

(This Declaration was recorded in the Register of Deeds Office, Mecklenburg County on October 12, 1971, Book\_\_\_\_Page\_\_\_\_.)

# **NORTH CAROLINA DECLARATION OF MECKLENBURG COUNTY COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made and executed this 29th day of July, 1971, by DONALD J. SCHOLZ & COMPANY, a Delaware corporation (hereinafter referred to as the "Developer").

***WITNESSETH:***

WHEREAS, the Developer is the fee simple owner of certain real property located in Sharon Township, Mecklenburg County, Charlotte, North Carolina, as described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Properties"), and desires to develop therein a residential community together with common lands and facilities for recreational purposes for the benefit of such community;

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common lands and facilities, and to this end, desires to subject the Properties to the covenants, restrictions, easements, charges and liens Thereinafter referred to collectively as the "Restrictions") as hereinafter set forth, for the benefit of the Properties and each owner thereof;

WHEREAS, the Developer has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the community facilities, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created;

WHEREAS, the Developer has incorporated or intends to incorporate under the laws of the State of North Carolina, as a non-profit corporation, the Quail Hollow Homeowners Association, Inc. for the purpose of exercising the functions aforesaid; and

WHEREAS, the Developer desires that the Restrictions shall run with, burden, and bind the Properties;

NOW, THEREFORE, the Developer hereby declares the Properties are and shall be held, transferred, sold, conveyed, occupied and used subject to the Restrictions hereinafter set forth, for and during the period of time hereinafter specified.

## ***ARTICLE I***

### ***Definitions***

The following words when used in this Declaration or any Supplement hereto (unless the context shall prohibit) shall have the following meanings:

- a. "Architectural Committee" shall mean and refer to the committee of persons appointed pursuant to Article IX to supervise the preservation of the architectural and esthetic values of the properties.
- b. "Association" shall mean and refer to the Quail Hollow Homeowners Association, Inc. , its successors and assigns.
- c. "Common Areas" shall mean and refer to those areas of land designated "Common Area" or "Common Open Space" on any recorded subdivision plat of The Properties. Said areas are intended to be devoted to the common use and enjoyment of the members of the Association, as herein defined, and are not dedicated for use by the general public.
- d. "Developer" shall mean and refer to Donald J. Scholz Company, a Delaware corporation, and any successor to all or substantially all of its business of developing the Quail Hollow Estates community.
- e. "Established Drainage" shall mean and refer to the drainage pattern existing at the time of the completion of the grading of The Properties or any part thereof, including such planting of vegetation as may have been made or designed by the Developer.
- f. "Living Unit" shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family, whether as a single family house or a unit in an apartment building or townhouse building.
- g. "Lot" shall mean and refer to any plot of land intended and subdivided for a detached single family residence shown upon one of the recorded subdivision maps of The Properties, but shall not include the Common Areas.
- h. "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article II. Section I of this Declaration.
- i. "Mortgage" shall mean and refer to any mortgage, deed of trust or similar instrument granted as security for the performance of any obligation.
- j. "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such Living Unit is situated upon its own individual Lot.
- k. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, Living Unit or Multifamily Structure but shall not mean or refer to any mortgagee or subsequent holder of

a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.

1. "Parcel" shall mean and refer to any plot of land intended and subdivided for a Multifamily Structure.
- m. "Party Fence" shall mean and refer to a fence situated or intended to be situated, on the boundary line between adjoining properties.
- n. "Party Wall" shall mean and refer to the entire wall, all or a portion of which is used for the support of each adjoining property, situated, or intended to be situated, on the boundary line between adjoining properties.
- o. "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article III hereof.
- p. "Structure" shall mean and refer to any thing or device [other than trees, shrubbery, which is less than two (2) feet high if in the form of a hedge, and landscaping] the placement of which upon any Lot or Parcel may affect the appearance of such Lot or Parcel, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall, hedge more than two (2) feet in height, signboard or any temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot or Parcel. "Structure" shall also mean and refer to (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot or Parcel, or which affects or alters the now of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot or Parcel, and (ii) any change in the grade of any Lot or Parcel of more than six (6) inches from that existing at the time of purchase by an Owner.

## **ARTICLE II**

### ***Membership and Voting Rights***

Section 1. Every Owner of a Lot, Living Unit or Multifamily Structure which is subject to assessment shall be a member of the Association; provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot, Living Unit or Multifamily Structure which is subject to assessment.

Section 2. The Association shall have three (3) classes of voting membership:

- a. Class A. Class A members shall be all Lot and Living Unit Owners (with the exception of the Developer and Owners of Multifamily Structures) and shall be entitled to one vote for each Lot or Living Unit owned. When more than one person holds an interest in any Lot or Living Unit, all persons shall be

- members. The vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Living Unit.
- b. Class B. The Class B members shall be the Owners of Multifamily Structures, and each Owner shall be entitled to one vote for each Living Unit in a Multifamily Structure so owned.
  - c. Class C. The Class C member shall be the Developer, and shall be entitled to a total number of votes equal to the total number of votes of all Class A members and Class B members plus one, so that the Developer will have a number of votes equal to a majority of the total votes of all members of the Association. The Class C membership shall cease and terminate at such time that the Developer owns no Lot, Living Unit or Multifamily Structure in the Properties.
  - d. Condominium Units. If a Multifamily Structure has been submitted to the condominium form of ownership pursuant to the North Carolina Unit Ownership Act (Chapter 47A of the General Statutes of North Carolina), the owner of each Condo-Condominium Living Unit in such Multifamily Structure shall be a Class A member and there shall be no Class B member with respect to such Multifamily Structure.

### **ARTICLE III**

#### ***Property Subject to this Declaration: Additions Thereto***

Section 1. Existing Property. The real property subject to this Declaration is all that property located in Sharon Township, Mecklenburg County, Charlotte, North Carolina, as described in Exhibit A attached hereto and made a part hereof.

Section 2. Additions to the Properties by the Association. Additional land may be annexed to the Properties pursuant to the assent of two-thirds of the Class A membership, two-thirds of the Class B membership and two-thirds of the Class C membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. In the event that two-thirds ( $\frac{2}{3}$ ) of the Class A membership or two-thirds ( $\frac{2}{3}$ ) of the Class B membership or two-thirds ( $\frac{2}{3}$ ) of the Class C membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat. Such annexation shall be effectuated by filing for record among the Land Records of Mecklenburg

County, North Carolina, a Supplemental Declaration with respect to such additional land.

Section 3. Additions to The Properties by Developer. Notwithstanding the provisions of Section 2 of this Article III, if the Developer, its successors and assigns, should develop additional lands contiguous to The Properties, such additional lands may be annexed to The Properties at any time prior to the expiration of fifteen (15) years after the date of this Declaration without the assent of the Class A members or the Class B members by filing for record among the Land Records of Mecklenburg County, North Carolina, a Supplemental Declaration with respect to such additional lands.

Section 4. Mergers. 'Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger; provided, however, that such merger shall have been approved by the vote of two-thirds of the Class A membership, two-thirds of the Class B membership and two-thirds of the Class C membership, if any, at a meeting duly called for such purpose, in accordance with the provisions of Section 2 of this Article III. The provisions of Section 2 of this Article III with respect to notice, quorum, adjournment and proxies shall apply to any vote required under this Section 4. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within The Properties together with covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants established by this Declaration within The Properties except as hereinafter provided.

Section 5. Other Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its By-Laws, the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association, may file for record among the Land Records of Mecklenburg County, North Carolina, a Supplementary Declaration so effecting the same.

Section 6. Effect of Annexation. In the event that any additional lands are annexed to The Properties pursuant to Section 2, Section 3 or Section 5 of this Article III, (a) such additional lands shall be considered within the definition of "The Properties" for all purposes of this Declaration, and (b) all voting of each class of the membership of the Association, and all voting by the Owners hereunder, shall be aggregated as a single vote, it being intended that any voting requirements need not be fulfilled separately for the real property described in Exhibit A and for each tract of additional lands described in a Supplemental Declaration.

## **ARTICLE IV**

### ***Property Rights in the Common Areas***

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every Owner shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot, Living Unit and Multifamily Structure.

Section 2. Title to Common Areas. The Developer may retain the legal title to the Common Areas until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association shall be able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey the Common Areas to the Association, free and clear of all encumbrances and liens, except those created by or pursuant to this Declaration, not later than December 31, 1975.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said properties and the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder, provided, however, that no such borrowing or mortgaging shall be made unless approved by the vote of two thirds ( $\frac{2}{3}$ ) of the Class A membership, two-thirds of the Class B membership and two-thirds of the Class C membership, if any, at a meeting duly called for such purpose, in accordance with the provisions of Section 2 or Article III. The provisions of Section 2 of Article III with respect to notice, quorum, adjournment and proxies shall apply to any vote required under this Section 3 (a);
- b. the right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure;
- c. the right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any member in the recreational facilities for any period during which any assessment remains unpaid, and for any period not to exceed thirty days for any infraction of its published rules and regulations;
- d. the right of the Association to charge reasonable admission fees, guest fees or other fees for special uses that might be made of certain parts of the Common Areas by members of the Association or by persons outside the community;
- e. the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, pro-

- vided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by members entitled to cast two-thirds ( $\frac{2}{3}$ ) of the votes of the Class A membership, two-thirds ( $\frac{2}{3}$ ) of the votes of the Class B membership and two-thirds ( $\frac{2}{3}$ ) of the votes of the Class C membership, if any, has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the action is sent to every member at least sixty (60) days in advance of any action taken; and
- f. the right of the Developer prior to the conveyance of the Common Areas to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, and other utilities.

Section 4. Delegation of Use. Any Owner may delegate his rights of enjoyment to the Common Areas and facilities to the members of his family, tenants, or contract purchasers (and members of the family of any tenant or contract purchaser) who reside on the property or to such other persons as may be permitted by the Association.

Section 5. Obligations of the Association. The Association (a) shall operate and maintain, for the use and benefit of all members of the Association, all Common Areas and facilities and improvements developed thereon and (b) shall maintain, mow the grass on, and replace all dead or destroyed original landscaping on, all Lots and Parcels.

## **ARTICLE V**

### ***Covenant for Maintenance Assessments***

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, or itself and its successors and assigns, and for each Lot, Living Unit or Multifamily Structure owned within The Properties, hereby covenants, and each Owner of any Lot, Living Unit or Multifamily Structure by acceptance of a deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fee, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fee, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent

assessments shall not pass to his successors in title (other than as a lien on the 'land) unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the resident's in The Properties and in particular for services and facilities related to the use and enjoyment of the common areas, including, but not limited to, the payment of taxes and insurance on said common areas; for repair, replacement and additions to improvements on said common areas, including cost of labor, equipment, materials, management and supervision there of; for the cost of utilities and fuel used in operating facilities on said common areas; and in addition there to for equipment and personnel.

**Section 3. Basis and Maximum of Monthly Assessments.**

- a. Commencing with the conveyance of the first Lot, Living Unit or Parcel from the Developer to an Owner and until January 1 of the year immediately following such conveyance, the monthly assessment imposed upon each member of the Association shall be as follows: (1) Owner of each Apartment Unit - \$28. 00; (2) Owner of each Townhouse - \$30. 00; (3) Owner of each Single Family Lot - \$45. 00. The monthly assessment may be increased as hereinafter provided in Section 4 of this Article V.
- b. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the monthly assessment for any year in an amount below the maximum monthly assessment set forth in Section 3(a), as the same may be increased pursuant to Section 4 of this Article V, and may provide for the payment of such assessment on an annual basis, rather than in monthly installments, if the amount of such annual assessment does not exceed a sum equal to twelve times the monthly assessment provided in Paragraph (a) above, provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such assessments at an amount sufficient to maintain and operate the Common Areas and facilities.

**Section 4. Change in Maximum of Monthly Assessments.** The Board of Directors of the Association may, without a vote of the members of the Association, prospectively increase the maximum of the monthly assessments [fixed by Section 3(a) hereof] to an amount which is the greater of (i) five percent (5%) above the monthly assessments for the previous December or (ii) the monthly assessment fees stated in the Section 3(a) of this Article V. The Association may prospectively increase the maximum of the assessments above the amount permitted pursuant to the preceding sentence, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Special Assessments for Capital Improvements. In addition to the monthly assessments authorized by Section 3 of this Article V, the Association may levy in any assessment year a special assessment (which must be fixed at one uniform rate for each Lot or Living Unit) applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 6. Quorum for any Action Authorized Under Section 4 and 5. The quorum required for any action authorized by Sections 4 and 5 of this Article V shall be as follows: At the first meeting called, as provided in Sections 4 and 5 of this Article V, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting, may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Monthly Assessments; Due Dates. The monthly assessments as to any Lot or Living Unit shall commence on the first day of the month following the conveyance of such Lot or Living Unit (or the Multifamily Structure containing such Living Unit) from the Developer to an Owner and shall be due and payable there-after on the first day of each calendar month thereafter. The due date of any special assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. In the event of any change in the monthly assessment as set forth herein, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot, Living Unit or Multifamily Structure for each assessment period at least sixty (60) days in advance of such date or period and shall, at that time, prepare a roster of the Lots, Living Units and Multifamily Structures and assessments applicable there-to which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid, or the amount of any unpaid as-

assessment. A reasonable charge may be made by the Association for the issuance of such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien; Remedies of Association. If any assessment is not paid on the date when due (as specified in Section 7 hereof), then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot, Living Unit or Multifamily Structure which shall bind such Lot, Living Unit or Multifamily Structure in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (80%) per annum and the Association may bring legal action against the Owner personally obligated to pay the same or may enforce or fore-close the lien against the property; and in the event a judgment is obtained, such judgment shall include interest on the assessments above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action. No Owner of a Lot, Living Unit or Multi-family Structure may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his or its Lot, Living Unit or Multifamily Structure.

Section 10. Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot, Living Unit or Multifamily Structure shall not affect the assessment lien. However, the sale or transfer of any Lot, Living Unit or Multifamily Structure by fore-closure of any first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot, Living Unit or Multifamily Structure from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. The following properties subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority, and devoted to public use; (b) all Common Areas, and (c) all properties owned by the Developer.

## **ARTICLE VI**

### ***Party Walls or Party Fences***

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction of the homes upon The Properties and any replacement thereof. - In the event that any portion of any structure, as originally constructed by the Developer, including any party wall or fence, shall protrude over an adjoining Lot, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining Lot or Lots, and the Owners shall neither maintain any action for the removal of a party wall or fence or projection, nor any action for damages. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements in conformance with the original structure, party wall or fence constructed by the Developer. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who make use of the wall or fence in pro-portion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence may restore it, and if the Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article, each party shall choose one

arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and be binding upon the parties.

## ***ARTICLE VII***

### ***Exterior Maintenance***

In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon as provided in Article VIII hereof, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the improvements erected thereon. The cost of such work or maintenance shall be added to and become part of the assessment to which such Lot is subject.

## ***ARTICLE VIII***

### ***Maintenance of Property***

Each Owner of a Lot shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair, including but not limited to, the painting (or other appropriate external care) of improvements thereon, all in a manner and with such frequency as is consistent with good property management. Each Owner of a lot shall maintain the landscaping of his Lot at a level and quality at least equal to the landscaping plan for such Lot prepared by the Developer for the initial Owner of such Lot.

## ***ARTICLE IX***

### ***Architectural Control***

No Structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or exterior alteration therein be made, nor any landscaping work be performed, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an Architectural Committee composed of three (3) or more persons. So long as the Developer owns one or more Lots, the Developer shall have the right to appoint all the members of the Architectural Committee. At and after such time that the Developer does not own any Lot (or at such earlier time designated in writing by the Developer to the Board of Di-

rectors), the Board of Directors of the Association shall appoint all the members of the Committee.

## **ARTICLE X**

### ***Protective Covenants***

#### Section 1. Prohibited Uses.

- a. No noxious or offensive acts shall be conducted in or upon, or suffered to be conducted in or upon any Lot or Parcel, nor shall any nuisance be maintained, or suffered to be maintained, in or upon any such Lot or Parcel.
- b. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise if the resulting Lot or Lots will have a frontage on the abutting street which is less than the least amount of frontage of any of the Lots in The Properties on an abutting street or if the resulting Lot or Lots will have a total area which is less than the least amount of area of any of the Lots in the Properties.
- c. No facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Lot or Parcel and no external or outside antennas of any kind shall be permitted or maintained, except customary household television antenna and except as may be required by public utility companies or governmental authorities.
- d. No motor vehicles (other than that of a private passenger type), boat, boat trailer, house trailer, trailer or any similar items shall be stored in or upon any Lot or Parcel unless the same is stored in a garage so as to be entirely hidden from the view of adjacent and surrounding property, or unless placed upon that portion of the Common Areas designated from time to time by the Board of Directors of the Association for the storage of such items.
- e. No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily, or permanently, as a residence on any Lot or Parcel.
- f. No Lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot or Parcel, except building materials during the course of construction of any Structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, in such a place so as to provide access to persons making such pickup. At all other times such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the Lots and Parcels.

- g. No water pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot or Parcel above the surface of the ground, except hoses and movable pipes used for irrigation purposes. No Lot or Parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydro-carbons, minerals, gravel, or earth.
- h. No tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot or Parcel by any Owner other than the Developer without the express written authorization of the Architectural Committee. The Architectural Committee, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Properties. If it shall deem appropriate, the Architectural Committee may mark certain trees, regardless of size, as not removable without written authorization.
- i. No birds, animals or insects shall be bred, raised, kept or maintained on the Properties except for domestic purposes. Under no circumstances shall any commercial or business enterprise involving the use of animals be conducted on the Properties. The Architectural Committee may, from time to time, publish and impose reasonable regulations setting forth the type and number of domestic animals that may be kept on any Lot or Parcel.
- j. No sign or other advertising device of any nature shall be placed upon any Lot or Parcel except as provided herein. The Architectural Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. Notwithstanding the foregoing, a family or professional name plate, a name and address plate, or an address plate, none of which shall exceed 240 square inches in area, and a temporary sign, not to exceed eight (8) square feet in area, for the purpose of advertising the property for sale or rent, may be displayed on a Lot or Parcel. The Architectural Committee may establish other criteria with respect to the size, form and location of such signs.
- k. Use of a Lot or Parcel for any purpose other than that for residential purposes and other than that of the Developer's construction office or sales office shall not be permitted without the specific written approval of the Architectural Committee. The Architectural Committee in its discretion, upon consideration of the circumstances in each case, and particularly the affect on surrounding Lots or Parcels, may permit the Properties to be used in whole or in part for some purpose other than as residential. No such use shall be permitted, however, unless it is considered by the Architectural Committee to be compatible with a high quality residential neighborhood.
- l. No clothing or any other household fabrics shall be hung in the open on any Lot or Parcel unless the same are hung from an umbrella or retractable clothes hanging device which is removed from view when not in use and unless the same is enclosed by a fence or other enclosure at least six inches higher than such hanging articles, provided such fence or other enclosure is approved by the Architectural Committee. No machinery shall be placed or

operated upon any Lot or Parcel except such machinery as is usual for residential purposes.

- m. No change in the exterior colors of any dwelling house (including townhouses and apartment buildings) shall be made without the express written authorization of the Architectural Committee.

Section 2. Prohibited Structures. No Structure other than a detached dwelling, a private garage [designed for use by not more than two (2) automobiles], a swimming pool, patios, walkways, customary household television antenna, and fences and such other structures as may be appurtenant to said specified Structures, shall be erected, placed or maintained on any Lot without the express written authorization of the Architectural Committee. No dwelling shall be erected on any Lot by any party other than the Developer unless the architectural plans and specifications for such dwelling have been approved in writing by the Architectural Committee as being in harmony with the other dwellings in The Properties.

Section 3. Size of Single-Family Detached Dwelling. No dwelling shall be erected on any Lot which has a total floor area for the main structure, exclusive of porches, garages, and carports, of less than one thousand seven hundred (1,700) square feet, unless otherwise approved in writing by the Architectural Committee.

Section 4. Easements. The Developer, for itself and its successors and assigns, hereby creates easements over, under, in, on, and through the "easement area", as hereinafter defined, of each Lot or Parcel for the installation, construction, reconstruction, relocation, removal, maintenance, repair, operation, and inspection of sewer, water, drainage, electric, gas, telephone and cable telephone facilities and the wires, lines, conduits and other necessary and proper attachments in connection therewith, for the benefit of the adjoining land owners, the Developer, any Federal, State or local authority, commission, or agency having jurisdiction thereover and any corporation, either public, quasi-public or private, supplying or servicing such facilities. The term "easement area," as used herein, shall mean and refer (i) to a ten (10) foot wide strip of land parallel and adjacent to each front and rear lot line of each Lot or Parcel and five (5) feet in width from each side lot line of each Lot or Parcel, and (ii) such additional areas on each Lot or Parcel with respect to which easements are shown on the recorded subdivision plat relating thereto.

Section 5. Drainage. No person, except the Developer or its duly authorized agents, shall obstruct, alter or in any way modify the Established Drainage from, on or over any Lot or Parcel, nor shall any person obstruct, alter or in any way modify any drainage swales, devices and/or facilities now installed on any Lot or Parcel, nor shall any Structure be erected, placed or maintained which shall in any way obstruct the Established Drainage.

## **ARTICLE XI**

### **General Provisions**

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, Living Unit, Multifamily Structure or Parcel subject to this Declaration, their respective legal representative, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by Owners holding not less than two-thirds (2/3) of the votes of the membership has been recorded, agreeing to terminate or change said covenants and restrictions in whole or in part; provided, however, that no such agreement to terminate or change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than ninety percent (90%) of the votes of the membership at any time until the end of the initial thirty (30) year term and thereafter by an instrument signed by the Owners holding not less than two-thirds (2/3) of the votes of the membership. Any amendment must be properly re-corded to be effective.

#### Section 2. Remedies.

- a. The Association, or any Owner, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot ' Living Unit, Multifamily Structure or Parcel violating these covenants and restrictions and shall constitute a lien on the Lot, Living Unit, Multifamily Structure or Parcel collectible in the same manner as assessments hereunder.
- b. Violation or breach of any Restriction contained in this Declaration shall give the Developer or the Architectural Committee, their respective legal representatives, heirs, successors and assigns, in addition to all other remedies, the right, upon fifteen (15) days notice, to enter upon the land upon or as to which such violation or breach exists, and summarily to abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed guilty of any manner of trespass, or be liable for any damage, for such entry, abatement or removal. Nothing herein contained shall be deemed to affect or limit the rights of any Owner to enforce the Restrictions by appropriate judicial proceedings.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this instrument shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

Section 4. Assignability. Developer, its successors and assigns, shall at all times have the right to fully transfer and assign any or all of its rights and powers under this Declaration, subject to Developer's obligations hereunder

Section 5. Non-Waiver. The failure of the Developer, the Architectural Committee or any Owner, or their respective legal representatives, heirs, successors and assigns, to enforce any Restriction contained in this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto.

Section 6. Construction and Interpretation. The Developer and the Architectural Committee to the extent specifically provided herein, may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Developer and the Architectural Committee shall take into consideration the best interests of the Owners to the end that the Properties shall be preserved and maintained as a high quality community.

Section 7. Severability. All of the covenants, conditions, restrictions, and reservations contained in this Declaration are hereby declared to be severable and a finding by any court of competent jurisdiction that any of them or any clause or phrase thereof, is void, unlawful or unenforceable shall not affect the validity or enforceability of any other covenants, conditions, restrictions, reservations, or clause or phrase thereof.

IN WITNESS WHEREOF, DONALD J. SCHOLZ & COMPANY has caused this instrument to be executed by C. Craven Hughes, its Vice President, and its corporate seal to be hereunto affixed and attested by \_\_\_\_\_ its Secretary, on the day and year first above written.

ATTEST:

DONALD J. SCHOLTZ & COMPANY

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
C. Craven Hughes, Vice President