

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

GLENWYCK SUBDIVISION

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made June 27, 2000 by HB PARTNERS a North Carolina Partnership with their principle offices in Mecklenburg County, North Carolina, hereafter called "DECLARANT".

STATEMENT OF PURPOSE

DECLARANT is the owner of the real property comprising the real estate development known as "Glenwyck", more particularly described on Exhibit A which is attached hereto and incorporated herein by reference, hereafter called "the Property." DECLARANT desires to impose upon the property certain covenants, conditions and restrictions with regard to the use of the Property and with regard to use of certain segments of the Property

DECLARATION

DECLARANT hereby declares that the Property, and any additional property subjected to this Declaration by Supplemental Declaration, shall be held, sold, used and conveyed subject to the following covenants, conditions, restrictions and easements, each of which shall run with the land comprising the Property, and each and all of which shall be binding upon, and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and their respective heirs, personal representatives, successors and assigns.

ARTICLE I: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1 Articles of Incorporation or Articles: The Articles of Incorporation of Glenwyck as filed with the North Carolina Secretary of State.
- 1.2 Association: Glenwyck Residents Association.
- 1.3 Base Assessment: Assessment levied on all Members pursuant to Article IX to fund Common Expenses for the general benefit of the Property in Glenwyck, as more particularly described in Section 9.1.
- 1.4 Board of Directors or Board: The Body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under North Carolina corporate law.
- 1.5 Builder: Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Property for further subdivision, development and/or resale in the ordinary course of such Person's business.
- 1.6 Bylaws: The Bylaws of Glenwyck Residents' Association, Inc. Attached as Exhibit B and incorporated by reference, as may be amended.

- 1.7 Class B Control Period: The period of time during which the Class B Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the Bylaws.
- 1.8 Common Area: Those areas of the Property designated as Common Area on maps recorded in the Registry or in this Declaration, and those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract or agreement or by its own volition.
- 1.9 Common Expenses: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation.
- 1.10 Declarant: HB Partners and their respective successors and assigns; also, any person who takes title to the Property or any portion of the Property, or any interest therein, and who is designated as Declarant in a recorded instrument executed by HB Partners. If HB Partners or any successor or assign of either, shall transfer its interest in the Property or assigns its rights under this Declaration, the successor shall be substituted for such party and shall be entitled to exercise the rights of Declarant under this declaration of the Bylaws.
- 1.11 HUD and VA: The Federal Housing Administration of the U.S. Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to HUD or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.
- 1.12 Lot: Any single-family residential lot which is a numbered plot of land to be used for single-family residential purposes shown upon any subdivision plat of the Property, or any portion of the Property, subject to this Declaration, and recorded in the Registry.
- 1.13 Member: A person which is subject and entitled to membership in the Association pursuant to Section 3.2, and Declarant, as long as the Class "B" membership exists under Section 3.2.
- 1.14 Mortgage: A deed of trust, mortgage, deed to secure debt or any other form of security conveyance of real property.
- 1.15 Mortgagee: A beneficiary or holder of a Mortgage.
- 1.16 Mortgagor: Any Person who gives a Mortgage.
- 1.17 Owner: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.
- 1.18 Person: A natural person, a corporation, a limited liability company, a partnership, a trustee, or any legal entity.
- 1.19 Property: The real property described on Exhibit A, together with such additional property as may be subjected to this Declaration in accordance with Article XIV.
- 1.20 Registry: The office of the Register of Deeds for Mecklenburg County, North Carolina.
- 1.21 Special Assessment: Assessments levied in accordance with Section 9.5.

1.22 Specific Assessment: Assessments levied in accordance with Section 9.6.

1.23 Supplemental Declaration: An instrument filed in the Registry pursuant to Article XIV which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument or both.

ARTICLE II: PROPERTY RIGHTS

2.1 Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area pursuant to Section 4.7; and
- (e) The right of the Association to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

2.2 Any Owner may extend such Owner's right of use and enjoyment to guests and invitees, subject to reasonable regulation by the Board.

2.3 Notwithstanding any provision of this Declaration, if ingress or egress to any residence of any Member is through a Common Area, any conveyance or encumbrance of such Common Area is subject to the Member's easement.

2.4 Notwithstanding any other provision of this Declaration, the Common Area may not be mortgaged or conveyed without the consent of at least 80% of the Owners, excluding the Declarant.

ARTICLE III: MEMBERSHIP AND MEMBERSHIP RIGHTS

3.1 Function of Association: The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area, and for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls for Glenwyck set forth in this Declaration, the Bylaws, the Articles and the laws of the State of North Carolina.

3.2 Membership: The Association shall have two classes of membership, Class A and Class B.

- (a) Class A. The Class A Members of the Association shall be the Owners.
- (b) Class B. The sole Class B Member shall be Declarant. The Class B membership shall terminate and become converted to Class A membership upon the earlier of:
 - (i) the date that 75% of the Units are conveyed to Members;
 - (ii) five years from the date of the Declaration.

(iii) recordation in the Registry of an instrument executed by Declarant terminating the Class B membership and converting it to Class A membership.

3.3 Voting.

(a) Class A. Class A members shall be entitled to one vote per lot:

(b) Class B. The Class B Member shall be entitled to four (4) votes for each Lot owned by Declarant.

(c) Exercise of Voting Rights. The voting rights of Members of the Association may be exercised by the Member, if a natural person, or if not a natural person, by any officer or director of the Member duly authorized by the board of directors of the Member to act on behalf of the Member in matters relating to the Association or by any duly authorized partner of a general partnership, limited partner of a limited partnership or manager of a limited liability company. No vote shall be exercised for any property which is exempt from assessment under Section 9.10.

3.4 Enforcement Rights. Notwithstanding any provision of this Declaration, each Member is empowered to enforce the covenants contained herein.

ARTICLE IV: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Common Area. The Association shall manage and control the Common Area and all improvements thereon, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant or its designees may convey to the Association improved or unimproved real estate located within the properties described in Exhibit A, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of the Owners and occupants of the Property, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3 Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines. In addition, the Association through the Board, in accordance with Section 3.19 of the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to any Member, or to any property subject to the control of a Member, who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration or the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association is awarded any monetary damages or any other legal or equitable relief, it shall be entitled to recover from the opposing party all costs (including, without limitation, attorneys fees and court costs) reasonably incurred in such action. Any judgement awarding the Association monetary relief shall bear interest at the rate of sixteen percent (16%) or the maximum rate allowed on contracts by law, whichever is greater.

4.4 Implied Rights. Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, by any Member Declaration, or by any other recorded covenants applicable to any portion of the Property, or reasonably implied from or reasonably necessary to effectuate any

such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Issues. As long as Declarant owns any portion of the Property, Declarant may designate sites within the Property for fire, police, and other utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such site consents.

4.6 Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions as to which the liability of officers and indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Area. The Association may dedicate portions of the Common Area to the State of North Carolina, to Mecklenburg County, to any other local, state, or federal governmental entity and to other entities.

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designated to make the Property safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, the original Declarant, and any successor Declarant are not insurers and that each Person using the Property assumes all risks of personal injury and loss or damage to property resulting from acts of third parties. Nothing in this paragraph, however, shall be construed as an intent to waive or as a waiver of any rights, claims, causes of action or demands of any kind on behalf of any Owner against any firm, person, or corporation whose acts or omissions directly or indirectly cause or result in bodily injury, personal injury or damage to property.

ARTICLE V: MAINTENANCE

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the following:

(a) all landscaping and other flora, lakes and ponds, structures and improvements situated upon the Common Area;

(b) all primary entry features and signage for Glenwyck to the extent that such rights-of-way lie within or adjacent to the Property;

- (c) all streets within the Property until such time as the maintenance of such streets shall have been assumed by the appropriate governmental authority;
- (d) the Common Area as may be designated on maps recorded in the Registry or as may be otherwise designated by Declarant or the Association;
- (e) such additional property as may be included as Common Area by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

Except as provided above, the responsibilities of the Association under Article V shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant, as long as Declarant owns any portion of the Property.

The Association may assume maintenance responsibility for the common property of any Member or for any other property within Glenwyck, either by agreement with the Member or Owner. All costs of maintenance pursuant to this paragraph shall be assessed as a Specific Assessment against the benefitted Member or the property as to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Except as otherwise specially provided herein, all costs associated with maintenance, repair and replacement necessary under this Article V shall be a Common Expense to be allocated among all Members as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Member Declaration, other recorded covenants, or agreements with the owner(s) of such property.

5.2 Individual Responsibility.

- (a) Each Owner shall maintain that Owner's Lot all structures, parking areas, and other improvements on that Property in a manner consistent with the standards accepted by the Association and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a third party pursuant to any applicable Member Declaration or other declaration of covenants applicable to such Lot.
- (b) Any owners association having jurisdiction over any portion of the Property shall maintain the common property under its control and all structures, parking area and other improvements thereon in a manner consistent with the standards adopted or approved by the Association. If any such owners association fails to perform its maintenance responsibility as required herein, the Association may perform it and assess the costs against all Lots within the jurisdiction of such owners association as provided in Section 10.6.

5.3 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the standards adopted by the Association, the Glenwyck Architectural Control Committee and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

ARTICLE VI: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements in the Common Area and any other areas which are to be maintained by the Association under this Declaration or for which the Association has assumed responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability policy, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(iv) Directors and officers liability coverage if available at a reasonable cost, such cost to be determined by the Board;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgement but not less than an amount equal to one-sixth of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgement, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all such insurance shall be Common Expenses and shall be included in the Base Assessment.

(b) Damage and Construction. Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the costs of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members representing at least 75% of the total Class A votes in the Association, and the Class B Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until

such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall.

6.2 Individual Insurance.

(a) By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, and liability insurance, unless such insurance responsibility is assumed by or assigned to a third party pursuant to any applicable Member Declaration or other declaration of covenants applicable to such Lot.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article X of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Lot may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots and standards for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

(b) Any owners' associated having jurisdiction over any portion of the Property shall maintain commercial liability insurance and property insurance on all property under its control, such property insurance to provide coverage at least equal to the full replacement cost of all insurable improvements thereon, less a reasonable deductible.

ARTICLE VII: NO PARTITION

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No person shall seek any judicial partition unless the Property or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may not be subject to this Declaration.

ARTICLE VIII: CONDEMNATION OF COMMON AREA

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class A votes in the

Association and of Declarant, as long as Declarant owns any property described on Exhibit A) by any authority having the power of condemnation or eminent domain, each Member shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Members, to be disbursed as follows:

If taking does not involve any improvements on the Common Area or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE IX: ASSESSMENTS

9.1 Creation of Assessments. There are hereby created, and the Association is hereby authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, and under the Articles and Bylaws, specifically including but not limited to:

- (a) expenses of maintaining, repairing, replacing, operating and insuring Common Area and other areas which are the responsibility of the Association, including amounts due to third parties who perform such tasks on behalf of the Association.
- (b) the cost of insurance and fidelity bond coverage obtained pursuant to Article VI;
- (c) expense of monitoring and enforcing compliance with the provisions of this Declaration, the Bylaws, Association rules, and any other covenants applicable to the Property, including the Member Declaration;
- (d) expenses arising out of the Association's indemnification obligations under Section 4.6;
- (e) expenses arising out of any measures undertaken to enhance the safety of the Property pursuant to Section 4.8;
- (f) expenses arising out of its exercise of architectural control under Article X;
- (g) expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members and Owners, postage and copying expense, and the cost of office supplies and equipment necessary or desirable to perform its responsibilities (provided during Class B Control Period the directors appointed by the Class B Member shall receive no compensation for their involvement in the management of the Association);
- (h) legal, accounting and other professional fees; and
- (i) such other expenses as the Board of Directors deems necessary or desirable to keep the Property in good, clean and attractive condition, including expenses incurred in bringing any portion of the Property into compliance with this Declaration as described in Sections 5.2 and 10.6

All assessments, together with interest (at a rate determined by the Board from time to time, not to exceed the lesser of sixteen percent (16%) or the highest rate allowed by North Carolina law) computed from the date the delinquency first occurs, late charges (subject to the limitations of North Carolina law), costs, and reasonable attorney's fees, shall be a charge and continuing lien upon the Property of the defaulting owner each Lot until paid, as more particularly provided in Section 9.7. Such assessments, together with interest, late charges, costs,

and reasonable attorney's fees, shall be personal obligation of the Person who was the Owner of the Lot at the time the assessment arose. Upon transfer of title to the Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the conveyance. However, no first Mortgagee or other Person who obtains title to the Lot upon exercise of the remedies provided in such Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Member or Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

All Base Assessments for each calendar year shall be due on January 1 of that year (except during the first year that Base Assessments are due, in which event the Base Assessments shall be due, on a pro-rated basis, on the first day of the month subsequent to the Person taking title to the property in the subdivision). Such Base Assessments shall be payable, however, on a quarterly basis with one-third of the annual Base Assessment payable the first day of each calendar quarter. Special Assessments and Specific Assessments shall be due and payable as determined by Declarant or by the Association. If any person is, or becomes, delinquent on any Base Assessment, Special Assessment or Specific Assessment, the Board may accelerate all assessments due for that calendar year in addition to the other assessments due for that calendar year in addition to the other assessments owed, and may require that all assessments whatsoever be paid in full immediately.

Notwithstanding anything to the contrary herein, each Member shall be jointly and severally obligated with the Owners of Lots subject to such Member's jurisdiction, for all assessments levied against such Lots. Each Member shall include in its common expense budget, and shall be responsible for collecting and paying to the Association, the total amount of all assessments levied by the Association against the Lots subject to such Member's jurisdiction, and such amount shall have first priority for payment out of the income of each Member. The obligation of each Member to collect and pay such Base Assessments to the Association pursuant to this paragraph shall not relieve any Owner of liability for its pro rata share of any amounts not paid by the Member.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Member and Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses.

9.2 Declarant's Obligation for Assessments. During the Class B Control Period, Declarant may annually elect either to pay regular assessments on that portion of the Property which it owns, notwithstanding the commencement date for assessments set forth in Section 9.8, or to pay the difference between the amount of assessments levied on all other property subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Declarant's obligations hereunder may be satisfied

in the form of cash or by "in kind" contributions of services or materials, or by a combination of these as determined by Declarant. After termination of the Class B Control Period, Declarant shall be obligated for assessments on that portion of the Property which it owns in the same manner as any other Owner.

9.3 Computation of Base Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 9.4. Such budget may, in the Board's discretion, take into account any income anticipated from sources other than Base Assessments.

The total dollar amount to be raised through the levy of Base Assessments shall be assessed against each Lot in an amount derived by multiplying the Base Assessment by a fraction, the numerator of which is one and the denominator of which is the total number of Lots subject to the assessment.

The Board shall establish a cutoff date for determining what property is part of the Property for purposes of allocating the assessment, and all property subjected to this Declaration after such date shall be assessed in accordance with Section 9.8.

The Board shall send a copy of the budget and notice of the amount of the Base Assessments due for the following year to each Member at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75% of the total number of Class A Members, and by the Class B Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the Bylaws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

9.4 Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each such asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect to both amount and timing by annual Base Assessments over the budget period.

9.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least 51% of the total Class A votes, and the affirmative vote or written consent of the Class B Member, if the Class B Member still owns any portion of the Property. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.6 Specific Assessments. The Board shall have the power to specifically assess against individual Lots monetary fines authorized by this Declaration or the Bylaws and expenses of the Association incurred as a consequence of the conduct, including the failure to comply with any provision of this declaration of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Specific Assessment against any Lot

to reimburse the Association for costs incurred in bringing any Lot into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Owner and an opportunity for a hearing.

9.7 Lien for Assessments. The Associations shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges, (subject to the limitations of North Carolina law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgement, and foreclosure in the same manner as mechanic's and materialman's liens under North Carolina Law. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments, except that the sale or transfer of a Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such lot due prior to acquisition of title. Such unpaid assessments shall be reallocated among all Residential Lots, if the foreclosure affected a Residential Lot, or among all Nonresidential Lots, if the foreclosure affected a Nonresidential Lot, and may be added to and collected as part of the following year's Base Assessment against such Lots; provided, if the Lot affected by the foreclosure is subject to a Member Declaration, then such foreclosure shall not affect the personal obligation of the Member for such assessments and the unpaid assessments shall be reallocated among only those Lots subject to such Member Declaration.

9.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each portion of the Property on the first day of the month following: (a) the month in which it is made subject to this Declaration, (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, or (c) the month following the month in which Declarant in writing elects to cease maintaining the Common Area and carrying out the other responsibilities of the Association under the Declaration and the Bylaws, whichever is later.

Upon annexation of additional property to this Declaration pursuant to Article IX, such property shall be assessed at the same rate per acre of residential property or at the same rate per acre of nonresidential property, as used in computing the assessments against the property subject to this Declaration on the date the budget was computed; provided, the resulting Base Assessment for the year in which such annexation occurs shall be adjusted to reflect the number of months remaining in the fiscal year at the time assessments commence.

9.9 Failure to Assess. Failure of the board to fix assessment amounts or rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Member or Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

9.10 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Areas; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

9.11 Failure on the part of a Member to pay any Assessments set forth in this Article IX of the Declaration shall not constitute a default under any insured mortgage given by that member.

ARTICLE X: ARCHITECTURAL STANDARDS

10.1 General. No structure shall be placed, erected, installed, or allowed to remain upon any portion of the Property, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines for the Glenwyck community promulgated pursuant to Section 10.3, and in compliance with all applicable local, state, and federal laws.

This article shall not apply to improvements to the Common Area or areas under control of the Association. The Board may by resolution exempt certain other activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

This Article may not be amended without Declarant's written consent so long as Declarant owns any land subject to this Declaration.

10.2 Architectural Review. The Glenwyck Control Committee (the "ACC") shall be responsible for administration of the Design Guidelines and shall have exclusive jurisdiction over all new construction and all modifications within the Property. The ACC shall consist of at least three, but not more than five, persons. The members of the ACC need not be Owners or representatives of Owners, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. Until all of the Property has been developed and conveyed by Declarant to Owners other than Builders, Declarant retains the right to appoint and remove all members of the ACC in its sole discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board shall appoint the members of the ACC, who shall thereafter serve and may be removed in the Board's discretion.

10.3 Guidelines and Procedures.

(a) Design Guidelines. Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Property. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the property to another depending upon the location, unique characteristics, and intended use.

The ACC shall adopt such Design Guidelines at its initial organization meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall apply to construction and modification commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The ACC shall make the Design Guidelines available to Owners or Builders who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. In Declarant's discretion, such Design Guidelines may be recorded in the Registry, in which

event the recorded version, as it may be unilaterally amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

Any Member or Member Declaration may establish additional procedures and standards governing the project subject to such Member Declaration, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the ACC. However, except as provided in Section 10.2(b), any such procedures shall be in addition to and not in lieu of compliance with the procedures set forth in this Section and in the Design guidelines.

(b) Procedures. Except to the extent that the ACC has delegated its responsibility hereunder to a Member, no activities within the scope of Section 10.1 shall commence on any portion of the Property until an application for approval of the proposed work has been submitted to and approved by the ACC. Such application shall be in the form required by the ACC and shall include plans and specifications showing the nature, kind, shape, size, color, materials, and location of all proposed structures and improvements. In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted as applicable. The ACC may require the submission of such additional information as it deems necessary to consider any application. In reviewing each submission, the ACC may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the ACC fails to approve or disapprove any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved provided the proposed work is not inconsistent with the Design Guidelines.

The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

10.4 Variance. The ACC may authorize variances from compliance with any of its Design Guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) stop the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to attain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

10.5 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Association, Declarant, nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for insuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or on modifications to any Lot.

10.6 Enforcement. Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove

and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed, and such action shall not be deemed a trespass. The Board, or its designees shall also have the right to seek enforcement of the Design Guidelines in a court of law seeking legal and/or equitable remedies. If the Board is awarded any monetary or other legal or equitable relief whatsoever, it shall be entitled to recover from the opposing party all costs (including, without limitation, attorneys fees and court costs) reasonably incurred in such action. Any judgement awarding the Association monetary relief shall bear interest at the rate of sixteen percent (16%) or the maximum rate on contracts by law, whichever is greater.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Property, subject to the notice and hearing procedures contained in the bylaws. In such event, neither the Association, its officers or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ACC.

ARTICLE XI: RESTRICTIONS ON USE

11.1 Residential Use. All lots shall be used for single family residential purposes only, and are subject to the restrictions of this Article XI. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than a single-family dwelling not to exceed three and one-half (3 ½) stories in height or the maximum height permitted by applicable law or ordinance, whichever is the lesser, and a private garage for each Lot for not more than three (3) cars and other accessory structures customarily incidental to the use of the Lot.

11.2 Building Line Requirements. No building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded maps of Lots. No building shall be located nearer any side Lot line than the applicable zoning ordinance shall allow. On any Lot which fronts on the lake on the Property, no building shall be located nearer than thirty (30) feet from the waterline at its normal height. Minimum setback lines which may be shown on any recorded plat of Lots are not necessarily intended to create uniformity of setbacks; they are meant primarily to avoid overcrowding and monotony. It is intended that setbacks may be staggered where appropriate so as to preserve the trees and other natural vegetation, and to insure each Owner the greatest benefit and enjoyment of that Owner's Lot. Any unintentional deviation from the building line requirements not in excess of ten (10) percent thereof shall not be construed as a violation of the building line requirements as long as such deviation does not violate any local ordinance, including, but not limited to, zoning.

11.3 Animals and Pets. No animals, livestock and poultry of any kind shall be raised, bred, pastured or maintained on any Lot except generally accepted household pets, which may be kept thereon for the sole pleasure and use of the occupants but not for commercial use or purpose, and not more than three (3) pets over the age of six (6) months shall be permitted at any time. Birds shall be confined in cages. In no instance shall household pets become a nuisance to other Owners, or infringe upon the property rights of other owners.

11.4 Signs. No advertising signs of any type or kind shall be erected, placed, or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale", which sign shall not exceed two feet by three feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a lot. Notwithstanding the above, Declarant may erect and place permanent and temporary

signs on or above any unsold Lot or the Common Area. Declarant shall also have the right of ingress, egress, and regress over the aforesaid Lots in order to maintain and replace any such signs until 100% of the Lots have been conveyed by Declarant.

11.5 Nuisances. No offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance, as determined by Declarant, to any other Owner. No Lot or right-of-way shall be used in whole or in part for storage of rubbish of any kind whatsoever or for the storage of any property or thing that will cause such Lot or right-of-way to appear unclean, untidy, or unsightly; nor shall any substance, thing or material be kept upon any Lot or right-of-way that will emit a foul odor or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding Lots. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other such debris for pick up by governmental and other similar garbage or trash removal service units but such deposits shall only be permitted upon the specific date of pick up as determined by governmental and other similar garbage and trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds, or underbrush or to maintain and repair the main dwelling, outbuildings, sheds, garages and other similar structures on each lot in a manner satisfactory to Declarant, Declarant may, through its agent or representative, five days after posting a notice on such Lot or mailing a notice to the Owner thereof at his property requesting the Owner to comply with the requirements of this paragraph, enter and remove all such unsightly objects, debris or vegetation at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by Declarant in the enforcement of this paragraph promptly on demand. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to Declarant or to a Builder while constructing residences upon any Lots.

11.6 Clotheslines. Garbage Cans. Etc. All clotheslines, garbage cans, lawn mowers, stored materials, wrecked, unlicensed, or inoperable vehicles and all similar equipment shall be kept in an enclosed structure or adequately screened by planting or fencing, as determined by Declarant, so as to conceal the same from the view of neighboring Owners and to conceal the same from the view in front of the residence. Incinerators for garbage, trash, and other refuse shall not be used nor permitted to be erected or placed on any Lot.

11.7 Antennas. No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Lot. Radio and television antennas not exceeding seven and one-half (7 ½) feet in height above the roof line of the residence and dishes or disks not exceeding three (3) feet in diameter and not visible from the street in front of the residence shall be allowed to be attached to the structure of the residence only.

11.8 Walls. Fences. and Hedges. Walls and fences, except for chain link fences, are permitted as long as both sides of such structures are constructed of identical materials and of identical design. No chain link fence shall be constructed or allowed to remain on any Lot. For masonry walls, no exposed concrete block will be permitted. Hedges shall be maintained in a neatly trimmed and clean condition on both sides. All walls, fences, and hedges shall comply with all local ordinances and shall not be located within setbacks or site triangles as described herein or shown on record maps of the Property.

11.9 Pools. Pools shall be permitted upon Lots but such pools must be located directly behind the residence of each Lot, screened from view by a six-foot privacy fence, and be at least twenty (20) feet from both side Lot lines and the rear Lot line of each Lot.

11.10 Driveways and Parking Areas. Only driveways and parking areas constructed of concrete or brick shall be permitted upon any Lot.

11.11 Vehicles, Boats, and Trailers. No vehicles, boats, trailers, recreational vehicles or similar items shall be allowed to remain upon any Lot unless they are parked upon driveways constructed of concrete or brick. No tractor-trailers, trailers, tractors, tow trucks, buses or recreational vehicles shall be permitted to be parked or to remain on any Lot.

11.12 Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shed, tent, garage, carport, or any other structure of a similar nature shall be used as a residence, either temporarily or permanently. Provided, however, this paragraph shall not be construed to prevent Declarant from using sheds or other temporary structures during construction for such purposes as Declarant deems necessary. Provided, further, this paragraph shall not be construed to prevent owners from constructing a permanently detached garage, carport, or utility shed (such a shed not to exceed 12 feet by 12 feet in area) if constructed of materials similar to those used in the residence located upon such Lot, if located behind the rear wall of the residence for such Lot, if constructed in conformity to and in harmony with existing structures and residences located within the immediate area, and if not located within any easements reserved to Declarant or utility companies or shown on any recorded plat for the Single Family Property. In addition, one commercially manufactured metal building no larger than 10 feet by 10 feet shall be permitted upon a Lot if not located within any easements reserved to Declarant or utility companies and if located behind the rear wall of the residence for such Lot.

11.13 Basketball Goals and Mailboxes. Basketball goals shall be permitted upon a Lot if placed a minimum of twelve (12) feet behind the concrete curb into such Lot and placed outside of the public right-of-way. All goals and surrounding area are to be maintained in a neat and orderly condition so as not to create a nuisance as described in Section 2.5. No stone or masonry mailbox structures are permitted. All mailboxes are to be constructed of break-away materials as approved by the North Carolina Department of Transportation, such as 4" x 4" wooden posts or small diameter wooden posts.

11.14 Minimum Square Footage. Single family dwellings shall contain not less than a minimum of 1000 square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings.

11.15 Side Setbacks. No building shall be located nearer than five (5) feet on one side and six (6) feet on the other side of an interior Lot line except detached garages or carports located on the rear of the residence may be erected not closer than five feet to the interior side line, provided, no structure shall be erected on any easement described within this document. For the purpose of this covenant, eaves, steps, and uncovered porches or terraces shall not constitute a part of any building, provided, however, that this exception not be construed to permit encroachment upon an adjacent Lot or upon any easement shown on recorded maps or plats or described within this document. Provided further that the Zoning Ordinance for the City of Charlotte, North Carolina, or any other applicable Zoning Ordinance, as amended from time to time, shall prevail if a conflict shall arise between this Declaration and the Zoning Ordinance requirements. No structure shall be located upon a Lot in such a manner that it will interfere with the use and maintenance of any utility or drainage easement. No solid fence, wall, or similar obstruction shall be permitted within the building setback line or sight triangles shown on the recorded maps.

11.16 Cutting of Trees. No trees smaller than two (2) inches in diameter, and which are located within thirty (30) feet of the waterline at normal height of the lake on the Property, shall be cut down, uprooted, or otherwise removed from any Lot.

11.17 Waiver. Declarant reserves the right, but shall not be obligated, to waive in writing any violation of the designated and approved building location lines on either side Lot line, horizontal measurement only, provided that such violation does not exceed 10% of the applicable requirements and provided such violation does not violate any local ordinance, including, but not limited to, applicable zoning ordinances.

11.18 Subdivision of Lots. No lot shall be subdivided by sale or otherwise so as to reduce the total lot area shown on the recorded maps or plats, except by and with the written consent of Declarant and in compliance with local ordinances.

11.19 Comer Lots. Any single family dwelling erected on a Lot other than a comer Lot shall face the street on which the Lot abuts, and on Comer Lots single family dwellings may be erected so as to face the intersection of the two streets on which the Lot abuts.

11.20 Fire. In the event any home or structure within this subdivision is destroyed or partially destroyed by fire, act of God, or as a result of any other act or thing, said damage must be repaired and the improvement reconstructed within twelve (12) months after such damage or destruction.

11.21 General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of surveys upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot which will interfere with rights and use of any and all easements shown on said recorded plat.

11.22 Control of Signs. Declarant shall have the right to place permanent and temporary signs of any size or shape on unsold Lots and on the Common Area until all of the Lots have been conveyed by Declarant.

11.23 Utility and Drainage. An easement on each Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under, and upon a strip of land ten (10) feet in width along the rear lot lines of all Lots shown on recorded plats, and easements five (5) feet in width along the front and side lot lines of all Lots shown on recorded plats, in addition to such other easements as may appear on a recorded subdivision plat for lots. The purpose of these easements shall be to provide, install, maintain, construct, and operate drainage facilities now or in the future and utility service lines to, from, over, or for each of the Lots. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements except for party walls located on a portion of the side line or lines of a Lot. The easement area of each and all improvements in it shall be maintained continuously by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Declarant: may exercise the right to remove obstructions in such easements upon Owner's failure to do so at Owner's expense and Owner, by acquiring any Lot, agrees to pay such costs incurred by Declarant in the enforcement of this paragraph promptly upon demand. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the herein reserved easements along any Lot lines when, in its sole discretion, adequate reserved easements are otherwise available for the installation of drainage facilities and/or utility service lines.

For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Declarant; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefore from Declarant.

11.24 Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the property or any portion thereof, in the performance of their respective duties.

11.25 Sales Material. Until all of the Lots have been conveyed by Declarant, all sales, promotional and advertising materials, and all forms of deeds, contracts for sale, and other closing documents for the sale of Lots by any builder should be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver written notice to any Builder of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any builder within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedures shall be repeated until approval is obtained or deemed to be obtained.

11.26 Declarant's Consent to Amendments. This Article XI may not be amended without the express written consent of Declarant until all Lots which are part of the Property have been sold; provided, however, the rights of Declarant contained in this article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

11.27 Duration. The covenants, conditions, and restrictions of this Article XI shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each unless terminated as provided in Section 11.28.

11.28 Amendments and Termination. Article XI of this Declaration as it relates to the Single Family Property may be terminated during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners and signed by Declarant if Declarant shall own any Lots, and thereafter may be terminated by an instrument signed by not less than eighty percent (80%) of the Owners of Lots. Article XI of this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least sixty-seven percent (67%) of the Owners of Lots and the written consent of the Declarant; provided, however, that Declarant may amend this Article XI to correct minor and clerical errors, as determined by Declarant, without approval of Owners and should the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) subsequently delete any of their requirements which necessitate certain provisions of this Declaration or make any such requirements less stringent, Declarant, without approval of Owners, may amend this Declaration to reflect such changes. Any such amendment or termination shall not be effective until an instrument evidencing such change has been filed of record in the Registry.

11.29 Enforcement. If an Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for action to recover sums due, for damages or injunctive relief, or both, maintainable by Declarant, or, in proper case, by an aggrieved Owner. Any failure by Declarant or any other

Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidation of any covenant, condition, or restriction or other provision of this Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

11.30 Unintentional Violation of Restrictions. In the event of an unintentional violation of any of the foregoing restrictions with respect to any Lot, Declarant or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend, or release any portion of the foregoing restrictions as the same may apply to that particular Lot.

11.31 Severability. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder hereof.

11.32 Association as Successor to Declarant. For purposes of this Article, the Association shall be deemed to be vested with all rights and authority that is reserved to Declarant in this Article, upon the termination of the Class B Control Period. Provided, however, that the association shall not be deemed to succeed to the rights and authority reserved to Declarant in Sections 11.26, 11.27, and 11.29.

ARTICLE XII: EASEMENTS

12.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lot due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

12.2 Easements for Utilities. Etc. There are hereby reserved unto Declarant, so long as Declarant owns any portion of the Property, the Association, and the designees of each (which may include, without limitation, Mecklenburg County, North Carolina, and any public or private utility) access and maintenance easements upon, across, over and under all of the Property to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property owned by the Person exercising the easement or within easements designated for such purposes on recorded plats of the Property. These easements shall entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing structure on a Lot, and such construction and installation shall occur only within fifty (50) feet of the Lot boundary line unless otherwise consented to in writing by the Owner of the affected Lot, whose consent shall not unreasonably be withheld. Any damage to a Lot resulting from the exercise of these easements shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of these easements shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, electric company and natural gas supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the structures on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the board or Declarant.

ARTICLE XIII: MORTGAGEE PROVISIONS

An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Member having jurisdiction over the Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or other Owner or Occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association;
or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

ARTICLE XIV: DECLARANT'S RIGHTS

- (a) Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred, in whole or in part, to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Registry.
- (b) Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction on or sale of such Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities.
- (c) Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as Declarant deems appropriate in its sole discretion.
- (d) No person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the registry.

(e) Declarant shall have the right to make additional property subject to the terms of this Declaration, provided that such additional property is contiguous to the Property described herein. Such addition shall be accomplished by the identification of such additional property, and the execution and recordation of an instrument ("Supplemental Declaration") expressly making such property subject to the terms of this Declaration.

(f) This article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 20 years from the date this Declaration is recorded, or (b) upon recording in the Registry by Declarant of a written statement that all sales activity has ceased.

ARTICLE XV: GENERAL PROVISIONS

15.1 Term. Unless earlier terminated by an instrument signed by members holding eighty percent (80%) of the Class A votes and by the Class B Member, if any, and recorded in the registry, this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association, any Owner, or their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten years, unless an instrument signed by Members holding not less than eighty percent (80%) of the Class A votes and the Class B member, if the Class B Membership has not been terminated, has been recorded within the year preceding any such extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein, provided, nothing in this Section shall be construed to permit the termination of any easement without the consent of the holder of such easement.

15.2 Amendment.

(a) By Declarant. Until termination of the Class B membership, Declarant may amend all articles of this Declaration for any purpose after receiving the approval of at least two-thirds of the Members; thereafter, Declarant may unilaterally amend such articles with the approval of at least sixty-seven percent (67%) of the Members if such Amendment is necessary: (i) to bring any provision into compliance with any applicable government statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase mortgage loans on the Lots; (iv) to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; or (v) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the owner shall consent thereto in writing. So long as Declarant still owns any portion of the Property, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class A votes in the Association and the consent of the Class B member, if the Class B membership has not been terminated. In addition, the approval requirements set forth in Article XIV shall be met if applicable.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Effective Date and Validity. To be effective, any amendment must be recorded in the Registry.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgement or court order shall in no way affect other provisions or applications.

15.4 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities except for this provision, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Ronald A. Brown.

15.5 Use of the Word "Glenwyck." No person shall use the word "Glenwyck" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Builders may use the term "Glenwyck" in printed or promotional matter where such term is used solely to specify that particular property is located within Glenwyck, and the Association shall be intitled to use the word "Glenwyck" in its name.

15.6 Compliance. Every Owner of any Lot shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available by law or in equity, by the Association or, in a proper case, by any aggrieved Owner(s).

15.7 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot, or who does sell or transfer his Lot, shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and other such information as the Board may reasonable require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.8 Approval of HUD\VA. Annexation of additional properties, dedication of Common Area and amendment to the Declaration shall require prior approval of HUD and VA as long as Class B membership shall exist.

ARTICLE XVI: JOINDER OF TRUSTEES IN AND OWNERS AND HOLDERS OF DEEDS OF TRUST

16.1 Joinder. Bryan F. Kennedy, Trustee in, and PARK MERIDIAN BANK, owner and holder of, the deed of trust recorded in Book 9961, Page 966 in the Mecklenburg County Registry, for themselves and for their respective successors and assigns, join in this Declaration for the purposes of consenting to it and being bound by its terms.

ARTICLE XVII: JOINDER OF OWNERS OF PREVIOUSLY CONVEYED LOTS

17.1 Joinder. Brookwood Home Builders, Inc., a North Carolina corporation, being the owner of certain lots which have been previously conveyed by Declarant and which are part of the Property described on Exhibit "A",

and wishing for said lots to be subject to this Declaration, for itself, its successors and/or assigns, joins in this Declaration for the purposes of consenting to it and being bound by its terms, and hereby agrees that this Declaration shall apply to and be enforceable against said lots to the same extent and in the same manner as if said lots were at this time the property of Declarant.

Exhibit "A"

BEGINNING at a stone monument found in the common westerly corner of the property of David Michael Leonhardt and wife, Teresa B. Leonhardt (now or formerly) as described in Deed recorded in Book 5547 at Page 728 and Henderson Park Subdivision as shown on map thereof recorded in Map Book 27 at Page 881 in the Mecklenburg County Registry; and runs thence with the westerly line of said Henderson Park Subdivision, and with Henderson Park Subdivision as shown on map thereof recorded in Map Book 27 at Page 882, three (3) courses and distances as follows: (1) South 01-00-18 East 820.21 feet to a 1" pipe found; and (2) South 06-38-09 East 720.69 feet to a 1" pipe found; and (3) South 08-41-50 East 1,107.72 feet to an existing iron rod located in the approximate center of McDowell Creek; thence with said approximate center of McDowell Creek, and with the northerly line of the property of Reginald L. Clark (now or formerly) as described in Deed recorded in Book 7769 at Page 548, South 42-31-00 West 887 .15 feet to a set iron rod; thence with the easterly line of the property of B. Alex Barnette, Jr. a/k/a Bertram A. Barnette, Jr. and wife, Lillian U. Barnette (now or formerly) two (2) courses and distances as follows: (1) North 03-09-12 West 1,451.09 feet to an existing iron rod; and (2) North 03-09-12 West 1,514.24 feet to a PK nail found in the right-of-way of Bud Henderson Road (SR #2131); thence with said right-of-way four (4) courses and distances as follows: (1) North 68-07-44 East 65.14 feet to a PK nail found in the centerline of said right-of-way; (2) North 47-44-49 East 100.00 feet to a PK nail found in the centerline of said right-of-way; (3) North 38-32-55 East 99.98 feet to a Railroad spike found in the centerline of said right-of-way; and (4) North 36-28-00 East 611.42 feet to a Railroad spike found in the centerline of said right-of-way; thence with the westerly line of the property of David Michael Leonhardt and wife, Teresa B. Leonhardt (now or formerly) as referred to above, South 10-31-37 West 343.20 feet to the point and place of Beginning, and containing a total area of 36.428 acres, more or less, including an area of 0.605 acres, more or less, within the right-of-way of Bud Henderson Road, for a net area of 35.823 acres, more or less, as shown on survey of Paul F. Zeltner, NCRLS, dated September 24, 1998.

A portion of the above-described property has been subdivided and is known as GLENWYCK, Map 1, as shown on map thereof recorded in Map Book 32, Page 587, in the Mecklenburg County Public Registry. It is anticipated that subsequent maps of GLENWYCK will be recorded, showing the subdivision of the remainder of the above-described property.