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Book 1172  
Pages 1162 - 1189

COUNTY OF IREDELL

STATE OF NORTH CAROLINA

28 PAGE(S)

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Register Of Deeds

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CURTIS POND, LLC

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 11<sup>th</sup> day of November, 1999 by CURTIS POND, LLC, a North Carolina limited liability company, hereafter referred to as "Declarant".

62/28

STATEMENT OF PURPOSE

Declarant is the owner of certain property in Iredell County, North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference. Declarant desires to create thereon an exclusive residential community of single-family residences to be named CURTIS POND.

Declarant desires to insure the attractiveness of CURTIS POND and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within CURTIS POND and to provide for the maintenance and upkeep of all common areas in CURTIS POND. To this end the Declarant desires to subject the real property described herein to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common area in CURTIS POND, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect, and enhance the values and amenities in CURTIS POND, to insure the residents' enjoyment of the specific rights, privileges and easements in the common area, and to provide for the maintenance and upkeep of the common area.

To that end the Declarant has or will cause to be incorporated under North Carolina law, pursuant to the Articles of Incorporation CURTIS POND OWNERS' ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

CURTIS POND, LLC, joins in this Declaration to subject all property owned by them, respectively within the Development to the terms and provisions herein.

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

Drawn by/Mail to:

LandCraft Properties, Inc.  
201 N. Tryon Street  
Suite 2650  
Charlotte, N.C. 28202

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to CURTIS POND OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean all real property, easements and improvements owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is all of the area labeled as "Common Area" on the Maps and all roads and streets shown thereon, including those roads and streets depicted as "public" roads and streets on the Map; provided, however, said "public" roads and streets shall only be considered to be Common Area until such time as said roads and streets are finally accepted by the appropriate governmental authorities for maintenance purposes and shall be maintained by Declarant until accepted for maintenance by the applicable governmental entity. The listing and description herein of the components of the Common Area is illustrative of Declarant's present plans only and is not a guaranty by Declarant or the Association that all or any part of such components will be constructed or installed by Declarant or the Association at any future time.

Section 3. "Declarant" shall mean and refer to CURTIS POND, LLC, its successors and assigns, and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by CURTIS POND, LLC hereafter when such designee become vested with title to two or more undeveloped Lots for the purpose of causing dwellings to be constructed thereon, and any such successor in title to CURTIS POND, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and un conveyed), but no longer. CURTIS POND, LLC hereby designates Don Galloway Homes, Eastwood Homes, and Keystone Builders as "Declarant" hereunder (but solely in connection with said term as it is applied in Article IV, Article V, Article VI and in Article VII, Sections 6 and 9 herein) for so long as said company is the owner of any Lots and is not in material breach of its contractual agreement to purchase Lots from CURTIS POND, LLC.

Section 4. "Development" shall mean and refer to CURTIS POND, a single-family residential development proposed to be developed on the Properties by the Declarant.

Section 5. "Lot" shall mean and refer to any plot of land with delineated boundary lines, appearing on the Maps with the exception of the Common Area and public roads and streets.

Section 6. "Maps" shall mean and refer to the map of the Property as recorded in Map Book 33 at Page 109 in the Iredell County, North Carolina, Public Registry, and the maps of any other portions of the Properties which may constitute additional Phases (if annexed pursuant to Article II hereof), which may be recorded by Declarant in the Iredell County, North Carolina, Public Registry hereafter.

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

Section 8. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 9. "Mortgagee" shall mean the owner and holder of a Mortgage at the time said term is being applied.

Section 10. "Owners" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot including the Declarant if it owns any Lots and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Property" or "Properties" shall mean and refer to the Phase I Property and additional real property which may be dedicated in additional Phases as described in Article II hereof, and such other property as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF  
THE CURTIS POND OWNERS' ASSOCIATION, INC.

Phase I Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Iredell County, North Carolina, and is more particularly shown on the Map recorded in Map Book 33 at Page 109 in the Iredell County Public Registry.

Section 2. Additional Properties.

(a) The Phase I Property is a portion of the real property described on Exhibit "A" which is attached hereto (the "Base Tract"). The remaining portion of the Base Tract, exclusive of the Phase I Property, or any part thereof, may be brought within the scheme of this Declaration in one or more additional Phases and within the jurisdiction of the Association in future stages of development, without the consent of the Association or its members, provided that (i) such annexations occur within six (6) years after the date of the filing of this instrument, and (ii) so long as there is at least one Federal Housing Administration ("FHA") or U.S. Department of Veterans Affairs ("VA") insured loan on a Lot within the Properties, such annexations are determined by the FHA or VA, as applicable, to be in accord with the general plan heretofore approved by them, as applicable.

(b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Properties in the Iredell County, North Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. At the time of the filing of each such Supplementary Declaration, there shall be recorded in the Iredell County, North Carolina, Public Registry a Map or Maps which show the boundary line of each Lot annexed pursuant to such Supplementary Declaration and which delineates all Common Area annexed pursuant to such Supplementary Declaration.

(c) The obligation for Owners of Lots in any portion of the Additional Properties to pay the assessments described in Article V hereof shall commence upon the filing of the Supplementary Declaration in the Iredell County, North Carolina, Public Registry annexing such portion. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Phase I Property, and such voting rights shall commence as of the date of the filing of the Supplementary Declaration.

ARTICLE III

PROPERTY RIGHTS

Section 1. Ownership of Common Area. After the conveyance of 75% of the Lots by Declarant to other Owners or at an earlier date selected by the Declarant or as may be required by the Federal Housing Administration or the U.S. Department of Veterans Affairs, Declarant shall convey the Common Area to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Area (including the Common Area streets and roads) shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public, subject to the provisions of Article VII hereof; provided, however, that Declarant or the Association may offer roads and streets previously a part of the Common Area for dedication to the appropriate governmental authorities and if such roads or streets are accepted for dedication by such governmental authorities then such roads or streets shall then be considered dedicated to the use and enjoyment of the public. No additional Common Area will be created, granted or developed or otherwise established other than as described herein or as shown on the Maps without the prior consent of the applicable governmental authorities. Furthermore, no Common Area shall be converted for any other purpose or use than for the common use and enjoyment of the Owners, without the consent of the applicable governmental authorities.

Section 2. Owners' Rights to Use and Enjoy Common Area. Each Owner shall have the right to use and enjoy the Common Area which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following:

- (a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Area to insure the safety and rights of all Owners;
- (b) the right of the Association to suspend the voting rights of any Member in the Association and right to suspend an Owner's right to use the Common Area for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty days for any infraction of its published rules and regulations; and
- (c) the right of the Declarant or the Association to grant utility, drainage and other easements of the type and for the purposes set forth in Article IX across the Common Area.

Section 3. Owners' Easements for Ingress and Egress. Every Lot shall be conveyed with a perpetual, non-exclusive right to use any roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area, or dedicated, or intended to be dedicated, to the public and accepted for maintenance by the appropriate governmental authority, for the purpose of providing access to and from each Lot.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association (a copy of which is attached hereto as Exhibit C), his right of enjoyment to the Common Area and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on his Lot.

ARTICLE IV  
MEMBERSHIP, VOTING RIGHTS AND CONTROL  
OF THE ASSOCIATION

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

Section 2. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 3. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Development at a compensation to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days' prior written notice to the manager without payment of a termination fee.

Section 4. Maintenance. Certain features that are deemed common amenities, being of benefit to all Lots, shall be maintained exclusively by the Association. Said common amenities include, without limitation, the entrance monument and landscaping, interior parks, pool, clubhouse, common walks, parking areas, landscaping, landscape furniture, and picnic tables. The Association shall also maintain all utilities and all storm and drainage easements located within the Common Areas, together with common amenities not maintained by public entities or utilities.

The Association shall not be responsible for the maintenance of any Lots or the improvements within the boundaries thereof. The Owner thereof shall be responsible for same.

Section 5. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the

periodic maintenance, repair and replacement of all Common Areas which the Association is obligated to maintain. Such reserve fund shall be maintained out of the annual assessments described in Article V hereof.

Section 6. Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by a Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. A Declarant shall be entitled to three (3) votes for each Class B Lot owned by it. The Class B Lots shall be converted to Class A Lots on the happening of either of the following events, whichever occurs earlier: (i) when the total votes outstanding in the Class A Lots equals the total votes outstanding in the Class B Lots, or (ii) December 31, 2005.

Section 7. Amendment. Notwithstanding the provisions of Section 6 above, so long as CURTIS POND, LLC owns any Lot, the Bylaws to the Association may not be amended without its written consent. In the event Federal Housing Administration or U.S. Department of Veterans Affairs insured mortgage loans have been arranged for and provided to purchasers of Lots, then as long as any Class B Lot exists, as provided in Article III hereof, the amendment of this Declaration will require the prior approval of the Federal Housing Administration or the U. S. Department of Veterans Affairs, as applicable.

Section 8. Board of Directors. The Association shall be governed by a Board of Directors in accordance with the Bylaws. Notwithstanding the provisions of Section 6 above, CURTIS POND, LLC shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs:

- (1) CURTIS POND, LLC has sold seventy-five percent (75%) of the Lots, or
- (2) Five (5) years from the date this Declaration is recorded in the Iredell County Public Registry.
- (3) CURTIS POND, LLC surrenders the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by CURTIS POND, LLC in the Iredell County Public Registry.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

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

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used as

follows:

- (a) to maintain any trails or paths in the Common Area in an easily 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;
- (b) to maintain the landscaping, including, without limitation, the mowing of lawns, planting and maintenance of shrubs, flowers and other plants, and watering on and within the boundaries of the Common Area;
- (c) to maintain the clubhouse and pool in the Common Areas, common walks, common signs and development statement pieces or entranceways (including any monuments erected at said entranceways);
- (d) to maintain any and all retention ponds, drainage pipes, inlets, basins, ditches, swales and other facilities installed upon the Common Area;
- (e) to keep the Common Area clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, and to maintain the landscaping thereon including any necessary removal and replacement of landscaping;
- (f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Area from theft, vandalism, fire and damage from animals;
- (g) to pay all ad valorem taxes levied against the Common Area and any property owned by the Association;
- (h) to maintain all recreational and related facilities, including picnic tables, located within the Common Areas as a common amenity;
- (i) to erect and maintain an entrance monument at the main entrance to the Development and a sign or signs on the Common Area, said signs to be of standard construction and quality.
- (j) to pay the premiums on all hazard insurance carried by the Association on the Common Area and all public liability insurance carried by the Association pursuant to the Bylaws;
- (k) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (l) to maintain a contingency reserve equal to 10% of the sum of the amounts described in subsections (a) through (o) above in order to fund unanticipated expenses of the Association.

Section 3. Maximum Annual Assessment. Until January 1 of the calendar year following the conveyance of the first Lot by the Declarant to another Owner, the maximum annual assessment for each Lot shall be Two Hundred and Fifty Dollars (\$250.00).

- (a) The maximum annual assessments established above may be increased, effective January 1 of each calendar year following the conveyance of the first Lot by the Declarant to another Owner, without a vote of the membership, by an amount which is the greater of (i) Five percent (5%) per year over the previous year, or (ii) the percentage increase between the first and last months of the thirteen (13) month period terminating at the end of the third (3rd) quarter of the previous calendar year in the Consumer Price Index for All Urban Consumers, South (1982-84 = 100) All Items, relating to urban populations of 50,000-450,000 (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics. In the event the CPI shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the amount of the maximum annual assessment shall be made with the

use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or, failing such publication, by statistical information. If the CPI is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living. If the annual assessment is not increased in any given year by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the assessment may be increased by that amount in a future year at the election of all members of the Board of Directors without a vote of the membership, in addition to the maximum increase permitted under the terms of the preceding sentence.

(b)  
(c)

Notwithstanding the limitations set forth in Section 3(a) above, from and after January 1 of the calendar year immediately following the conveyance of the first Lot by Declarant to another Owner, said maximum annual assessments may be increased without limitation if such increase is approved by Members entitled to no fewer than sixty-seven percent (67%) of all of the votes of each Class of membership. Such voting may be represented in person or by proxy at a meeting duly called for this purpose.

The Board of Directors may fix the annual assessments at such amounts as they deem necessary to fulfill the purposes thereof; provided that such amounts shall not be in excess of the maximum amounts permitted herein.

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

Section 5. Assessment Rate. Except as set forth in the next sentence, both annual and special assessments must be fixed at a uniform rate for all Lots. Notwithstanding the foregoing, a Declarant owning any Class B Lots shall pay twenty-five percent (25%) of the otherwise applicable annual or special assessment for any such Lot(s).

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each Class of membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Association of the Common Area; provided, however, CURTIS POND, LLC reserves the right to commence the annual assessments on a later date which more closely coincides with the date maintenance of Common Areas begins or is necessary. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates 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 Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Damage Assessment. In the event the Association finds that an Owner has damaged any part of the Common Area such as roads which have not been accepted by governmental authorities for maintenance, the Association may levy an assessment on such Owner's Lot for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas including the common

roadways and cul-de-sacs serving the Development and the amount of said assessment shall be a lien with respect to said Lot.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of six percent (6%) per annum. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the Association's lien against the delinquent Owner's Lot, and interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Area or abandoning His Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgagee or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien or extinguish the requirement to pay all delinquent assessments owed relating to such Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure 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; provided, however, that the Board of Directors may in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Architectural Committee. Except for improvements made upon the Properties by a Declarant (including Don Galloway Homes, Eastwood Homes, and Keystone Builders), or except as otherwise provided upon this Declaration, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties nor shall any exterior addition to or change or alteration therein be made 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 the Architectural Control Committee. For purposes of this Article VI, CURTIS POND, LLC, Don Galloway Homes, Eastwood Homes and Keystone Builders, or a designated representative of each of said companies, shall function as the Architectural Control Committee (the "Committee") so long as said companies are Class B Members of the Association. After the termination of the said companies' Class B Membership, the Board of Directors of the Association shall appoint no less than three (3) and no more than five (5) members to the Committee to carry out the functions set forth in this Article. In the event the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Definitions. For purposes of this Article VI, the following terms shall have the following meanings unless the context clearly requires a different meaning:

- (a) "accessory building" means every detached garage, carport, boat shed, tool shed, storage or utility building, dog house, boat dock, well house, detached guest quarters, detached servants' quarters or other similar building or any other type of building constructed or placed on a Lot or incidental thereto, which is not a dwelling;
- (b) "buildings" means accessory buildings and dwellings;
- (c) "dwelling" means a building constructed for single-family residential use but excluding detached servants' quarters and guest quarters; and
- (d) "improvements" or "structures" mean buildings, walls, fences, decks, patios, planters, statues or

statuary, terraces, swimming pools, basketball courts/goals, tennis courts or anything else constructed or placed on a Lot.

Section 3. General Guidelines. The placement and construction of improvements on the Lots shall be subject to the following general guidelines:

- (a) Every dwelling constructed on a Lot shall contain a minimum of 1,000 square feet of fully enclosed floor space. For purposes hereof, the "fully enclosed floor area" of a dwelling shall exclude decks, patios, terraces, attached garages and carports, accessory buildings and porches.
- (b) Since the establishment of standard inflexible building setback lines for the location of dwellings on Lots tends to force construction of dwellings both directly behind and directly to the side of other dwellings with detrimental effects on privacy, preservation of important trees, etc., no specific setback lines are established by these covenants except as shown on the Maps, which comply with the regulations and guidelines of the applicable governmental authorities. In order to assure, however, that location of dwellings will be staggered where practical and appropriate, so that the maximum amount of view will be available to each dwelling; that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of large trees and fields and similar considerations, the Declarant reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements and utilities upon all Lots and every Lot within the subdivision; provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site and in any event all buildings shall be constructed beyond the minimum setback lines established on the Maps.
- (b) All storage areas and facilities must be screened and hidden from view.
- (c) Unless specifically otherwise approved in writing by the Committee, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot.
- (d) All structures approved by the Committee must be completed within one (1) year after the receipt of such approval; provided, however, the Committee may waive this requirement if construction delays have been caused by strikes, war, fire, Acts of God or other events which render the completion of construction within such time impossible.
- (e) All driveways, turning areas and parking areas shall be constructed of concrete or brick and must be completed prior to the occupancy of any dwelling on the Lot.

Section 4. Approval of Plans, Specifications, and Construction. No Improvement shall be erected, remodeled or placed on any Lot, except by a Declarant, until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Committee as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any improvements situated thereon and drainage arrangement; and
- (d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within architectural guidelines or bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

Prior to the commencement of any construction of an improvement on a Lot, final plans and specifications (including a site plan showing the location of the contemplated improvements on the Lot) for all improvements proposed to be constructed on a Lot which have been prepared by a qualified registered architect or reviewed, approved and sealed by a registered architect for the specific use of the Owner submitting such plans and specifications, shall be submitted to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the Committee-approved set of plans and specifications (specifically including, but without limitation, the above-described site plan) must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval as required herein shall be in writing. Once the Committee has approved the plans and specifications for the proposed improvements, the construction of such improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within the time set therefor by the Committee in the written approval, such approval shall be deemed rescinded and before construction of improvements can thereafter be commenced on the Lot in question, the plans and specifications therefor must again be approved by the Committee pursuant to this Article.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Such bulletins shall supplement this Declaration and are incorporated herein by reference. Current copies of the architectural standards bulletins shall be available to interested persons at the principal office of the Association for a reasonable cost.

Section 5. Enforcement. The Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in the Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein.

Section 6. Effect of Failure to Approve or Disapprove. If the Committee fails to approve or disapprove the design of any proposed improvements within forty-five (45) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article shall be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Committee if they contain erroneous data or present inadequate information upon which the Committee can arrive at a decision. Notwithstanding the foregoing, the Committee shall have no right or power, either by action or failure to act, to waive or grant any variance relating to any mandatory requirements specified in the Declaration.

Section 7. Right of Inspection. The Committee shall have the right, at its election, to enter upon any of the Lots during preparation, construction, erection, or installation of any improvements thereon to determine that such work is being performed in conformity with the approved plans and specifications.

Section 8. Limitation of Liability. Neither the Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this Declaration. The Committee's approval of any plans and specifications shall not constitute a representation, warranty, or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications neither the Committee, the members thereof, the Association, any member thereof, nor the Board assumes any liability or responsibility therefor, or for any defect in the structure constructed from such plans or specifications. Neither the Committee, any member thereof, the Association, nor the Board shall be liable to any Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 9. Compensation. No member of the Committee shall be entitled to compensation arising out of services performed pursuant to this Article. The Association shall reimburse members of the Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Committee. The Association may pay the cost of professional consultation services used by the Committee.

## ARTICLE VII

### USE RESTRICTIONS

Section 1. Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. Only one family may occupy a Lot as a principal residence at any one time. No structure, except as herein provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling, one one-story accessory building which may include a detached private garage and servant's quarters and a swimming pool, provided the use of such dwelling or accessory building or pool does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. A guest suite or a like facility without a kitchen may be included as part of the main dwelling or accessory building, if such guest suite would not result in overcrowding the site, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Notwithstanding anything in this Article VII to the contrary, Declarant may maintain a sales office, models, and construction office on any Lot until all Lots have been sold.

Section 2. Governmental Regulations. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions, watershed protection regulations, and other regulations applicable to his Lot.

Section 3. Nuisance. No activity will be carried on in any Lot which is an unreasonable nuisance to other residents. No Owner will permit anything on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common-Area.

Section 4. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other common household pets (not exceeding a maximum of three such pets) may be kept or maintained provided they are not kept or maintained for commercial purposes.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Committee.

Section 6. Use of Common Area. The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association; provided, however, that so long as Declarant owns any Class B lots, the Declarants shall have the exclusive right to use parts of the Common Area for sales purposes, including, without limitation, promotional activities.

Section 7. Access to Lots. The Association, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situated upon such Lot which serve another Owner's Lot. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.

Section 8. Signs and Ornaments. No Owner will display any signs or other articles outside of his dwelling so as to be visible from outside the Lot, except seasonal decorations. Notwithstanding the foregoing, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot.

Section 9. Trash and Vegetation. No trash will be kept on any Lot except in sanitary containers located in a screened area. No weeds, rubbish or debris will be permitted to accumulate on any Lot which would render it unsanitary or offensive to its neighbors. Grass and landscaping will be maintained to appear neat and attractive. Dead trees or shrubs will be promptly removed.

Section 10. Maintenance. All improvements erected on Lots shall be maintained in a clean, neat, and orderly

condition and in a good state of maintenance and repair. All Owners shall further be responsible for keeping clean and repairing damage caused to the public roads adjacent to such Owners Lots prior to such roads being accepted for maintenance by the applicable governmental authorities.

Section 11. Accessory Structures. No metal carport or freestanding metal garage or utility building will be erected on any Lot. One wooden utility building or non-commercial greenhouse may be located in the rear one-quarter (1/4) of any Lot so that it is directly behind the residence as viewed from a point on a line of sight perpendicular to the street. Such structure shall not exceed 400 square feet. The siding and trim paint color of any storage building must be the same as the siding and trim color on the home. If the residence is all brick, the exterior color of the siding on the storage building must be approved by the Architectural Control Committee.

Section 12. Utilities. All residential utility service lines to the Lots shall be underground. Further, certain amenities such as utilities transformers, trash containers, lighting facilities, utilities meters, drainage pipes, ditches and swales, storm drains and easements may be located and maintained on the Lots (even though they may serve several other Lots) and the Declarant and others benefiting from such items shall have non-exclusive easements over the Lots for the installation, maintenance and use of same.

Section 13. Mailboxes. The mailbox on each Lot will conform to a design established or otherwise approved by the Architectural Control Committee. This design will exclude any brick enclosed mailboxes. Once the design is approved and installed, any mailbox being replaced for any reason shall be of the same design.

Section 14. Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other unenclosed area (including porches and patios) within the Properties.

Section 15. Additions. Any additions or substantial alterations to improvements, including alteration to the exterior of residential improvements and garages, must first be approved in writing by the Committee pursuant to Article VI hereof.

Section 16. Parking. No boat, trailer, recreational vehicle, camper or commercial vehicle will be left in any driveway or on any other part of a Lot unless it is fully enclosed within the garage, is behind the house fully hidden from the view of neighbors walking by the Lot, or is otherwise screened in a manner approved by the Architectural Control Committee. This restriction will not apply to construction trailers or other construction vehicles during the time construction is proceeding on the affected Lot. No boat, truck, trailer, manufactured home, camper or tent will be used as a living area on any Lot. No unlicensed vehicles may be left on a Lot.

Section 17. Painting of Residences. No Owner may change the color of his residence or garage or repaint same in a color other than its original color without the approval of the Committee.

Section 18. Antennas. No satellite dishes or discs, radio or television aerial, antennas, towers or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot or elsewhere upon any Lot or within the Property without the prior written approval of the Committee pursuant to Article V hereof and, so long as Declarant shall own a Lot, without the prior written approval of Declarant, which approval Declarant may withhold in its sole and absolute discretion; provided, however, that satellite dishes which are eighteen (18") inches or less in size, ground mounted and screened from view from the street, may be installed without such approval.

Section 19. Fences. No fence or wall will be erected on any Lot closer to the street than 15 feet from the front building line. Privacy fencing around patios, decks, or pools may not exceed six (6) feet. Rear yard fencing shall be split-rail four (4) feet in height. Any other fencing, including chain link or other metal fencing, is expressly prohibited, except that metal fencing attached to the split-rail fencing may be used to contain animals within the yard. Any fence not of a split-rail type will be constructed of cedar, redwood, or fir and shall be painted or stained. Split-rail fences will be left natural and unfinished. All fences must be approved by the Architectural Control Committee prior to installation.

Section 20. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; provided,

however, that any such reconstruction must be commenced within six (6) months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within six (6) months of such destruction.

Section 21. Subdivision. No Lot shall be subdivided or its boundary lines changed without the written consent of CURTIS POND, LLC. However, CURTIS POND, LLC hereby expressly reserves to itself, its successors and assigns, the right to modify the boundary lines of any two (2) or more Lots shown on the Maps of the development provided that no Lot originally shown on any Map is reduced by more than 20% of its original size.

Section 22. Leasing. No building on any Lot may be leased except in accordance with rules and regulations promulgated by the Association.

Section 23. Above-Ground Pool. No above-ground pools will be installed on a Lot.

Section 24. Declarant's Right of Entry. In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the Declarant for such plan), such entry to be made (at the expense of the owner of the Lot) by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of CURTIS POND. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such Lot to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

Section 25. Regulations. Reasonable regulations governing the use of the Common Area and external appearance of all structures erected on the Lots may be made and amended from time to time by the Board of Directors of the Association. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

Section 26. Compliance. In the event that the Owner of any Lot fails to comply with any of the restrictions set forth in this Article or the rules and regulations subsequently promulgated by the Board of Directors, the Association shall have the right, but not the obligation, to enter any Lot and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Association in curing such default shall be charged to the defaulting Owner and shall be payable by such Owner to the Association immediately upon demand.

ARTICLE VIII

SPECIAL RESTRICTIONS AFFECTING COMMON AREA

Section 1. Purpose. It shall be the intent and purpose of these restrictions and covenants to maintain and enhance the Common Area, to afford and enhance recreation opportunities, and to implement generally the CURTIS POND master plan for development.

Section 2. Buildings. No building, tent, trailer or other structure, either temporary or permanent, except as noted elsewhere herein, shall be erected or caused to be placed on the Common Area except a "Sales Center" for the purpose of selling all Lots in the Development.

Section 3. Declarant's Right of Entry. The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground 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 reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of 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.

Section 4. Prohibition Against Dumping. No dumping of trash, garbage, sewage, sawdust or other debris 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 5. 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.

Section 6. Rights Reserved By Declarant. The Declarant expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of the Common Area, in a manner not inconsistent with the provisions of this Declaration.

Section 7. Declarant's Actions Permissible. Where the Declarant is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on any portion of the Properties, entering the property and taking such action shall not be deemed a breach of these covenants.

ARTICLE IX

EASEMENTS

Section 1. Easements Reserved by Declarant. Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, telephone and electric power lines, cable television lines, water and sewer lines, lift stations, drainage ditches and for other utility installations over the Properties and the Common Area. Each Owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Area, acknowledge such reservations and the rights of Declarant to transfer such easements to the Association or to such utility companies as Declarant may choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

Declarant reserves the right and easement, at its discretion, to install screenage on the Common Area and Lots (other than areas of the Lots upon which buildings are constructed) for the purposes of providing screening, privacy, decoration, retainage and topographical stability in connection with the overall plan and development of the Properties and the various Lots located thereon.

Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of 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. In addition, the Declarant shall have the continuing right and easement to maintain all public sewer and water lines located on the Lots.

Section 2. Easements Reserved for the Association. The Association is hereby granted an exclusive easement for the purpose of maintenance and landscaping all of the Common Area. The amount and manner of such maintenance and landscaping shall be in the Association's absolute discretion.

The Association is hereby granted an easement for the installation and maintenance of utilities (including transformers) and other commonly beneficial amenities including without limitation, mailboxes, trash containers and area lighting.

ARTICLE X

INSURANCE

Section 1. Individual Lot Owners. Each Owner shall secure and maintain in full force and effect at such Owner's expense, one or more insurance policies insuring Owner's Lot and the improvements thereon for the full replacement value thereof against loss or damage from all hazards and risks normally covered by a standard "Extended

Coverage" insurance policy, including fire and lightning, vandalism and malicious mischief.

Each Owner, at Owner's expense, shall secure and maintain in full force and effect comprehensive personal liability insurance for damage to person or property of others occurring on Owner's Lot, any other Lot, or upon the Common Area, in an amount not less than the amount designated by the Association. Owner shall provide the Association with satisfactory evidence that such insurance as herein required is in full force and effect and the Association will be given thirty (30) days' notice prior to the expiration or cancellation of any Owner's insurance coverage. In the event Owner fails or refuses to maintain such insurance coverage as required, the Association may, but shall not be obligated to, through its agent or representative, secure and maintain such insurance coverage for Owner's benefit, and the cost or expense thereof shall be deemed a special assessment levied by the Association against Owner and Owner's Lot in accordance with the other provisions of this Declaration, and Owner covenants and agrees to pay to the Association such special assessment upon demand.

This Insurance provision may be modified or amended to substitute one comprehensive insurance policy covering all Lots provided the approval of a majority of the Owners is obtained and approval by 75% of the owners and holders of first deeds of trust on the Lots is obtained. Such approvals shall be in writing but need not be acknowledged and shall be attached to an amendment to this Declaration which amendment shall be executed only by the Association and recorded in the Iredell County Public Registry.

Section 2. Board of Directors. The Board of Directors shall obtain and maintain at all times insurance on the property of the type and kind and in no less than the amounts set forth below:

(a) Fire. All improvements and all fixtures and personal property included in the Common Area and all personal property and supplies belonging to the Association shall be insured in an amount equal to 100% of the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, explosion and boiler damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. All such policies shall provide that adjustment of loss shall be made by the Board of Directors. In addition to the provisions and endorsements set forth in Section 4 of this Article, the fire and casualty insurance described herein shall contain the following provisions:

- (i) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- (ii) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (iii) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (iv) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association,, the Owners and their employees, agents, tenants and invitees;
- (v) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control; and

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies

whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carrier's, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

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

(c) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Flood Insurance. In the event it is determined, by survey or otherwise, that any improvements in the Common Area are located within an area having special flood hazards and if flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association shall obtain and pay, as a common expense, the premiums upon a policy of flood insurance on the Common Area in such amount as may from time to time be deemed appropriate by the Board of Directors; provided, however, that such coverage shall not be less than the lesser of: (1) the maximum coverage available under the NFIP for that portion of the Common Area within a designated flood hazard area or (2) 100% of the current "replacement cost" of such portion of the Common Area.

(e) Other. Such other insurance coverages, including workmen's compensation, as the Board of Directors shall determine from time to time desirable.

Section 3. Premium Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Article V hereof.

Section 4. Special Endorsements. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

- (a) recognition of any insurance trust agreement entered into by the Association;
- (b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured, any Insurance Trustee and all Mortgagees; and
- (c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the

Association, any Owner or any Mortgagee.

Section 5. General Guidelines. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "AAA" or better by the current issue of the Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

ARTICLE X

RIGHTS OF MORTGAGEES

Section 1. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the Owners and holders of first deeds of trust on Lots located within the Property then subject to the full application of this Declaration, 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 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 an 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 Lots, the maintenance of party walls or common fences and driveways, or the upkeep of lawn 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 percent 100% of the insurable value; or
- (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 2. Books and Records. Any owner and holder of a first deed of trust on any Lot will have the right to examine the books and records of the Association during any reasonable business hours.

Section 3. Payment of Taxes and Insurance Premiums. The owners and holders of first deeds of trust on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against 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.

Section 4. FHA/VA Approval. In the event purchasers of Lots have been provided or arranged to obtain insured mortgage loans from the Federal Housing Administration or U.S. Department of Veterans Affairs, then as long as any Class B Lot exists, as provided in Article III hereof, the amendment of this Declaration will require the prior approval of the Federal Housing Administration or the U. S. Department of Veterans Affairs.

ARTICLE XI

CONDEMNATION

Section 1. Partial Taking Without Direct Effect on Lots. If part of the Properties shall be taken or condemned

by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected lots, shall be paid to the Board of Directors of the Association in trust for all Owners and their mortgagees according to the loss or damages to their respective interests in such Common Area. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Area, including without limitation on the right of the Owners to represent their own interests. Such proceeds shall be used to restore the Common Area with the excess, if any, paid to the Owners pro rata. Nothing herein is to prevent Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or personal improvements therein, exclusive of damages relating to Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Board of Directors as their interest may appear by arbitration in accordance with the rules of the American Arbitration Association.

Section 2. Partial or Total Taking Directly Affecting Lots. If part or all of the Properties shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Section 1 of this Article and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots, or personal improvements therein, shall be paid to the Owners of the affected Lots and their mortgagees, as their interests may appear.

Section 3. Notice to Mortgagee. A notice of any eminent domain or condemnation proceeding shall be sent to holders of all first mortgages.

ARTICLE XII  
GENERAL PROVISIONS

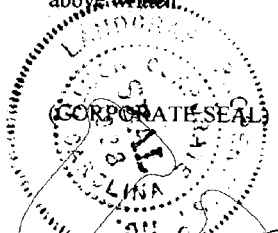
Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any 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 2. Incorporation of Declaration into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

Section 3. Severability. Invalidation of any one of the covenants, restrictions or other provisions herein by judgment or order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Term and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until January 1, 2015 after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration (except as set forth to the contrary in Article IV, Section 7 and in Article X, Section 4) may be amended by an instrument signed by the Owners of not less than sixty-six and two-thirds percent (66 2/3%) of the Lots.

IN WITNESS WHEREOF, the Declarants have caused this instrument to be executed by their respective officers thereunto duly authorized and their respective corporate seals to be hereunto affixed on the day and year first above written.



ATTEST: Deann Correll Sullock  
Asst. Secretary

DECLARANT:

CURTIS POND, LLC, a North Carolina Limited Liability Company (SEAL)

By: LandCraft Properties, Inc., Manager

By: Scott A. Stover  
E.V. President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 11 day of November, 1999, personally came before me Scott A. Stover who, being by me duly sworn, says that he is E.V. President of LandCraft Properties, Inc. and Manager of CURTIS POND, LLC, a North Carolina Limited Liability Company, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given. And the said Scott A. Stover acknowledged the said writing to be the act and deed of said Corporation.

William P. Sanders  
Notary Public



CURTIS POND  
CONSENT OF MORTGAGEE

FIRST CHARTER NATIONAL BANK, being the Beneficiary under that certain Deed of Trust from CURTIS POND, LLC to Kenneth W. Caldwell, Trustee, conveying the property or portions thereof described in this Declaration and made a part hereof, and recorded in Book 1136, at Page 181, in the Iredell County Public Registry, does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof to said real property described in Exhibit A, and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits, attachments, supplements and amendments hereto, shall be superior to the lien of said Deed of Trust on said Property. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and CURTIS POND, LLC, the relationship of partnership or of joint venture, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the CURTIS POND, LLC under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 12<sup>th</sup> day of November, 1999.

TRUSTEE

Kenneth W. Caldwell [SEAL]  
Kenneth W. Caldwell, Trustee

[CORPORATE SEAL]

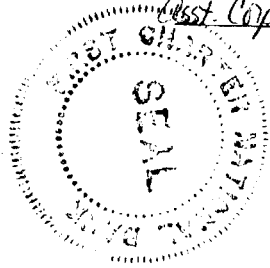
Attest:

Anne C. Forrest  
Asst. Corp. Secretary

BENEFICIARY

FIRST CHARTER NATIONAL BANK

By James M. [Signature]  
CEO/President

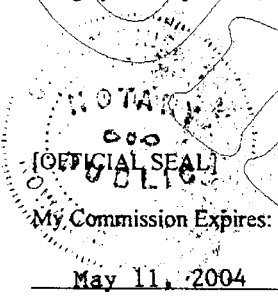


STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 12th day of November, 1999, personally came before me Kenneth W. Caldwell, Trustee, who, being by me duly sworn, acknowledged the execution of the foregoing instrument.

Sybil Kimbrough  
NOTARY PUBLIC

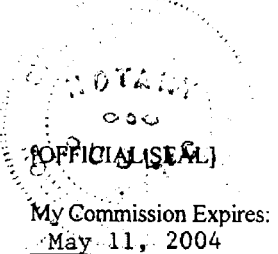


STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 12th day of November, 1999, personally came before me Lawrence Kimbrough, who being by me duly sworn, says that he/she is a CEO ~~President~~ of FIRST CHARTER NATIONAL BANK, that the seal affixed to the foregoing instrument in writing is the official seal of the Corporation, that said writing was signed and sealed by him/her in behalf of said Corporation by its authority duly given. And the said CEO ~~President~~ acknowledged said writing to be the act and deed of said Corporation.

Sybil Kimbrough  
NOTARY PUBLIC



CURTIS POND  
CONSENT OF MORTGAGEE

John L. Sullivan, Jr. being the beneficiary under that certain Deed of Trust from CURTIS POND, LLC to Jean M. Sullivan, Trustee, conveying the property of portions thereof described in this Declaration and made a part hereof, and recorded in Book 1136, at Page 220, of the Register of Deeds for Iredell County, does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof to said real property described in Exhibit A, and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits, attachments, supplements and amendments hereto, shall be superior to the lien of said Deed of Trust on said Property. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and CURTIS POND, LLC, the relationship of partnership or of joint venture, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the CURTIS POND, LLC under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 11<sup>th</sup> day of November, 1999.

TRUSTEE

Jean M. Sullivan [SEAL]  
Jean M. Sullivan, Trustee

BENEFICIARY

John L. Sullivan, Jr. [SEAL]  
John L. Sullivan, Jr.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 11<sup>th</sup> day of November, 1999, personally came before me Jean M. Sullivan., Trustee, who, being by me duly sworn, acknowledged the execution of the foregoing instrument.

Lisa M. Thurmond  
NOTARY PUBLIC



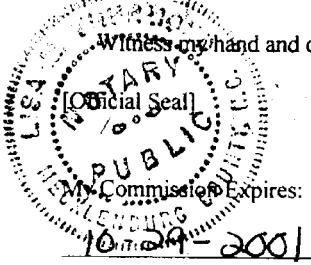
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, LISA M. THURMOND, a Notary Public for said County and State, do hereby certify that John L. Sullivan, Jr. personally appeared before me this 11<sup>th</sup> day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 11<sup>th</sup> day of November, 1999.

Lisa M. Thurmond  
NOTARY PUBLIC



CURTIS POND  
CONSENT OF MORTGAGEE

Robert G. Bradford, being the beneficiary under that certain Deed of Trust from CURTIS POND, LLC to Helen R. Bradford, Trustee, conveying the property of portions thereof described in this Declaration and made a part hereof, and recorded in Book 1136, at Page 211, of the Register of Deeds for Iredell County, does hereby consent to the recordation of this Declaration and the imposing of the provisions hereof to said real property described in Exhibit A, and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits, attachments, supplements and amendments hereto, shall be superior to the lien of said Deed of Trust on said Property. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and CURTIS POND, LLC, the relationship of partnership or of joint venture, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of the CURTIS POND, LLC under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 11 day of November, 1999.

TRUSTEE

Helen R. Bradford [SEAL]  
Helen R. Bradford, Trustee

BENEFICIARY

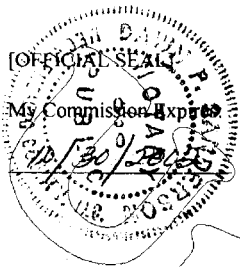
Robert G. Bradford [SEAL]  
Robert G. Bradford

STATE OF NORTH CAROLINA

COUNTY OF IREDELL

This 11 day of November, 1999, personally came before me Helen R. Bradford, Trustee, who, being by me duly sworn, acknowledged the execution of the foregoing instrument.

Dawn P. Sanderson  
NOTARY PUBLIC



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, DAWN P. SANDERSON, a Notary Public for said County and State, do hereby certify that Robert G. Bradford personally appeared before me this \_\_\_\_\_ day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 11 day of November, 1999.



Dawn P. Sanderson  
NOTARY PUBLIC

Official

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The foregoing Certificate(s) of Dawn P Sanderson + Sylvia Rinehardt + Lisa M Thurmond

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By Brenda D. Bell REGISTER OF DEEDS FOR Iredell COUNTY  
By Kay W Mills Deputy Assistant-Register of Deeds.

**EXHIBIT A**

**LEGAL DESCRIPTION**

**CURTIS POND PHASE I BASE TRACT**

Tract 1:

Lying and Being in Coddle Creek Township, Iredell County, North Carolina and being more particularly described as follows:

BEGINNING at a found nail in the center line of the right of way margin of Rocky River Road (State Road 1147) said nail being N 55-38-19 E 411.45 feet from a found pk nail in the center line of the right of way margin of Kistler Road (State Road 1148) at its intersection with the northerly right of way margin of Rocky River Road; thence from said Beginning Point the following four (4) courses and distances as follows: (1) S 21-28-42 E 214.31 feet to a found #5 rebar (passing a found #5 rebar at 30.82 feet in the southerly right of way margin of Rocky River Road), (2) S 01-41-14 W 550.73 feet to a found #5 rebar, (3) S 16-21-18 W 661.08 feet to a found #5 rebar, and (4) N 72-46-24 W 465.11 feet to a found #5 rebar in the southeasterly boundary of that certain property of John and Linda Keller pursuant to a deed recorded in Book 967 at Page 162 in the Iredell County Public Registry; thence with the southeasterly boundary of said Keller property (now or formerly) S 30-49-42 W 1028.46 feet to a found one inch pipe in the southernmost corner of said Keller property; thence with the westerly boundary of said Keller property N 12-18-38 W 1398.02 feet to a found nail in the center line of the right of way of Rocky River Road; thence with the center line of the right of way margin of Rocky River Road the following four (4) courses and distances as follows: (1) S 53-55-05 W 88.44 feet to a point, (2) S 50-25-55 W 111.54 feet to a point, (3) S 46-19-05 W 153.63 feet to a point, and (4) S 45-33-32 W 710.32 feet to a found nail in a bridge; thence S 31-42-14 E 27.67 feet to a set #4 rebar in the southerly right of way margin of Rocky River Road and in the easterly boundary of that certain property of Nora Lee Gilbert pursuant to a deed recorded in Book 584 at Page 349 in said Registry; thence with the easterly boundary of said Gilbert property (now or formerly) the following five (5) courses and distances as follows: (1) S 39-58-38 W 190.01 feet to a found #5 rebar, (2) S 05-09-13 W 320.03 feet to a found #5 rebar, (3) S 15-31-51 W 127.89 feet to a found #5 rebar, (4) S 48-14-58 E 200.00 feet to a found #5 rebar, and (5) S 00-54-15 W 362.02 feet to a found #4 rebar in a southeasterly corner of said Gilbert property and in a northerly boundary of that certain property of SFX Operating Co. of NC, Inc. pursuant to a deed recorded in Book 1032 at Page 224 in said Registry; thence with the northerly boundary of said SFX Operating Co. property (now or formerly) the following five (5) courses and distances as follows: (1) N 67-79-45 E 122.15 feet to a found three-quarter inch pipe, (2) S 86-31-29 E 251.55 feet to a found three-quarter inch pipe, (3) S 31-49-32 E 99.11 feet to a found three-quarter inch pipe, (4) S 12-54-06 E 151.51 feet to a found one-half inch pipe, and (5) S 37-40-10 E 355.25 feet to a found three-quarter inch pipe; thence with a new line the following seventeen (17) courses and

distances as follows: (1) N 49-10-56 E 425.36 feet to a set #4 rebar, (2) S 29-19-36 E 448.16 feet to a set #4 rebar, (3) S 58-41-39 E 272.40 feet to a set #4 rebar, (4) N 31-18-21 E 305.00 feet to a set #4 rebar, (5) N 58-41-39 W 178.17 feet to a set #4 rebar, (6) N 60-40-24 E 235.43 feet to a set #4 rebar, (7) N 30-49-42 E 311.92 feet to a set #4 rebar, (8) N 38-26-37 E 309.93 feet to a set #4 rebar, (9) S 76-38-28 E 113.31 feet to a set #4 rebar, (10) N 31-06-39 E 156.67 feet to a set #4 rebar, (11) N 49-45-04 E 302.48 feet to a set #4 rebar, (12) N 87-53-00 E 271.13 feet to a set #4 rebar, (13) N 02-07-00 W 617.36 feet to a found #5 rebar, (14) N 79-18-13 W 63.80 feet to a found #5 rebar, (15) N 02-16-53 W 488.43 feet to a found #5 rebar, (16) N 03-59-15 E 155.59 feet to a found #5 rebar, and (17) N 01-31-25 E 999.44 feet to a found nail in the center line of the right of way margin of Rocky River Road; thence with the center line of the right of way margin of Rocky River Road S 61-57-29 W 492.46 feet to a found nail, the BEGINNING POINT, said property containing 96.000 acres, more or less, and being more particularly shown as the "Curtis Tract Area" on that certain Boundary/Division Survey of Parts of the J. R. Curtis Estate & Keller Tract prepared by Lucas -Foreman Incorporated dated February 23, 1999 and last revised on March 29, 1999, reference to which survey is hereby made.

Tract 2:

LYING AND BEING in Coddie Creek Township, Iredell County, North Carolina and being more particularly described as follows:

BEGINNING at a found one inch iron pipe in the boundary of that certain property of the J. Ray Curtis Estate and in the southernmost corner of that certain property of John & Linda Keller pursuant to a Deed recorded in Book 967 at Page 162 in the Iredell County Public Registry, said pipe further being located S 12-18-38 E 1398.02 feet from a found nail in the center line of the right of way margin of Rocky River Road (State Road 1147); thence from said Beginning Point with the westerly boundary of said Keller property (now or formerly) N 12-18-38 W 598.62 feet to a set #4 rebar; thence with a new line the following two (2) courses and distances: (1) S 26-30-14 E 430.74 feet to a set #4 rebar, and (2) S 59-10-18 E 46.72 feet to a set #4 rebar in the southeasterly boundary of said Keller property and in the boundary of that certain property of the J. Ray Curtis Estate; thence with the southeasterly boundary of said Keller property and the boundary of the J. Ray Curtis Estate S 30-49-42 W 204.32 feet to a found one inch pipe, the BEGINNING POINT, said property containing 0.835 acres, more or less, and being more particularly shown as the "Keller Tract Area" on that certain Boundary/Division Survey of parts of the J. R. Curtis Estate & Keller Tract prepared by Lucas -Foreman Incorporated dated February 23, 1999 and last revised on March 29, 1999, reference to which survey is hereby made.

EXHIBIT B  
TO  
DEED OF TRUST  
FROM  
CURTIS POND, LLC  
FOR CURTIS POND  
PHASE I BASE TRACT  
DATED APRIL 1, 1999

1. Subordinate Lien. The lien of this Deed of Trust shall be a subordinate lien against the subject property and shall at all times be subject and subordinate to the lien of that certain first lien Deed of Trust from CURTIS POND, LLC to Kenneth W. Caldwell, Trustee, for the benefit of First Charter National Bank (the "First Lender") dated April 14, 1999 and recorded in the Iredell County Public Registry, said first lien Deed of Trust securing an indebtedness of up to \$3,000,000.00 (the "First Lender Loan"). The subordination of this Deed of Trust to said First Lender Deed of Trust shall be automatic such that no further recorded agreement effectuating the subordination shall be required. Beneficiary shall give written notice to the First Lender of default by Grantor hereunder or under the Promissory Note secured hereby, and (i) provide the First Lender with an opportunity to cure such default within thirty (30) days after receipt of such notice before beneficiary shall exercise any remedies provided herein or in the Promissory Note secured hereby which may be available upon such default.
2. Lot Releases. Notwithstanding anything in this Deed of Trust to the contrary, lots shall be released from the lien of this Deed of Trust upon request by the Grantor, provided, that the Beneficiary hereof receives a portion of the net sales proceeds, if any, actually received by Grantor at the applicable closing for the sale of such lot as set forth in that certain Promissory Note of even date herewith executed and delivered by Grantor to Beneficiary secured hereby.

Original