home Site for the purposes of this Declaration.

Section 1.7. “Institutional Lender” shall mean any life insurance company, bank, savings and loan association, trust, real estate investment trust, pension fund, or other organization or entity which regularly makes loans secured by real estate, which has made a loan secured by a Home Site.

Section 1.8. “Landscape and Easement Areas” shall be those areas designated as Landscape and Easement Areas on any of the Maps.

Section 1.9. “Map” or “Maps” shall mean and refer to (i) the maps of Morrocroft Estates recorded in Map Book 23, Page 333, Map Book 23, Page 334, Map Book 23, Page 335, Map Book 23, Page 443, Map Book 25, Page 222, Map Book 26, Page 550, Map Book 26, Page 605 and Map Book 26, Page 691 all recorded in the Mecklenburg County Public Registry and (ii) any additional maps of any of the Properties or other additional property incorporated into the scheme of this Declaration by a Supplemental Declaration and recorded after the date hereof pursuant to **Article II** hereof.

Section 1.10. “Master Association” shall mean and refer to Morrocroft Master Association, Inc., a North Carolina non-profit membership corporation, its successors and assigns, formed for the purpose of maintaining all landscaping, lawns, trees, decorative lighting, sprinkler systems and other Improvements located (a) within the public rights-of-way, along Colony Road, Morrison Boulevard, Cameron Valley Parkway, as said roads are shown on Exhibit A attached hereto; (b) within the areas located at the intersections of the aforesaid streets with Sharon Road and Fairview Road as shown on Exhibit A attached hereto; and (c) between the brick walls and the street rights-of-way identified in (a) above and designated as “Master Association Landscape and Easement Areas” on any Maps.

Section 1.11. “Member” shall mean and refer to the Owners and every person or entity holding membership in the Association.

Section 1.12. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Home Site which is a part of the Properties (as hereinafter defined), including contract sellers and owners of an equity of redemption, but excluding those having such interest in a Home Site solely as security for the performance of an obligation.

Section 1.13. “Private Street Rights-of-Way” shall be those areas designated as Private Street Rights-of-Way by Declarant in deeds of portions of the Property, or on any Maps of the Property owned by Declarant or with the consent of the then Owner of the parcel affected, or on any Maps or in any Supplemental Declarations (as hereinafter defined), which rights-of-way are for the use of all Members of the Association, their guests, employees, tenants and invitees for the purpose of ingress, egress and regress from portions of the Property to public streets by vehicle or otherwise. All roadways constructed within said Private Street Rights-of-

Way shall be initially constructed and installed by Declarant in accordance with all applicable governmental requirements and in accordance with the construction standards normally followed in similar first-class developments of the type contemplated by this Declaration. Colony Road, Morrison Boulevard, Cameron Valley Parkway and Governors Hill Lane will not be Private Street Rights-of-Way.

Section 1.14. “Properties” or “Property” shall mean and refer to the “Existing Property” described in **Section 2.1** hereof and any additions thereto, as are or shall become subject to this Declaration under the provisions of **Article II** hereof.

Section 1.15. “Stream Maintenance Areas” shall be that area designated as a Stream Maintenance Area on the Maps and maintenance of the Stream Maintenance Areas shall include maintenance of only those Designated Maintenance Items enumerated in **Section 1.5(i) and (l)**.

Section 1.16. “Common Area Access Easement” shall be those areas designated as Common Area Access Easements on the Maps.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

Section 2.1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in Charlotte, Mecklenburg County, North Carolina and is shown on maps recorded in Map Book 23 at Pages 333, 334 and 335, Map Book 23, Page 443, Map Book 25, Page 222, Map Book 26, Page 550, Map Book 26, Page 605 and Map Book 26, Page 691, all in the Office of the Register of Deeds for Mecklenburg County (collectively, the “Existing Property”).

Section 2.2. Additions to Existing Property.

(a) Additional residential property (and common area) may be annexed to the Properties and brought within the scheme of this Declaration and the jurisdiction of the Association, with the consent of the Members entitled to at least sixty percent (60%) of the votes appurtenant to all Home Sites. The Association may participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes as the Association, thereby adding to the Association, or to a surviving homeowners association, the properties, rights and obligations of the non-profit corporation with which it merges or consolidates. Any such merger or consolidation shall have the assent of the members as provided above, and no such merger or consolidation shall revoke, change or add to any of the provisions of this Declaration except as herein provided.

The additions authorized under **Section 2.2** shall be made by filing of record Supplemental Declarations of Covenants, Conditions and Restrictions (the “Supplemental Declarations”) with respect to the additional properties which shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessment for their just share of the Association’s expenses. Said Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect only the different character of the added properties and as are not inconsistent with the provisions of this Declaration.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership Appurtenant To Home Site. Every Owner of a Home Site which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Home Site which is subject to assessment.

Section 3.2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Home Sites. Each Home Site shall entitle the Owner(s) of said Home Site to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Home Site, all such persons shall be Members and the voting rights appurtenant to said Home Site shall be exercised as they, among themselves, determine.

Section 3.3. Board of Directors. The Association shall be governed by a Board of Directors (the "Board of Directors") in accordance with the Bylaws.

## ARTICLE IV

### PROPERTY RIGHTS

Section 4.1. Ownership of Common Areas. The Common Areas and the Private Street Rights-of-Way have been conveyed by Declarant to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas and Private Street Rights-of-Way shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public. The Association shall be responsible for the upkeep and maintenance of the Common Area and Private Street Rights-of-Way.

Section 4.2. Owner's Rights to Use and Enjoy Common Area. Except as limited by **Section 4.3**, every Owner shall have a non-exclusive right and easement to use and enjoy the Common Area and Private Street Rights-of-Way, which right and easement shall be appurtenant to and shall pass with the title to every Home Site, subject to the following provisions:

(a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the same to insure the safety and rights of all Owners;

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area and to limit the use of said recreational facilities to Owners who occupy a residence on the Properties, and to their families, tenants, and guests as provided in **Section 4.3**;

(c) The right of the Association to suspend the voting rights and rights of an Member to the use of any Common Area for any period during which any assessment against his Home Site remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area, Private Street Rights-of-Way or private water/sewer lines to any public agency, authority, or public or private 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 Members entitled to at least seventy-five percent (75%) of the votes appurtenant to all Home Sites agree to such dedication or transfer and signify their agreement by a signed and recorded written

document, provided that this **Section 4.2(d)** shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewerage, utilities, including cable television, and drainage facilities upon, over, under and across the Common Area and Private Street Rights-of-Way without the assent of the membership when such easements, in the sole opinion of said Board, are required for the convenient use and enjoyment of the Properties.

(e) The right of the Association, with the assent of Members entitled to at least seventy-five percent (75%) of the votes appurtenant to the of Home Sites, to mortgage, pledge, deed in trust, or otherwise hypothecate or encumber any or all of its real or personal property as security for money borrowed or debts incurred.

Section 4.3. Delegation of Use to Family.

(a) Family. The right and easement of enjoyment granted to every Owner in **Section 4.2** may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Mecklenburg County, North Carolina.

(b) Tenants. The right and easement of enjoyment granted to every Owner in **Section 4.2** may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Mecklenburg County, North Carolina.

(c) Guests. Recreational facilities, if any, located on Common Area may be utilized by guests of Owners, tenants or contract purchasers subject to such rules and regulations governing said use of the Association as may be established by the Board of Directors.

Section 4.4. Water and Sewage Systems. Declarant caused water and sewage systems to be constructed and installed upon the Properties including within the Common Area and Private Street Rights-of-Way and through easements over certain Home Sites for the benefit of Owners and others. Declarant shall convey to the Association any and all pipes, fixtures, wells, pumps and other equipment comprising that portion of the water and sewer systems which are private, which are not located upon a Home Site (except within a designated easement), and which are not owned, operated and maintained by the Charlotte/Mecklenburg Utility Department. That portion of the water and sewer system not owned, operated and maintained by the Charlotte/Mecklenburg Utility Department and which is conveyed to the Association (the "Private System") shall be owned, operated and maintained by the Association, or upon the decision of the Board of Directors, by some other designated operating entity. The Private System connects at various points to the public system maintained by the Charlotte/Mecklenburg Utility Department, and the water usage of the Private System is maintained by master meters located at such connection points. Usage of each Home Site shall be measured by private meters located at the point where each Home Site connects to the Private System and the Owner of each Home Site shall be billed by the Association for such water and sewer usage at rates equivalent to those charged for such services by the Charlotte/Mecklenburg Utility department and in accordance with rules and regulations established by the Board of Directors. In addition to the right of the Association to discontinue such service to a Home Site for failure to pay any charge levied therefore, the Association shall have such further lien rights and remedies provided for in **Article V** hereof for the nonpayment of assessments. Each Owner of a Home Site shall be responsible for maintaining any part of the Private System located upon such Home Site, unless that portion of the Private System is located within a sanitary sewer or water easement or right-of-way as shown on the Map of the Property. The Association shall be responsible for maintaining that portion of the Private System located within any sanitary sewer or water easement or right-of-way or within any Private Street Right-of-Way or Common Area as shown

on any Map or as established by any sanitary sewer or water easement agreement between the Association, Declarant and any Owner of a Home Site or any public or private utility company.

Section 4.5. Rules and Regulations Regarding Parking Rights. The Board of Directors may make such reasonable rules and regulations as it may elect with respect to the parking of vehicles within the Private Street Rights-of-Way or on other areas within the Properties, and the use of the same provided all such rules and regulations are applied uniformly to all Owners and their employees, agents and invitees and do not unreasonably limit access to Home Sites. The Board of Directors may, in its sole discretion, prohibit parking on all Private Street Rights-of-Way without the approval of any Owner.

Section 4.6. Rules and Regulations Regarding Security. The Board of Directors may make such reasonable rules and regulations as it may elect with respect to the use of the guard houses, security systems, visitor screening, and access, ingress and egress into the Property. The Board of Directors shall have the authority to employ a private security firm to provide security for the Property. The Board of Directors shall generally determine the scope and hours of operation of all security services.

Neither the Association nor the Declarant (nor any director, officer or partner of either) makes any representation or warranty, direct or indirect, to any Owner regarding the security provided for the Property and none shall be liable in any manner whatsoever for any loss, injury, damage or death occurring on the Property, regardless of whether the same was the result of the failure of the security provided in accordance with the terms hereof to prevent the same.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Home Site 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 to the Association: (i) annual assessments or charges, (ii) special assessments for capital Improvements, repairs and maintenance and other purposes and (iii) charges or assessments for water/sewer services, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Home Site against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such Home Site at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by the successor in title, but such unpaid assessment charges shall continue to be a lien upon the Home Site against which the assessment has been made.

Section 5.2. Purposes of Assessments and Duties of Association. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement, and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, Common Area Access Easements, Landscape and Easement Areas, Stream Maintenance Areas and Private Street Rights-of-Way and Home Sites including but not limited to, the cost of repair, replacement and additions thereto, the Designated Maintenance Items, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against any Common Area or Private Street Rights-of-Way, the procurement and maintenance of insurance in accordance with the By-Laws of the Association, the employment of attorneys to represent the Association when necessary, payments of principal

and interest on funds borrowed for Association purposes, payment of amounts due to the Master Association and such other needs as may arise.

Without limiting the generality of the above-described purposes, the Association shall be responsible for performing the following in a diligent and reasonable manner and the assessments levied by the Association may be used for the following purposes:

(a) To maintain all Private Street Rights-of-Way to the standard of maintenance which would be required by the State of North Carolina before it would accept such roads for maintenance; provided that this provision does not require that the width of the Private Street Rights-of-Way be the width required before such roads would be accepted by the State of North Carolina for maintenance. In the event the Private Street Rights-of-Way are dedicated for public use and maintenance is taken over by the State of North Carolina or some other governmental body, the maintenance responsibilities of the Association for such Private Street Rights-of-Way shall cease. In the event the Association decides to dedicate the Private Street Rights-of-Way for public use and the State of North Carolina or other governmental body requires additional right-of-way, each Owner hereby agrees to dedicate sufficient property to accomplish such dedication for public use and, if necessary, each Owner agrees to execute any documents required by the appropriate governmental body or agency to effect the dedication of the additional street right-of-way.

(b) To maintain all trails or paths in the Common Area in reasonably passable condition, free from fallen trees, undergrowth, and other obstructions, and to keep all dead, diseased or decaying trees, shrubs and bushes removed from such areas and to replace such items with new trees, shrubs and bushes;

(c) To maintain all Common Area and Private Street Rights-of-Way in accordance with the highest standards for such private facilities;

(d) To keep all Common Area, Private Street Rights-of-Way, Common Area Access Easements, Landscape and Easement Areas free from refuse and debris and to maintain any other amenities in a clean and orderly condition, and to maintain the landscaping therein in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping;

(e) To provide such security services as may be approved by the Board of Directors, subject to the limitations of **Section 4.6**, as may be deemed reasonably necessary for the protection of the Home Sites, Common Area, Common Area Access Easement, Landscape and Easement Areas and Private Street Rights-of-Way from theft, vandalism, fire and damage from animals and to maintain all security equipment;

(f) To pay all ad valorem taxes levied against the Common Area, Private Street Rights-of-Way and any other property owned by the Association;

(g) To pay the premiums on all hazard insurance carried by the Association and all public liability insurance carried by the Association and officers' and directors' liability insurance;

(h) To pay all legal, management, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(i) To maintain the two (2) guard houses, entrance islands, entrance gates, signs and landscaping on any Landscape and Easement Area or Common Area Access Easement shown on the recorded maps or reserved by Declarant in deeds to Home Sites;



(j) To maintain any brick or stone wall erected by Declarant on any portion of the Property, any private water/sewer lines located on the Property, the Landscape and Easement Areas and all other Designated Maintenance Items located on Common Area, Common Area Access Easements or within Landscape and Easement Areas;

(k) To pay dues and assessments from the Association's funds to the Master Association as set forth in the Declaration of Covenants, Conditions and Restrictions establishing such Master Association (the "Master Declaration"); and

(l) To maintain any Designated Maintenance Item enumerated in **Section 1.5(i)** located within any Stream Maintenance Area.

Section 5.3. Maximum Annual Assessments. As of January 1, 2001, the maximum annual assessment: for each Home Site is as follows: \$3,572.68 each for Home Sites 1 through 12, inclusive, ("Group 1"); \$4,465.84 for Home Sites 13 through 22, inclusive, 35 through 38, inclusive, and 41 through 49, inclusive ("Group 2"); \$4,962.04 for Home Sites 23 through 34, inclusive, and 39 and 40 ("Group 3") and \$3,969.64 for Home Sites 50 through 90, inclusive ("Group 4").

(a) From and after January 1, 2002, the maximum annual assessment for each of the above groups of Home Sites may be increased or decreased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 15% of the maximum assessment for each of the above groups of Home Sites for the previous year without a vote of the membership.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the permitted maximum.

(c) From and after January 1, 2002, the maximum annual assessment may be increased in excess of the above maximum assessment set forth in **Section 5.3(a)** without limitation if such increase is approved by no less than two-thirds (2/3) of the votes appurtenant to the Home Sites, cast in person or by proxy, at a meeting duly called for this purpose.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

Section 5.4. Special Assessments for Capital Improvements and Other Matters. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Area or Private Street Rights-of-Way, including fixtures and personal property related thereto, or any brick or stone wall erected by Declarant or any private water or sewer line owned by the Association on any portion of the Property, and the roads if they remain private, repayment of indebtedness and interest thereon, providing funds to pay for unforeseen or unbudgeted expenditures, borrowing the funds to make property comply with zoning ordinance(s), borrowing of money for capital improvement and pledging or mortgaging of Association property as security for loans, provided that any such assessment shall have the same assent of the Members as provided in **Section 5.3(c)**.

Section 5.5. Assessment Rate and Collection. Both annual and special assessments shall be collected on a quarterly, semi-annually or yearly basis as billed by the Association. Notwithstanding any other provisions hereof to the contrary, the assessments (special and annual) applicable to each Group 1 Home Site shall always be seventy-two percent (72%) of the assessments applicable to each Group 3 Home Site; the assessments (special and annual)

applicable to each Group 2 Home Site shall always be ninety percent (90%) of the assessments applicable to each Group 3 Home Site; and the assessments (special and annual) applicable to each Group 4 Home Site shall always be eighty percent (80%) of the assessments applicable to each Group 3 Home Site.

Section 5.6. Notice of Quorum. Written notice of any meeting called for the purpose of taking any action authorized under **Section 5.3** or **Section 5.4** shall be sent to all Members in accordance with the By-Laws.

Section 5.7. Date of Commencement of Annual Assessments, Due Date; Certificate of Payment. The annual assessment provided for herein commenced as to all Home Sites on January 1, 1990 and the first annual assessment shall be the "maximum annual assessment" set forth in **Section 5.3**. The Board of Directors shall notify each Owner of the amount of annual assessment levied against the Home Sites in accordance with the terms of the Bylaws; provided, however, the failure of the Board of Directors to establish such assessment amounts and to give notice thereof in accordance with the Bylaws shall not prohibit the establishment of an increase at a later date nor prohibit the Association from collecting such increased assessment. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Home Site have been paid.

Section 5.8. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date for such assessment, shall incur a one-time late charge in the amount of One Hundred Dollars (\$100.00) and if not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eighteen (18%) percent per annum. Notwithstanding the prior sentence, if an Owner has made timely payments of all assessments during the previous twenty-four (24) month period, then prior to assessing a late charge against such Owner, the Association shall notify such Owner of its failure to pay the applicable assessment and such Owner shall have ten (10) days from the date of such notice to make payment and avoid the One Hundred Dollar (\$100) late charge. Pursuant to North Carolina General Statutes §47F-3-116, the Association shall have a lien against the applicable Home Site to secure payment of assessments which are not paid within thirty (30) days of their due date, as well as fees, fines, interest, late charges and other charges (subject to the limitations of North Carolina law) imposed pursuant to North Carolina General Statutes §§47F-3-102, 107, 107A and 115 and costs of collection (including reasonable attorneys' fees) upon filing by the Association of a claim of lien in the Office of the Clerk of Superior Court of Mecklenburg County, North Carolina. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Home Site at the time the claim of lien is filed, a description of the Home Site and the amount of the lien claimed. The Association may bid for the Home Site at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Home Site. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, Private Street Rights-of-Way or other property of the Association or by abandoning such Owner's Home Site.

Section 5.9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Home Site. Sale or transfer of any Home Site shall not affect any assessment lien. However, the sale or transfer of any Home Site which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Home Site 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 first mortgage or deed of trust.

Section 5.10. Exempt Property. Any Property dedicated to, and accepted by, a local public authority and any portion of the Properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or Improvements devoted to residential dwelling use shall be exempt from said assessments.

## ARTICLE VI

### EXTERIOR MAINTENANCE

Each Owner shall maintain the grounds and the Improvements situated on his, her, its or their Home Site, including, but not limited to plantings, landscaping, hedges, fencing, walls, lawns, driveway entrances, including driveway bridges and driveways, and any portion of any public drainage easement affecting such Home Site as shown on any Map, at all times in a neat and attractive manner satisfactory to the Board of Directors. Upon an Owner's failure to do so, the Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner ten (10) days' written notice sent to the last address for such Owner reflected in the Association's records, may have the grass, weeds, shrubs and vegetation mowed, cut, cleaned or pruned when and as often as the same is necessary in its judgment, have dead trees, shrubs and plants removed from such Home Site, and replaced, have any portion of the Home Site re-sodded or landscaped, repair or replace all or any portion of the driveway entrance, any driveway bridge or driveway, and maintain, repair or replace all or any portion of any public drainage easement located on such Home Site and all expenses of the Association under this **Article VI** shall be a lien and charge against the Home Site on which the work was done and the personal obligation of the then Owner of such Home Site; provided further, that in the event the Association is required to expend any such sums during the period within which an Owner has posted a \$1,500.00 deposit with the Association, as provided in **Section 7.5** to insure against construction damage, such amount shall be deducted from the deposit. Notwithstanding the prior sentence, the Association shall only be required to provide prior notice to an Owner before taking the actions described above only once during an Owner's ownership of a Home Site and thereafter no notice shall be required prior to taking action. The Owner shall remove mud stains and any construction discoloration from the foundation of any Improvements upon completion of the Improvement. Upon the Owner's failure to maintain the exterior of any structure, including, without limitation, the roof, walls, driveways, trim, gutters, shutters, doors, exterior paint and foundation, in good repair and appearance, the Association, acting through its Board of Directors and after giving the Owner thirty (30) days' written notice sent to the last address for such Owner reflected in the Association's records, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Home Site and shall constitute an assessment against the Home Site on which the work was performed, collectible in a lump sum and secured by the lien against the Home Site as herein provided. Any entry on a Home Site by Association, its agents or employees between the hours of 8:30 a.m. and 6:00 p.m. or during other hours in the case of an emergency to perform the maintenance and repairs set forth herein shall not be a trespass and an easement for such entry is hereby granted.

## ARTICLE VII

### USE RESTRICTIONS

Section 7.1. Residential Purposes Only/Limitations on Business/Size of Dwelling. Each Home Site shall be used exclusively for single-family, non-transient residential purposes, and garages and parking spaces which shall be used exclusively for the parking of passenger vehicles or light (i.e. non-commercial) vans or pick-up trucks. No trade or business of any kind shall be conducted upon a Home Site except that an Owner or occupant residing in a Home Site may conduct business activities within the Home Site so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Home Site; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the Home Site by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time, (y) such activity is intended to or does generate a profit or (z) a license is required. The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection.

Section 7.2. Obstructions. There shall be no obstruction of the Common Area, Private Street Rights-of-Way, Common Area Access Easements, Landscape and Easement Areas or Stream Maintenance Area, nor shall anything be kept or stored in such areas by any Owner, nor shall anything be altered, or constructed or planted in, or removed from such areas, without the prior written consent of the Association.

Section 7.3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on the Properties which will result in the cancellation of or increase in cost of any insurance carried by the Association, or any other Owner, or which would be in violation of any law. No waste shall be permitted in the Common Area, Private Street Rights-of-Way, Common Area Access Easements, Landscape and Easement Areas or Stream Maintenance Area. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable zoning ordinances) and other governmental rules and restrictions applicable to such Owner's Home Site(s).

Section 7.4. Signs. Except as specifically provided in this **Section 7.4**, no sign of any kind, including but not limited to for sale signs advertising a Home Site for sale (exclusive of street address identification numbers) and signs advertising a building contractor or subcontractors providing services to a Home Site shall be displayed on any Home Site or within a dwelling located on the Home Site if such sign is visible from outside of such dwelling. Notwithstanding the above, an Owner may display one (1) sign advertising a Home Site for sale using the professional sign approved by the Architectural Review Committee from time to time and any building permits required to be posted on a Home Site. In addition, an Owner may post up to three (3) signs on a Home Site that have dimensions of no greater than 12" in height by 12" in width notifying third parties of any company providing security service to such Home Site or invisible fencing for animals. Also, the foregoing shall not act to restrict or prohibit, or prevent the Association from posting directional and other signs relating to the use of the Properties. The

Association shall have the right to install signs in the Common Area, along and in Private Street Rights-of-Way and in Landscape and Easement Areas.

Section 7.5. Damage to the Common Area. Each Owner shall be liable to the Association and/or the Master Association for damage to property owned by any of them caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, contractors, employees or invitees. A \$1,500.00 refundable construction deposit must be submitted by each Owner to the Association at the time the final plans and specifications for the initial construction of any Improvements on the Home Site are returned to the Owner approved by the Architectural Review Committee. Such deposit shall be held in escrow and utilized, after written notice to the Owner, to repair any damage caused by construction personnel or equipment to adjacent property, roadways, drives, structures or amenities, or to maintain the construction site in a clean condition if not so maintained by the Owner or its contractor. Owner will be held responsible for any sums expended by the Association in excess of the \$1,500.00 escrowed. Any funds not used as above provided will be returned to the Owner upon completion of construction.

Section 7.6. Rules of the Association. The Board of Directors shall have the power and authority to promulgate rules and regulations to enable the Association to carry out the letter and intent of this Declaration. All owners shall abide by all rules and regulations so adopted by the Board of Directors from time to time. The Board of Directors shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner violating such rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees, resulting from such violations.

Section 7.7. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Home Site or in any dwelling except that dogs, cats or other usual and common household pets may be kept or maintained provided they are not kept or maintained for commercial or breeding purposes. All dogs must be kept contained, tied, or on a lead within the Properties or on any Home Site provided, that dogs may be allowed on a Home Site without being tied or on a leash so long as such dogs are confined to fenced in areas including those areas served by invisible fencing that is actually working so that such dog is confined to such Owner's Home Site. An Owner utilizing invisible fencing to contain an animal on such Owner's Home Site shall post a sign conforming to the requirements of **Section 7.4** informing third parties that invisible fencing is being used at such Home Site. No dog run may be constructed or maintained on any Home Site unless the Architectural Review Committee has approved such dog run in writing. The Board of Directors may, in its sole discretion, require the removal of any pets that are permitted to roam free or those pets that make objectionable noises (i.e. uncontrollable barking when an Owner is not home or is inside such Owner's residence), endanger the health or safety of occupants of the Home Sites, that are deemed to be dangerous or to have vicious propensities, or constitute a nuisance to occupants of other Home Sites. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed five (5) in number except for newborn offspring of such household pets which are under nine (9) months in age. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside a dwelling. Pets shall be registered, licensed, and inoculated as required by law. Full or mixed breeds of chows, rottweilers, dobermans and pit bulls shall automatically be deemed dangerous and to have vicious propensities and are not permitted on the Properties unless such dogs were located on the Properties prior to the date this Declaration was filed in the Mecklenburg County Public Registry in which case they may remain on the Properties subject to compliance with the restrictions set forth in this **Section 7.7**. Offspring of any full or mixed breeds of chows, rottweilers, Dobermans and pit bulls shall not be permitted on the Properties regardless of whether or not the parent(s) of such offspring were located on the Properties prior to the date this Declaration was filed in the Mecklenburg County Public Registry.

Section 7.8. Waste. No Home Site shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any Home Site except on a temporary basis in sanitary containers.

Section 7.9. Vehicles. Owners or occupants of a Home Site may not park vehicles owned, leased or otherwise regularly used by them on any portion of a Home Site except on the driveway serving such Home Site and the garage serving the dwelling constructed on such Home Site; provided that such restriction shall not prohibit temporary parking on the Private Street Rights-of-Way by guests or invitees of an Owner provided that such vehicles are parked in accordance with any rules promulgated by the Board of Directors pursuant to **Section 4.9**. No recreational vehicles or equipment, including a motorboat, houseboat or other similar water-bourn vehicle, or any motor home or “camper” vehicle or any vehicles that are not in operating condition shall be maintained, stored or kept on any portion of the Property, except in enclosed garages or in areas specifically designated by the Board of Directors. No vehicle of any size that transports inflammatory or explosive cargo may be kept within the Properties at any time. The Owner of each Home Site will be responsible for providing on such Home Site sufficient parking area for all vehicles normally parked and/or situated on such Home Site.

Section 7.10. No Drilling or Mining. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Home Site, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Home Site. No derrick or other structure designed for use in quarrying or for drilling for oil or natural gas shall be erected, maintained or permitted upon any Home Site.

Section 7.11. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

- (a) Outside burning of trash, leaves, debris, or other materials;
- (b) Use or discharge of any radio, loudspeaker, horn, whistle, bell, musical instrument or other sound device so as to be audible to occupants of other Home Sites after 11:00 p.m., except alarm devices used exclusively for security purposes. For example, if an Owner is having a gathering (either indoor or outdoor) at his/her Home Site, and such gathering results in the use of any radio, loudspeaker, horn, whistle, bell, musical instruments or other sound device (collectively, “Sound Devices”) that is audible to occupants of other Home Sites, then use of such Sound Devices must cease after 11:00 p.m. or be moderated so as to not be audible to occupants of other Homes Sites; and
- (c) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, or pond, or elsewhere within the Properties, except that (i) fertilizers may be applied to landscaping on Home Sites provided care is taken to minimize runoff and (ii) composting of grass clippings, leaves and other organic debris shall be permitted on a Home Site provided that such composting does not result in odors that are detectable outside of a Home Site and the composting area is not visible to adjacent Homes Sites or any Private Street Rights-of-Way.

## ARTICLE VIII

### EASEMENTS

Easements for construction, installation maintenance and continued location of driveway, sidewalk, walkway, parking area, public and private water/sewer line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility

installations are reserved for the benefit of the Association as shown on the Maps of the Property. Further, easements ten feet (10') in width for installation, repair and maintenance of general service utilities and facilities are reserved for the benefit of the Association over, under and through and along the front and rear property lines of all Home Sites and easements five feet (5') in width for such purposes are reserved over, under and through and along all side property lines of all Home Sites. A fifteen-foot (15') easement for construction, replacement, maintenance and continued location of a brick or stone wall is reserved for benefit of the Association as shown on any Map. Furthermore, an easement is reserved for the benefit of the Association over, under and through any Common Area and along that portion of any Home Site upon which is located any brick or stone wall or any portion thereof for the construction, replacement, maintenance and continued location of such brick or stone wall together with a general right of ingress, egress and regress over and upon any such Home Site for the purpose of accessing such construction and location easement. In the event it is determined that other and further easements are required over any Home Site or Home Sites in locations not shown on the recorded plat and not along front, rear or side Home Site lines, such easements may be established by the Association; provided that the written consent of the Owner(s) of such Home Site(s) and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. The Association may, without consent or approval of any Owner, grant or convey any of the easement rights hereinabove reserved for the purposes set forth herein to any person, public or private utility or service company or any agent of Declarant or the Association. The Association may, without consent or approval of Owners, reserve and grant easements for the installation and maintenance of sewerage, utility, including cable television, and drainage facilities over, under and through the Common Area as provided in **Section 4.2(d)**. No structure, planting or other material shall be placed or permitted to remain within any easements provided for above which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.

## ARTICLE IX

### FINANCING

Section 9.1. Approval of Owners and Holders of First Deeds of Trust. Unless at least fifty-one (51%) of the owners and holders of the first deeds of trust on Home Sites have given their prior written approval, the Association shall not:

(a) 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 or the transfer to a public agency or governmental unit shall not be deemed a transfer within the meaning of this clause.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Home Site Owner.

(c) By act or omission change, waive or abandon any plan of regulation, or enforcement thereof pertaining to the architectural design or the exterior appearance of residences located on Home Sites, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the subdivision..

(d) Fail to maintain fire and extended coverage insurance on insurable Improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value.

(e) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged Improvements.

Section 9.2. Books and Records. Any owner and holder of a first deed of trust on a Home Site will have the right to examine the books and records of the Association during any reasonable business hours.

Section 9.3. Payment of Taxes and Insurance Premiums. The owners and holders of first deeds of trust on Home Sites 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 of the Common Area 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 from the Association.

## ARTICLE X

### CONSTRUCTION OF IMPROVEMENTS AND ARCHITECTURAL CONTROL

#### Section 10.1. Construction of Improvements.

(a) Notwithstanding anything contained within this Declaration to the contrary, no Owner shall undertake on any Home Site (i) the location of any completed Improvement(s) (as hereinafter defined) or any construction of any Improvement(s), 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 other than general maintenance of landscaping located pursuant to previously approved landscaping plans, or (iii) any modification, change or alteration of any Home Site or dwelling thereon, whether functional or decorative, unless and until the type or size thereof, materials to be used in construction, exterior color scheme, exterior lighting plans, specifications and details thereof, and site 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 by the Architectural Review Committee, copies of said approved plans, specifications and details shall have been filed with said Architectural Review Committee, and in case of the initial construction of a dwelling on a Home Site, the Owner of such Home Site has paid to the Association the construction deposit required under **Section 7.5**. Generally, homes must be traditional in design and substantially of brick, stucco, clapboard or stone construction with rooflines consistent with the Design Guidelines (as hereinafter defined) as may be established by the Architectural Review Committee from time to time. For Home Sites designated as Lots 1 through 49 on the Maps roofing material must be cedar shakes, tile, slate, copper or similar permanent type roofing approved by the Architectural Review Committee, but not including composition roofing. For other Home Sites, roofing materials may also include 280-pound weight shingles of a composition type. The Architectural Review Committee may approve other materials which in its sole discretion provide similar high quality aesthetic appeal and long-term value both in utility and appearance. The Architectural Review 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 Architectural Review Committee shall be deemed sufficient.

(b) The term "Improvement(s)" as used throughout this Declaration 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, tree houses, children's playhouses, signs, exterior illumination, exterior antennae, earth satellite stations, microwave dishes, solar panels or other similar receiving, transmission or energy generating equipment, changes in any exterior color or shape and any new exterior constructed or exterior improvement exceeding \$1,000.00 in cost which may not be included in any of the foregoing. The definition of Improvement(s) does not include garden shrub or tree replacement 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 Improvements does include both original Improvements and all later changes and repairs to Improvements.

(c) The Architectural Review Committee shall have the sole and exclusive right to approve the grade at which any dwelling or any modifications thereto shall hereafter be erected, or placed on a Home Site (subject only to compliance with the regulations of public authorities having control thereof).

(d) The procedure to be followed by an Owner in obtaining approval from the Architectural Review Committee is set forth in **Section 10.22**.

Section 10.2. Floor Areas, Stories. The total heated floor area of the main dwelling on each Home Site, exclusive of porches, terraces, garages, basements, attics and outbuildings, shall contain not less than the following:

<u>Type of Home</u>	<u>Square Footage</u>
1-1/2, 2 or 2-1/2 Story	3,000
1 story	2,500

Section 10.3. Building Setback Lines. Unless a greater setback is required by applicable zoning laws and other governmental requirements, the main building on each Home Site shall not be located on any Home Site nearer to the Home Site boundary line than the building setback line specified as follows (Home Sites are numbered as set forth on the Maps):

(a) East Section - Lots 1 through 7, inclusive  
 Front Setback - 35' from right-of-way  
 Sideline - 10'  
 Rear Setback -55'

East Section -Lots 8 through 21, inclusive  
 Front Setback -60' from right-of-way  
 Sideline - 15'  
 Rear Setback -55'

East Section -Lots 23 through 34, inclusive  
 Front Setback -60' from right-of-way  
 Sideline - 15'  
 Rear Setback - 65'

East Section -Lots 35 and 37 through 46, inclusive  
 Front Setback -60' from right-of-way  
 Sideline - 15'  
 Rear Setback - 55'

East Section - Lots 22, 36 and 47 through 49, inclusive

Front Setback -40' from right-of-way

Sideline - 15'

Rear Setback - 55'

(b) West Section – Lots 50, 53, 54, 60, 61, 62, 63 64, 68, 74, 86, 87, 88, 89, 90

Front Setback –50' from right-of-way

Sideline - 10'

Rear Setback - 55'

West Section – Lots 51, 52, 55, 56, 57, 58, 69, 70, 71, 72, 73, 75, 76, 77, 78, 79, 80, 81, 85

Front Setback – 45' from right –of-way

Sideline – 10'

Rear Setback – 55'

West Section – Lots 59, 65, 66, 67, 82, 83, 84

Front Setback – 40' from right-of-way

Sideline – 10'

Rear Setback – 55'

Any Home Site having a side lot line adjacent to any Private Street Right-of-Way shall have a minimum side street setback as indicated on the Map showing such Home Site.

The above-listed setbacks, and setbacks shown on the Maps, may be modified by the Architectural Review Committee to recognize any special topography, dimensional factors or other site-related conditions.

Section 10.4. New Construction. Construction of new buildings only shall be permitted on a Home Site, it being the intent of this covenant to prohibit the moving of any existing building onto a Home Site and remodeling or converting the same into a dwelling.

Section 10.5. Diligent Construction. All construction, landscaping or other work which has been commenced on any Home Site must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Home Site, except during such reasonable time period as is necessary for completion. The exterior of all new dwellings and other structures must be completed within eighteen months (18) months from the date the building permit for the construction of such dwelling or structure was issued; provided that each Owner of a Home Site shall use its good faith efforts to have the exterior completed sooner than eighteen (18) months. If diligent construction on a Home Site stops for more than thirty (30) continuous days, then the Owner of the applicable Home Site shall have the Home Site grassed so that the Home Site is reasonably attractive to surrounding Home Sites within ten (10) days following the end of such thirty (30) day period. If an Owner fails to grass such Owner's Home Site within such time period, then the Association may have such Home Site grassed. The cost of such work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Home Site and shall constitute an assessment against the Home Site on which the work was performed, collectible in a lump sum and secured by the lien against the Home Site as provided in this Declaration. In addition, all new dwellings under construction on a Home Site must be completed, and a certificate of occupancy for such dwelling issued, within two (2) years following the issuance of the building permit. Prior to commencement of construction on any Home Site, if a concrete or other driveway approved by the Architectural Committee has not been completed on such Home

Site, the Owner shall provide a gravel driveway with a minimum base of five inches (5") of #5 crushed stone from the paved street to the site of the actual house construction area. No construction materials of any kind may be stored within forty-five feet (45') of the street curb. Any damage to the street, curb or sidewalk or to any part of any Common Area or utility system caused by the Owner or Owner's builder shall be repaired by such responsible Owner. The Owner of each Home Site shall at all times keep adjacent public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements. The Association 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. Every builder constructing Improvements within the Properties shall, consistent with standard construction practices, keep all portions of the Home Site 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 construction of Improvements or take other measures consistent with standard construction practices necessary to keep the Home Site free of garbage, trash or other debris which is occasioned by the construction of Owners' Improvements. All Owners and Owners' builders shall comply with such rules of the Association as are from time to time adopted with respect to construction of Improvements. All Owners shall be responsible to insure that any contractor employed by it complies with all Builder's Rules adopted by the Association from time to time. The initial Builder's Rules of the Association are attached hereto as Exhibit B.

Section 10.6. Location of Improvements. In order to assure that 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 Home Site, and to assure that structures will be located with regard to the topography of each Home Site, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Architectural Review Committee shall have the right to control absolutely, (subject to the provisions of zoning ordinances of the appropriate governmental authorities), the precise site and location of any building or structure on any Home Site for reasons which may in the sole and uncontrolled discretion and judgment of the Architectural Review Committee be sufficient.

Such location shall be determined only after reasonable opportunity is afforded the Owner of the Home Site in question to recommend a specific site. The provisions of this **Section 10.6** 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 Home Site shall not be affected by the location of a building or structure on an adjacent Home Site.

Section 10.7. Landscaping.

(a) General. Except for the building pad, driveways and sidewalks on each Home Site, the surface of each Home Site shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times. The Association reserves the right to require and establish a landscape reserve to be paid into a Landscaping Reserve Escrow Account maintained by or on the behalf of Association. The amount of such reserve shall be that amount established by the Board of Directors from time to time and shall be collected from the Owner at the closing of the purchase of the Home Site or anytime thereafter. The reserve shall be held by the Association or its designee until such time as written approval is given by the Architectural Review Committee of a landscape plan for the Home Site and upon such approval the reserve shall be released by the Association to the Owner as the landscaping is completed. If the landscaping does not progress in a timely fashion in accordance with the approved landscape plan, the Association shall have the right to disburse the reserve to any landscaping agent of Association for the completion of the approved landscape plan.

(b) Driveways. The Architectural Review Committee may, from time to time, establish guidelines for the color, location, alignment and materials to be used for driveways on each Home Site. All driveway construction at the intersection of the driveway with any Private Street must conform with Exhibit C unless the same is modified by the Architectural Review Committee.

(c) Landscape Guidelines. The Architectural Review Committee reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods and procedures for landscape management on the Property and such authorized standards, methods and procedures may be utilized by the Owners without prior written approval by the Architectural Review Committee. No trees measuring six inches (6") or more in diameter at a point two feet (2') above ground level may be removed without the prior written approval of the Association; unless such trees are dead, severely diseased and incapable of being saved as determined by a qualified arborist or landscape architect. On Home Sites 23 through 34, inclusive, bushes or natural vegetation located within fifty feet (50') of the rear property line may not be removed, disturbed or destroyed; unless such bushes or natural vegetation are dead or severely diseased. Approval for the removal of trees located within ten feet (10') of the main dwelling or accessory building or within ten feet (10') of the approved site for such building will be granted unless such removal will substantially decrease the attractiveness of the Property. If any trees are removed from a Home Site in violation of this **Section 10.7 (c)** the Owner of the Home Site from which a tree was removed shall pay to the Association the amount required pursuant to Exhibit D.

Section 10.8. Sediment Control. Sufficient sediment control measures including, but not limited to, installation and maintenance of silt fences, straw base fences, storm water inlet protection and temporary seeding, 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 Home Site in question. All sediment control measures must be maintained until such Home Site has been permanently stabilized with respect to soil erosion.

Section 10.9. Swimming Pools; Tennis Courts. No swimming pool, hot tub, Jacuzzi or tennis court shall be installed or erected on any Home Site until the plans and specifications for the same showing the nature, kind, shape, materials, height and location of the same shall have been approved by the Architectural Review Committee. No swimming pool shall be constructed on a Home Site in front of a dwelling or so that any portion of such pool protrudes above the finish grade of the adjoining ground as found prior to such construction; provided, however, that when the average slope of a Home Site exceeds twenty-five percent (25%), the Architectural Review Committee may approve an exception, subject to the following limitations: (a) the pool shall be located with its longer dimension parallel to the natural contour line; (b) not more than fifty percent (50%) of the pool shall be above the finished level of the adjoining ground; and (c) at no point shall any part of the pool project more than two feet (2') above the finished level of the adjoining ground as found prior to construction. The pool itself and pool equipment shall be screened, housed or stored underground.

All tennis courts must be naturally screened from adjacent Home Sites and Common Area and wind screens should not be greater than ten feet (10') in height. A plot plan showing the tennis court location shall be submitted to the Architectural Review Committee showing any and all proposed grading and screening. Design and color of fencing materials should blend naturally into the surrounding area and plant materials should be added where necessary to soften the visual impact. Court surface colors shall be muted reds and greens and not highly reflective. Lights for tennis courts will be permitted if at night the light does not intrude on adjacent property. Lights on tennis courts must be turned off by 10:30 p.m. Tennis courts, swimming

pools and other recreational Improvements must be set back a minimum of twenty-five feet (25') from any property line and sixty-five feet (65') from any Common Area.

Section 10.10. Fences and Walls. No fence, hedge or wall shall be erected, placed or altered on any Home Site where such fence, hedge or wall extends beyond the front facade of the main house or garage. Any wall constructed on the side yard line or rear yard line of Home Sites 24 through 34, inclusive, shall be constructed of stone, shall be of a similar design to the wall constructed by Declarant within the Common Area adjacent to said Home Sites, shall not exceed six feet (6') in height and shall not be located nearer than thirty-five feet (35') from the rear property line. All walls other than those permitted by the preceding sentence shall be constructed of brick, wrought iron, wood (excluding split rail), stone or stucco and shall not exceed eight feet (8') in height. Owners must obtain from the Architectural Review Committee its written approval of any proposed fence, hedge or wall, including approval of the location and materials, before erecting or installing the same.

Section 10.11. Garages. Any garage located upon any Home Site must be fully enclosed with doors for at least two (2) vehicles and consistent in design with the overall architectural design of the dwelling on the Home Site as determined by the Architectural Review Committee. Each garage must be side or rear loading unless a variance is granted by the Architectural Review Committee. No carports will be allowed.

Section 10.12. Sight Line Limitations. To the extent that governmental requirements do 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 Home Site within the triangular area formed by the street property lines and line connecting them at a point thirty-five feet (35') from the intersection of the street line, 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 Plat. The same sight line limitations shall apply on any Home Site within ten feet (10') 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 10.13. Septic Tanks and Wells. No septic tanks shall be installed, used or maintained on any Home Site. No wells shall be installed, used or maintained on any Home Site for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling which shall furnish domestic water from sources beyond the boundary lines of the Home Site.

Section 10.14. Air Conditioning Equipment. No air conditioning or heating apparatus shall be installed on the ground in front of any residence on a Home Site. No air conditioning or heating apparatus shall be attached to any front wall of a residence on a Home Site. No air conditioning or heating apparatus shall be installed on the side wall of a residence on a Home Site unless the same shall be screened from view from the street abutting such Home Site and any adjacent Home Site.

Section 10.15. Antennae and Solar Panels. No exterior antennae, earth satellite station, microwave dish, solar panels or other similar receiving, transmission or energy generating equipment may be constructed, placed or maintained on any Home Site unless approved by the Architectural Review Committee, provided that satellite dishes that are no more than 24" in diameter may be installed on a dwelling provided that such satellite dishes not visible from any public or private street abutting such Home Site.

Section 10.16. Gas Meters. No gas meters shall be set in the front of a residence of a Home Site unless such meter is of an underground type.

Section 10.17. Mail Boxes and Newspaper or News Box. No mailbox, newspaper or news box shall be erected or maintained on any Home Site unless approved by the Architectural Review Committee.

Section 10.18. No Clothes Lines. No clothes lines of any description or type or the outside drying of clothes shall be allowed on the outside of the dwelling unit on any Home Site.

Section 10.19. 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 Home Site above the surface of the ground, unless such installation is expressly approved by the Architectural Review Committee.

Section 10.20. No Subdivision of Home Sites. No Home Site shall be subdivided by sale, lease or otherwise so as to reduce the total Home Site area as shown on the recorded Maps; however, portions of Home Sites may be added to other Home Sites so long as the total number of Home Sites is not increased.

Section 10.21. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Home Site and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Home Site shall continue to be applicable and shall be complied with in regard to the Home Sites.

Section 10.22. Procedure. No Improvements of any kind or nature shall be erected, remodeled or placed on any Home Site until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Review Committee, as to:

(a) location with respect to topography and finished grade elevation and effect of location and use on neighboring Home Sites;

(b) quality of workmanship and materials, adequacy of site dimensions and alignment of main elevation with respect to nearby streets;

(c) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping; and

(d) other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Review Committee, or matters in which the Architectural Review Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications for all Improvements proposed to be constructed on a Home Site shall be submitted in duplicate to the Architectural Review Committee for approval or disapproval. The Architectural Review 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 Architectural Review Committee, one (1) complete set of plans and specifications will be marked "Approved" and returned to the Home Site Owner or his designated representative and the remaining set will be filed in the offices of the Architectural Review Committee. If found not to be in compliance with these covenants, conditions and

restrictions or if found to be otherwise unacceptable to the Architectural Review Committee pursuant hereto, one (1) set of plans and specifications shall be returned to the Home Site Owner marked "Disapproved", accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Owner thereafter shall resubmit, in accordance with the provisions of this **Section 10.22**, such plans and specifications setting forth the required changes to the Architectural Review Committee for its approval. Any modification or change to the Approved set of plans and specifications must again be submitted in duplicate to the Architectural Review Committee for its inspection and approval. The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing. Once the Architectural Review Committee has approved the plans and specifications for the Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not completed within twenty-four (24) months following the date of approval of the plans and specifications therefore by the Architectural Review Committee, such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Home Site in question, the plans and specifications therefore must again be approved by the Architectural Review Committee pursuant to this **Article X**.

The final plans and specifications as referred to in the preceding paragraph shall mean the following:

- (a) Final site plan which is three-dimensional and shows topography at two foot (2') contours (at a scale of one inch ( 1" ) equals twenty feet (20' ) or at a larger scale);
- (b) Final floor plans at a scale of one-fourth inch (1/4") equals one foot (1');
- (c) Final elevations, showing all sides, and accurate grade at a scale of one-fourth inch (1/4") equals one foot (1'); and
- (d) All material selections and color selections.

In addition to the procedure described in this **Section 10.22**, and in recognition of the cost involved in producing the final plans and specifications, the Home Site Owner may request a preliminary review of the design of the Improvements upon the submission of the following:

- (a) Schematic site plan which is three-dimensional and shows topography at two foot (2') contours (at a scale of one inch (1") equals twenty feet (20') or at a larger scale);
- (b) Schematic floor plans at a scale of one-fourth inch (1/4") equals one foot (1'); and
- (c) Final elevations, showing all sides, and accurate grade at a scale of one-fourth inch (1/4 " ) equals one foot (1'); and
- (d) All material selections and color selections.

The Architectural Review Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Home Sites and shall carry forward the spirit and intention of this Declaration. The Architectural Review Committee shall be responsive to technological advances and general changes in architectural design 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 bulletins shall supplement this Declaration and are incorporated herein by reference. The Architectural Review 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 Architectural Review Committee shall be deemed sufficient.

Section 10.23. Jurisdiction. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Home Site which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Project.

Section 10.24. Enforcement.

(a) The Association will have the specific right, but not obligation, to enforce the provisions contained in this **Article X** of this Declaration and/or to prevent any violation of the provisions contained in this **Article X** 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 X** of this Declaration.

(b) As to nonconforming or unapproved Improvements, the Master Association or 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 Improvements) if such Improvements were commenced or constructed in violation of this **Article X**. 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 assessment against the Home Site upon which such Improvements were commenced or constructed.

Section 10.25. Failure of the Architectural Review Committee to Act. If the Architectural Review 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 forty-five (45) 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 Architectural Review Committee, and provided the Architectural Review 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 Architectural Review Committee following the passage of such first above described forty-five (45) day period, it shall be conclusively presumed that the Architectural Review Committee has approved such plans and specifications and other submittals. The Architectural Review Committee shall use its good faith efforts to approve or disapprove plans and specifications and submittals in less than forty-five (45) days. The Architectural Review 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, except where variances shall be expressly permitted herein. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Review Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance; provided that the Architectural Review Committee shall take such actions within the time frame set forth above. The Architectural Review Committee is hereby authorized to request the submission of samples of proposed construction materials.

Section 10.26. Limitation of Liability. Neither the Architectural Review Committee nor the members thereof nor the Association shall be liable in damages or otherwise to any



Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal for 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 the Association, the Architectural Review Committee, the Board of Directors, 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 10.27. Design Guidelines. The Architectural Review Committee may, from time to time, publish and promulgate Design Guidelines (herein so called), and such Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Review Committee in reviewing plans and specifications. In any event, such Design Guidelines shall not be binding upon the Architectural Review Committee and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Architectural Review Committee of approval.

Section 10.28. Variances. Upon submission of a written request for the same, the Architectural Review Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are in variance with the setback requirements, architectural standards or similar provisions of this Declaration or the Master Declaration or Supplemental Declarations which may be promulgated in the future. 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 Architectural Review Committee has not expressly and in writing, approved such request within forty-five (45) days of the submission of such requests. The Architectural Review Committee shall use its good faith efforts to respond to requests for variances in less than forty-five (45) days. No member of the Architectural Review 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 Architectural Review Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder, against any other Owner.

Section 10.29. Review Fee and Address. The Architectural Review Committee shall impose a One Thousand Dollar (\$1,000.00) fee to cover costs that it may incur in reviewing, or having third-party professionals review, the initial plans and specifications for a new dwelling to be located on a Home Site. The Architectural Review Committee shall also impose a fee to cover any costs incurred by it in reviewing submittals following the initial construction of a dwelling on a Home Site, including but not limited to approval of additions, renovations and landscaping plans. The amount of such fee shall be equal to cost incurred by the Architectural Review Committee in having an Owner's submittals reviewed by third-party professionals. An Owner shall be required to pay such fee prior to the Architectural Review Committee providing final approval of an Owner's submittals. The address of the Architectural Review Committee shall be the address designated by the Board of Directors from time to time. Such address shall be the place of the submittal of any plans and specifications and the place where the current rules and regulations, if any, of the Architectural Review Committee shall be kept.

Section 10.30. 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 Architectural Review Committee, the members thereof, the Master Association nor the Association assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Section 10.31. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Home Sites or, if approved by the Architectural Review Committee in writing, located elsewhere on the Home Site provided they are adequately screened as required by the Architectural Review Committee in accordance with the provisions of this Declaration. Each Owner shall provide the company providing telephone service to the Owner's Home Site with a fifteen (15) volt AC-15/20 AMP receptacle in a water-proof box on an appropriate exterior wall upon request.

## ARTICLE XI

### SPECIAL RESTRICTIONS AFFECTING COMMON AREAS

Section 11.1. Right of Entry. The Association shall have the right to go on, over and under the Common Area to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in the Common Area. These rights expressly include the right to cut any trees, bushes or shrubbery, grade the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Association may locate wells, pumping stations and tanks within the Common Area. Such rights may be exercised by any contractor or licensee engaged by the Association.

Section 11.2. Prohibition Against Dumping. No dumping of trash, garbage, sewage, sawdust, organic or inorganic waste or other similar materials shall occur and no unsightly or offensive material shall be placed upon the Common Area, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Common Area.

Section 11.3. No Public Rights. The establishment of the Common Area does in no way grant to the public or to the owners of any surrounding or adjacent land, the right to enter such Common Area without the express permission of the Association.

## ARTICLE XII

[INTENTIONALLY OMITTED]

## ARTICLE XIII

### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 13.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.

(a) The Association and its officers, directors, and committee members, all parties subject to this Declaration, and any party not otherwise subject to this Declaration who agrees to submit to this **Article XIII** (each a "Bound Party" and collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Morrocroft Estates without the emotional and financial costs of litigation.

Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 13.2** below and makes a good faith effort to resolve such Claim.

(b) As used in this **Article XIII**, the term “Claim” shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles and any use restrictions described in or promulgated under **Article VII**, as they may be amended (collectively, the “Governing Documents”);

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of Improvements within the Properties;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 13.2** below:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of **Article IX** and **Article VII**;

(iii) any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the notice required by **Section 13.2** below, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### Section 13.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant’s proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

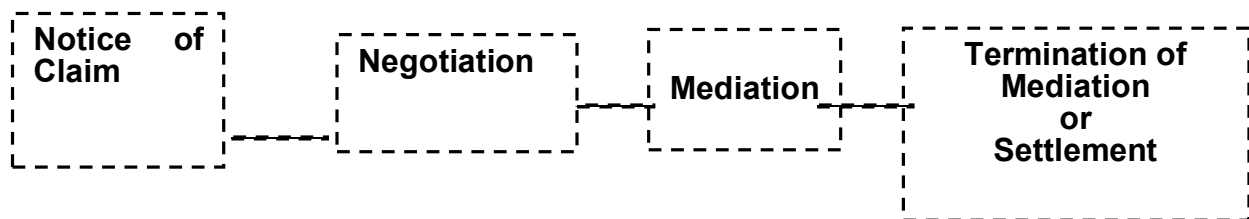
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in **Section 13.2(a)** above (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Mecklenburg County or the metropolitan Charlotte, North Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all fees charged by the mediator.

### **Alternative Dispute Resolution Process**



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this **Section 13.2**. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

**Section 13.3. Initiation of Litigation by Association**. The Association shall not be required to follow the alternative dispute resolution procedures and instead may initiate any judicial or administrative proceedings:

- (a) that are not considered “claims”;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

## ARTICLE XIV

### GENERAL PROVISIONS

Section 14.1. Enforcement. The Association, 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 this Declaration. 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.

Section 14.2. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of thirty-five (35) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated or altered in accordance with this **Section 14.2**. This Declaration may be amended during the first thirty-five (35) year period by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Home Sites, and thereafter this Declaration may be terminated or amended by an instrument signed by the Owners of not less than seventy-five (75%), percent of the Home Sites. Any termination or amendment must be properly recorded. For the purpose of this **Section 14.2**, additions to existing property as provided in **Section 2.2** hereof shall not constitute an “amendment.”

Section 14.3. Notices. All notices, demands, requests, permissions, consents or approvals (“Notices”) given by the Association to any Owner or by any Owner to the Association or the Master Association shall be in writing and shall be deemed to have been properly given three (3) days after posted if sent by United States registered or certified mail, postage prepaid, return receipt requested, if to Owner, at the street address of the owner’s Home Site, and if to the Association, at such address provided by the Board of Directors.

Section 14.4. Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the particular sections to which they refer.

Section 14.5. Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and all remaining provisions shall continue unimpaired, in full force and effect.

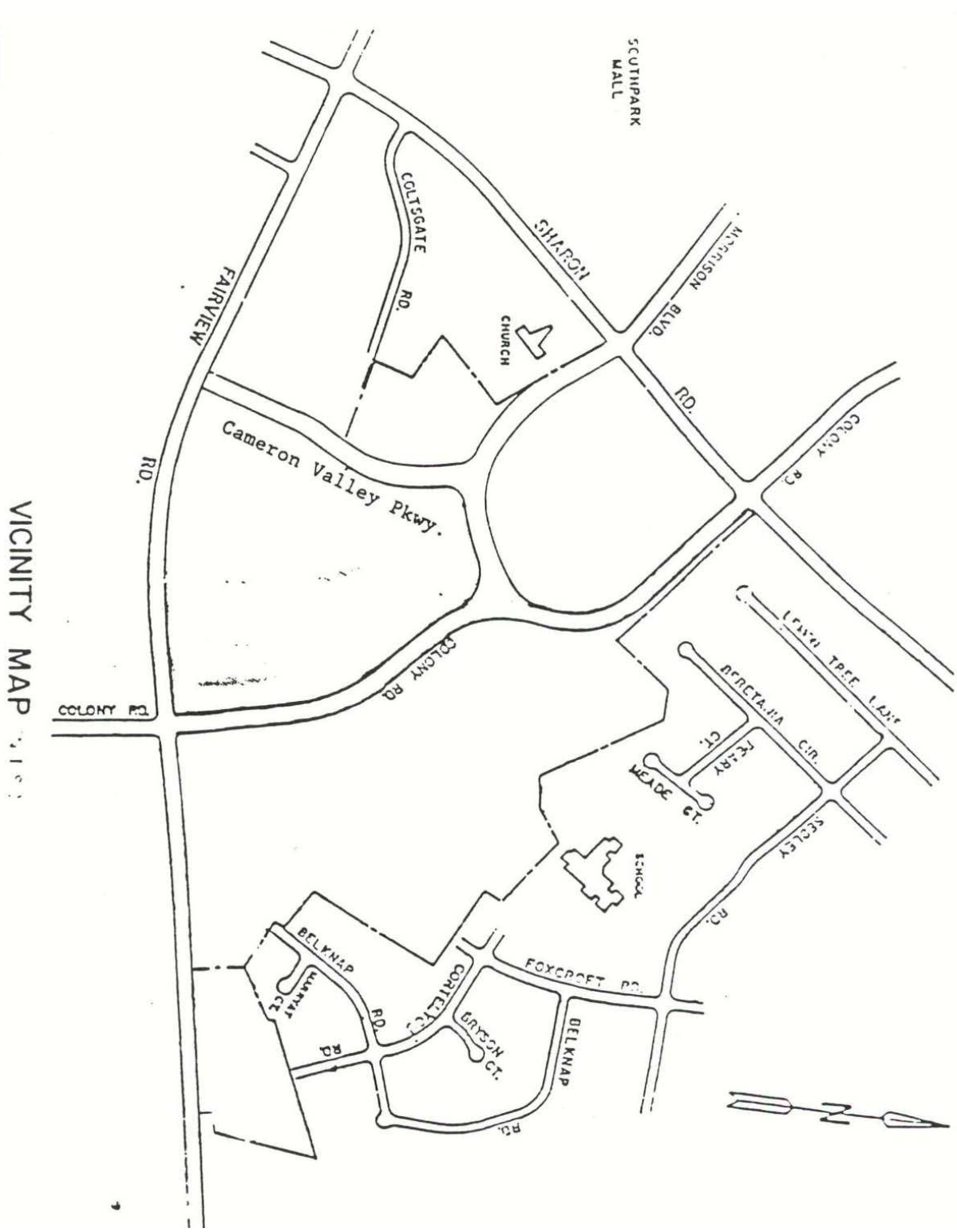
IN WITNESS WHEREOF, the undersigned being the Owners of at least seventy-five percent (75%) of the Home Sites in Morrocroft Estates have caused this instrument to be executed effective this \_\_\_\_\_ day of May, 2003.

***[SEE ATTACHED SIGNATURE AND NOTARY ACKNOWLEDGMENT PAGES]***

**EXHIBIT A**

MORROCROFT ESTATES

VICINITY MAP



## EXHIBIT B

### MORROCROFT ESTATES- BUILDER'S RULES

#### GENERAL RULES FOR ALL MORROCROFT CONTRACTORS AND BUILDERS

1. All contractor and builder personnel are required to enter and leave through the designated construction gates on Colony Road and are subject to the rules of the Association while on the property.
2. The main entrances will be open from 6:30 a.m. until 7:30 p.m. Monday through Sunday. All deliveries must be made during these hours. Any access needed to the subdivisions after these hours must be scheduled with the Association twenty-four (24) hours in advance. Security personnel will monitor all incoming and outgoing traffic and will not permit unauthorized entrance into the subdivisions after hours.
3. Contractors and homeowners are required to keep the job site and surrounding areas clean and free from mud, silt, rubbish, and debris at all times. Trash and discarded materials must be removed daily. Trash not removed will be removed by the Association and billed to the homeowner of the lot. Adjacent streets should be cleaned when necessary after heavy rains or frequent construction use. Silt fences for sedimentation control are required at the front and all disturbed areas of the site.
4. Any damage caused by contractors to streets, curbs, amenities, adjacent property or common areas will be billed to the responsible contractor or homeowner or taken from the construction deposit.
5. The established speed for all vehicles operating within Morrocroft is 17 miles per hour. This speed limit should be obeyed at all times.
6. No vehicles (trucks, vans, cars, trailers, etc.) may be left parked on the subdivision's streets overnight. Construction vehicles may be left in driveways or in other appropriate areas on site. Violators will be fined ten (10) dollars per vehicle per night.
7. No construction activities will be permitted after 7:30 P.M. unless approved by the Architectural Review Committee. No loud radios or distracting noise will be permitted during any construction.
8. Builder and contractor personnel will not be permitted to bring pets on the property, nor will they be permitted in common areas or any unauthorized areas.
9. Security personnel should be notified immediately of any accidents, injuries or other emergency occurrences.
10. Contractors should be aware that certain areas of the property exist as natural woodlands and cannot be disturbed. Additionally, the private roads and common areas have been constructed for the long-term and unique benefit of the homeowners and must be maintained and protected in a high quality manner. Special construction requirements unique to Morrocroft may be established and all contractors must cooperate with the Association in enforcing these rules.
11. Failure to abide by any of the above rules may result in the loss of a contractor's privilege to enter the subdivisions on a temporary or permanent basis.



**EXHIBIT C**

TYPICAL DRIVEWAY CURB CUT TO RESIDENCES AT MORROCROFT

LAND DESIGN, INC. JUNE 16, 1989

NOT TO SCALE

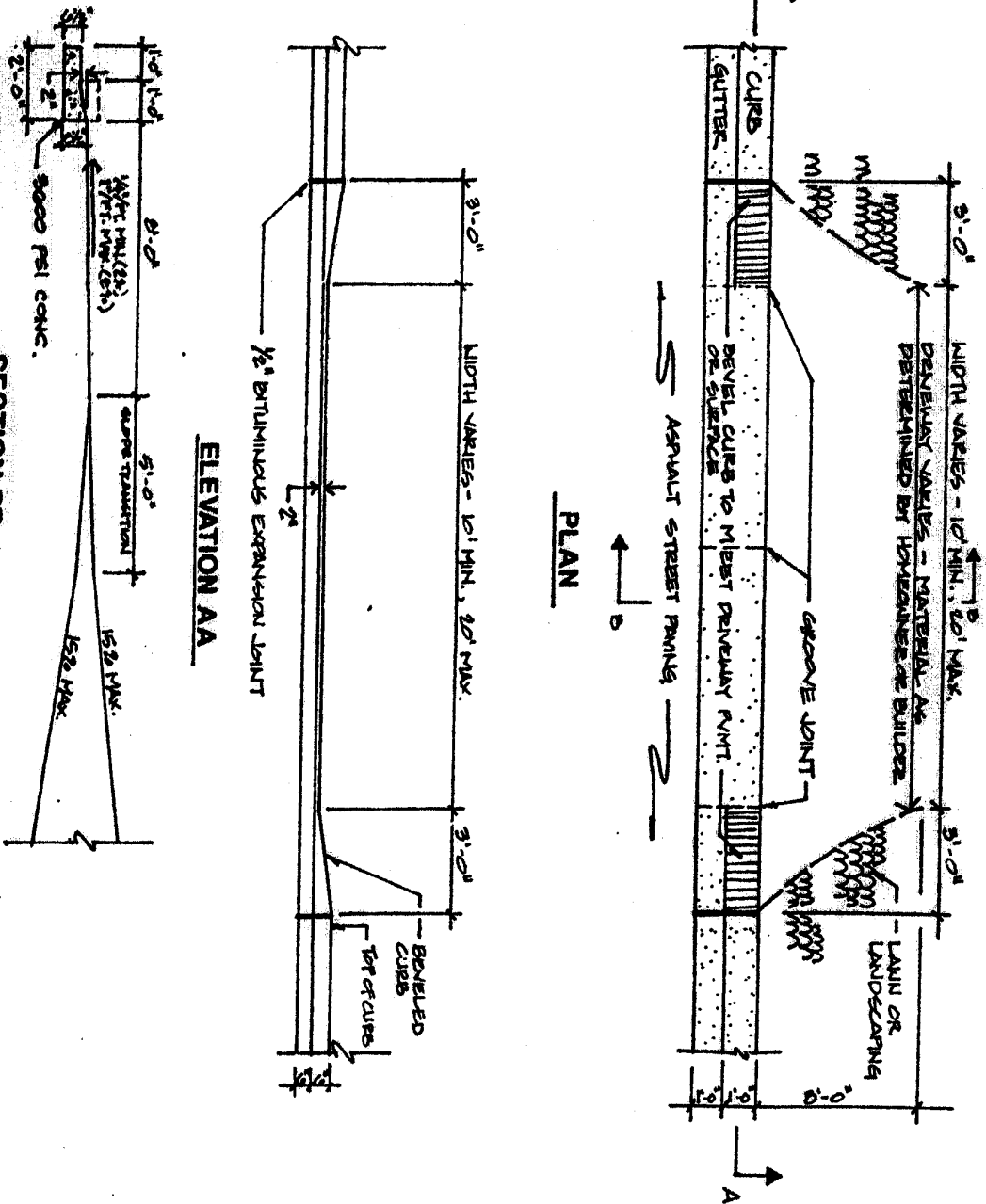


EXHIBIT D

**EXHIBIT D**

Tree Valuation Schedule and Reimbursement Obligations Relating to Damaged or Destroyed Existing Trees.

If a living tree is irreparably damaged, destroyed or removed by an Owner or a contractor or sub-contractor of Owner in violation of **Section 10.7(c)** of this Declaration, the Owner of such Home Site shall pay to the Association the amount set forth in the following schedule and the Association shall use such monies to rehabilitate, restore and/or replace, as appropriate, the damaged or destroyed trees to the extent practicable. Any of the reimbursement amount not used for this purpose shall be retained by the Association. The amount owed by an Owner hereunder shall be deemed a special assessment against such Owner's Home Site. For purposes of this Tree Valuation Schedule, the tree's trunk diameter is measured at twenty (24) inches above existing grade level. Trunk diameters that fall between any two sizes presented in the Tree Valuation Schedule shall be assigned a value calculated proportionally.

TREE VALUATION SCHEDULE

<u>Trunk Diameter (inches)</u>	<u>Cross Section (square inches)</u>	<u>Deciduous Tree (100% value)</u>	<u>Evergreen Tree (100% Value)</u>
6	28.26	\$244.99	\$349.95
8	50.24	\$436.90	\$622.14
10	78.50	\$681.25	\$792.09
12	113.04	\$981.00	\$1,399.82
15	176.63	\$1,582.36	\$2,187.27
20	314.00	\$2,725.00	\$3,888.38
30	706.50	\$6,131.25	\$8,748.84
48	1,808.64	\$15,696.00	\$22,397.04

A qualified arborist and/or landscape architect, at the applicable Owner's expense, shall evaluate the quality of the damaged or destroyed tree(s), as they would have existed prior to their being damaged or destroyed, using the three (3) criteria listed below. An average of the three (3) percentage values resulting from such evaluation will render the final percentage value to be multiplied by the corresponding one hundred percent (100%) value listed in the Tree Valuation Schedule for the appropriate tree type (*i.e.*, evergreen or deciduous) and size listed in the Tree Valuation Schedule. The three (3) criteria to be used by the arborist or landscape architect retained for such purpose by the Lot Owner are as follows:

(a) Location and Use:

Integral to the design and overall aesthetic appeal of the Lot  
\_\_\_\_\_ 100%

Incidental to the design and overall aesthetic appeal of the Lot  
\_\_\_\_\_ 50%

(b) Physical Condition:

Healthy and vigorous, free of defects and insect infestation  
\_\_\_\_\_ 100%

Diseased or waning, but exhibiting the potential for survival  
\_\_\_\_\_ 20%

(c) Tree Shape and Form:

Large, spreading canopy and well-proportioned form  
\_\_\_\_\_ 100%

Small canopy, but exhibiting potential for improved form  
\_\_\_\_\_ 50%

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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**  
**FOR**  
**MORROCROFT ESTATES**

**DRAWN BY AND MAIL TO: BOX 225**  
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