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Prepared by Susan L. Hunt, Atty.

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S. Hunt*

NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR LOCHMERE II SUBDIVISION

GUILFORD COUNTY

THIS DECLARATION, made this 17th day of August, 1999, by SESSOMS DEVELOPMENT, INC., a North Carolina Corporation with its principal office and place of business in Guilford County, North Carolina, herein after referred to as the Declarant;

WITNESSETH:

Whereas, Declarant is the owner of certain property in the County of Guilford, State of North Carolina, which is more particularly described as follows:

All of that parcel of land shown on that plat entitled "Lochmere II Subdivision" which appears in the office of the Register of Deeds of Guilford County, North Carolina, in Plat Book 134, Page 052, 053

WHEREAS, Declarant is creating on the above-described property a planned residential community to be known as Lochmere II; and

WHEREAS, Declarant desires to provide for the preservation and maintenance of the common areas and for certain other responsibilities in connection with Lochmere II and to this end desires to subject the real property described above, together with such additions as may hereafter be made thereto, to the covenants, restrictions and easements, hereinafter set forth, each and all of which is and are for the benefit of the property comprising Lochmere II and each owner thereof.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions and easements, all of which all of which are for the purpose of protecting the value and desirability of, and which shall run with the real property, shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

SECTION 1. “Association” shall mean and refer to Lochmere Homeowner’s Association, Inc., a North Carolina non-profit corporation, its successors and/or assigns. The Association shall not expire but shall survive in perpetuity.

SECTION 2. “Lochmere II” shall mean and refer to that certain real property hereinabove described which is herein made subject to this Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 3. “Common Area” shall mean and refer to all common areas within Lochmere Subdivision and Lochmere II Subdivision owned by the Association for the common use and enjoyment of the Owners, as shown on the recorded plat of Lochmere Subdivision and Lochmere II Subdivision , and all subsequent recorded plats for additional phases to Lochmere Subdivision and Lochmere II Subdivision.

Declarant reserves the right, in its sole discretion, to convey, from time to time, additional property to the Association, and the Association shall accept any such conveyance of additional property, and thereafter such additional property shall be held and maintained by the Association as Common Area.

Improvements on the Common Area may include, but shall not be limited to, landscaping, roadways, entrance and subdivision signs, retention or detention ponds, or erosion control devices.

SECTION 4. “Lot” shall mean any separately numbered plot of land, regardless of size, as shown on a recorded subdivision map of Lochmere II. Declarant hereby reserves the right to reconfigure, from time to time, and without the consent of the Owners or the Members of the Association, the boundaries of any lot or lots owned by Declarant and to thereby create additional lots, eliminate existing lots, or create additional Common Area. If Declarant elects to exercise its right to revise the boundaries of one or more lots owned by Declarant, Declarant shall record a revised plat of the affected lot or lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a “Lot” as defined in this Declaration and each newly configured lot shown on the revised plat shall be a “Lot” as defined in this Declaration.

SECTION 5. “Dwelling Unit” shall mean a residence containing sleeping facilities for one or more persons and a kitchen.

SECTION 6. “Member” shall mean and refer to every person or entity entitled to membership with voting rights in the Association.

SECTION 7. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of Lochmere II, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.

SECTION 8. “Declarant” shall mean and refer to the Developer of Lochmere II as well as its successors and assigns, if Declarant shall make an express conveyance to each successor and assign of its rights as Declarant hereunder, all of which rights may be assigned.

SECTION 9. “Board of Directors” or “Board” means those persons elected or appointed to act collectively as the directors of the Association.

SECTION 10. “Bylaws” shall mean the bylaws of the Association as they now or hereafter exist.

ARTICLE II

COMMON AREA OWNERSHIP AND MAINTENANCE

SECTION 1. OWNER’S EASEMENTS OF ENJOYMENT: Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

SECTION 2. DELEGATION OF USE: Any Owner may delegate his rights of enjoyment of the Common Area to the members of his family, his lessees, contract purchasers who reside in Lochmere II, or his guests.

SECTION 3. RULES AND REGULATIONS: The Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations shall be maintained in a place reasonably convenient to the Members and available to them for inspection during normal business hours.

SECTION 4. REGULATION OF USE OF COMMON AREA: The Association shall have the power to limit the number of guests, to regulate the hours of use, and to curtail any use or uses of the Common Area it deems necessary for either the protection of the facilities or the best interests of Members.

SECTION 5. SUSPENSIONS: The Association shall have the power to suspend the right to the use of any Common Area of a Member or any person to whom that Member has delegated his right of enjoyment for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its published rules and regulations.

SECTION 6. MORTGAGING COMMON AREA: The Association shall have the power to borrow money for purposes of improving the Common Area and facilities thereon and pursuant thereto to mortgage the Common Area, or any portion thereof; provided, however, that the execution of such mortgage shall require the approval of at least two-thirds of the vote of the Members.

SECTION 7. COMMON AREA DEDICATION OR TRANSFER: The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer by the Association shall be effective unless approved by at least two-thirds of the votes of Members.

SECTION 8. MAINTENANCE: The Association shall maintain any retention or detention ponds and any erosion control devices located on the Common Areas described above or on any other Common Areas hereinafter conveyed to the Association by Declarant that are required to be maintained by the governmental office having jurisdiction for Watershed protection as directed by such governmental office. In the event the Association is dissolved or ceases to exist or otherwise defaults in its obligation to maintain any such pond or erosion control device, then in such event the Owners of Record of the Lots at the time of the required maintenance shall be jointly and severally liable for any and all costs associated thereto.

The Declarant may design and construct bermes along roads and at the entrance area of Lochmere. These bermes are for the benefit of the Lot Owners. Declarant will pay the cost of construction. Declarant reserves unto itself, its successors/assigns/agents, a perpetual, alienable, and releasable easement or right to go on, over and under any bermes and the entrance area, to erect, maintain, and use suitable equipment to erect and maintain the bermes and entrance. Such rights shall not create any obligation on the part of the Declarant to provide or maintain such bermes or entrance.

The Association shall be responsible for the repair and/or maintenance of the entrance to the Subdivision and of any bermes in said Subdivision, and said Association is hereby granted the right to enter upon the Lots where the entrance or bermes are located for the upkeep and maintenance of same. Declarant reserves the right to determine whether and to what extent any additional landscaping is required on the entrance area or bermes.

The property owners of any such lots whereupon the entrance or a berme is located shall not place any item of a permanent nature upon said berme or entrance which the Owner does not wish to remove at Owner's expense, nor shall Owner landscape the entrance or berme area without the written permission of Declarant and/or the Association. The property owner shall be responsible for any expense incurred by the Declarant and/or Association in removing any items built into or upon the entrance or berme by the property owner and/or repairing any damage caused to the entrance or berme as a result of property owner's actions. Such cost will be added to the Owner's annual assessments and Declarant and/or the Association shall have the right to recover any such unpaid costs, together with attorney's fees, court costs and interest pursuant to Article VI, Section 9 hereinbelow.

ARTICLE III
RESTRICTIONS

All of Lochmere II shall be subject to the following covenants, conditions, restrictions and easements:

SECTION 1: LAND USE AND BUILDING TYPE. No Lot shall be used except for residential purposes. No mobile homes or campers shall be permitted in said subdivision unless used temporarily as a construction office and they are not to be used as living quarters. No building shall be erected, altered, placed, or permitted to remain on any Lot other than a detached single family dwelling not to exceed two and one-half stories in height above ground level. No Lots shall be permitted to be subdivided.

SECTION 2: DWELLING. All dwellings shall have 2500 square feet and a two-car garage. The garage must be side-entry. All plans must be expressly approved in writing by Sessoms Development, Inc.

SECTION 3: BUILDING LOCATION.

- a. No building shall be located on any Lot except on the site approved by the Declarant by written instrument.
- b. For the purposes of this covenant, decks, steps and open porches shall not be considered as a part of a building, provided however, that this shall not be considered to permit any portion of a building on a Lot to encroach upon another Lot.
- c. All foundations must be brick veneered. However, should construction building materials become scarce, Sessoms Development, Inc. may elect to approve alternative materials.*
- d. All siding materials must be masonry veneer or as otherwise expressly approved by the Developer in writing. Should construction materials become scarce, Sessoms Development, Inc. may elect to approve alternative materials.*

** Any approval for alternative materials must be made in writing and must specify the type of materials to be used.*

SECTION 4: DRIVEWAYS. All driveways shall be paved with concrete or asphalt.

SECTION 5: EASEMENTS. Easements for installation and maintenance of utilities and sight easements are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may obstruct or retard the flow of water through natural drainage channels. The easement area of each Lot shall be maintained continuously by the Lot Owner except for those improvements for which a public authority or

utility company is responsible. Sessoms Development, Inc. shall make the final determination as to any maintenance and landscaping upon said easement.

SECTION 6: NUISANCE. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

SECTION 7: TEMPORARY STRUCTURES. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

SECTION 8: LANDSCAPING.

- a. All lots must be landscaped within sixty (60) days after occupancy of the house located thereon. The landscaping must be consistent with other homes in the Subdivision. The Declarant shall have the final decision as to whether the Lot has been landscaped in accordance with the covenants and restrictions.
- b. The Declarant shall have the final decision as to whether any additional landscaping is required on any special purpose Lots, bermes and entrance. The Homeowner's Association shall be responsible for the maintenance and upkeep of the special purpose Lots, bermes and entrance.
- c. Grading must not impede the natural flow of water from Lot to Lot without the express written permission of the Declarant.

SECTION 9: SIGNS. No sign of any kind shall be displayed to the public view on any Lot except for one professional sign of not more than six square feet advertising the property for sale or rent; however, this provision is subject to the following exceptions:

- a. Signs used by the Declarant or builders to advertise during the construction and sales period must not exceed thirty (30) square feet.
- b. Only one Model Home shall be permitted for the development. Declarant shall make the determination as to which home will be the development's Model Home. No signs advertising model homes shall be permitted on any Lot except for the Lot designated by the Declarant as the development's Model home.
- c. Temporary "Open House" signs of not more than six square feet shall be permitted to be displayed on the day or days such open house shall be held, but shall be removed when the open house is not being conducted.

SECTION 10: USE OF PROPERTY. No Lot or the building thereon shall be used for business, manufacturing, or commercial purposes, nor shall any animals or fowl be kept or allowed to remain on said property for commercial or breeding purposes, or which create a nuisance or annoyance to any Lot owners.

SECTION 11: GARBAGE RECEPTACLES. No property within this Subdivision shall be used or maintained as a dumping ground for rubbish, trash or other waste. All waste shall be

kept in sanitary containers, and all incinerators and other equipment for the storage or disposal of such waste material shall be kept in a clean sanitary condition. The Declarant or its agents shall have the right to enter upon any Lot area to remove such waste or cut and remove any grass, weeds, trees, etc., on any Lot or area deemed by public authority or the Declarant or its agent, to be unsightly. If the Declarant performs the work to comply with this restriction, then the cost shall be borne by the Lot Owner and the cost shall be a lien upon the Lot until paid as hereinafter set forth.

SECTION 12: SATELLITE DISHES, ANTENNAS, OR CLOTHESLINES. No satellite dishes, antennas or clotheslines shall be erected, placed, altered, or allowed to remain on any Lot without the prior written consent of the Declarant or its agent. Placement of any satellite dish must be approved in writing by Declarant and must be inconspicuously located.

SECTION 13: FENCES. No fences shall be erected, placed, altered, or allowed to remain on any Lot without prior written consent of the Declarant. No chain link or wire mesh type fences, including chain link dog runs, shall be placed or erected on any Lot.

SECTION 14: EXTERIOR PAINT COLORS. All exterior colors must be approved in writing by the Declarant.

SECTION 15: BOATS, TRAILERS, TRACTOR-TRAILERS, MOTOR HOMES, MOBILE HOMES. No boats, trailers, tractor-trailers, motor homes or mobile homes, or inoperable, uninsured, unlicensed vehicles shall be parked on or in front of any Lot unless parked inside an enclosed garage area. All cars or other vehicles must be parked in the garage or on the driveway. Any vehicle parked in the driveway must be licensed, insured and operable.

SECTION 16: MAILBOXES. All mailboxes and posts must be uniform in design and color. Mailboxes shall be black, with a natural wood, unpainted "Trotter Ridge" post. Contact Sessoms Development, Inc. for the mailbox and post design.

SECTION 17: SWIMMING POOLS. No swimming pools shall be placed or built on any Lot without the prior written approval of the Declarant. All plans and designs for swimming pools shall be submitted to the Declarant for written approval prior to construction. **NO ABOVE-GROUND SWIMMING POOLS SHALL BE PERMITTED TO BE PLACED ON ANY LOT.**

SECTION 18: UTILITY BUILDINGS, OUTBUILDINGS, SHEDS. Anyone desiring to place a utility building, shed or other outbuilding on a Lot must meet with the Declarant to obtain the Declarant's express written approval of the location and design of such outbuilding. Declarant's written approval must be obtained prior to placing, erecting, or altering an outbuilding on any Lot. All outbuildings must be constructed with substantially the same materials and with the same colors as the house on said Lot. No pre-fabricated outbuildings shall be permitted within Lochmere II Subdivision.

SECTION 19: PROPANE TANKS. Any propane tanks or other storage tanks must be buried underground and the site must be properly landscaped in accordance with this Declarations. Location of the propane tank underground site must be submitted to and approved by the

Developer prior to placing the tank on any Lot. Neither Developer, its subsidiaries, agents or assigns shall be held liable in any manner for any defects in the tank, site preparation, use or otherwise.

SECTION 20: POND. The pond located within Lochmere II shall be owned by the Lot Owners whose Lots abut the perimeter of the pond as shown on the recorded plat referenced herein (specifically Lots 98, 102, 103, 104, 108, 109, 110, 111). There shall be an easement of 30 feet around the entire perimeter of the pond for pond maintenance only, in addition to any other easements shown on the recorded plat. The easement area on each Lot shall be maintained by the Lot Owner. The pond Lot Owners shall be responsible for the upkeep and maintenance of the pond and dam and shall regulate the access to and use of the pond.

ARTICLE IV

ARCHITECTURAL CONTROL

SECTION 1. ARCHITECTURAL COMMITTEE. An Architectural Committee consisting of three (3) persons shall be appointed by the Declarant. Declarant shall prescribe the procedures, nature and composition of the Committee until the Declarant has conveyed all of the Lots in Lochmere II and in any future phases of Lochmere II, but not in any event later than December 31, 2010, at which time Declarant's powers hereunder shall vest in the Association.

In the event of the dissolution of Sessoms Development, Inc., or its failure to act in any capacity herein provided, or at such time as the initial construction of a dwelling unit has been completed and the dwelling unit on each Lot in Lochmere II (including any additional phases to Lochmere II), or on December 31, 2010, whichever shall first occur, then at any time thereafter any consent or approval as herein required in this Article III to be obtained from Sessoms Development, Inc., instead of being given to Sessoms Development, Inc., may be given either by the Board of Directors of the Association or the Architectural Committee appointed as provided herein in Article IV.

SECTION 2: PLAN OR DESIGN APPROVAL

- (a) **APPROVAL OF INITIAL IMPROVEMENTS REQUIRED BY SESSOMS DEVELOPMENT, INC.** No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, Dwelling Units, outbuildings, driveways, fences, walls, swimming pools, tennis courts, signs, television antennas, mailboxes, post lamps and other structures, or additions, or excavation, or changes in grade shall be undertaken upon any Lot unless the plans and specifications therefore, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to and expressly approved in writing by Sessoms Development, Inc. No approval shall be required, however, for any improvements made by the Declarant.

After the date of the completion of the initial improvements to a Lot (which is herein defined as being that date ending six months after the beginning date of the first occupancy of the Dwelling Unit initially constructed upon the Lot), plans and specifications for subsequent improvements shall be submitted for approval to the Architectural Committee as herein provided in subparagraph (b) below, rather than to Sessoms Development, Inc.

In the event of the dissolution of Sessoms Development, Inc., or its failure to act in the capacity herein provided, then at any time hereafter any approval as herein required to be obtained from Sessoms Development, Inc., shall be obtained by the Architectural Committee as herein provided in subparagraph (b) below.

- (b) **APPROVAL REQUIRED FROM ARCHITECTURAL COMMITTEE AFTER COMPLETION OF INITIAL IMPROVEMENTS.** After the date of the completion of the initial improvements to a Lot (as defined in (a) above), no subsequent alteration or modification of existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain without the review and express approval in writing of the Architectural Committee.

SECTION 3: EFFECT OF FAILURE TO APPROVE OR DISAPPROVE. In the event that Sessoms Development, Inc., or the Architectural Committee, as the case may be, fails to approve or disapprove any of the foregoing within thirty (30) days after plans and specifications therefore have been submitted and received (receipt being hereinafter defined), 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 an officer of Sessoms Development, Inc., or the Architectural committee, as the case may be, if they contain erroneous data or fail to present full and adequate information upon which Sessoms Development, Inc., or the Architectural Committee, as the case may be, can arrive at a decision.

For the purposes of this section 3, plans and specifications will not be deemed to have been “received” unless an officer of Sessoms Development, Inc., or a member of the Architectural Committee, as the case may be, either acknowledges in writing such receipt or the plans and specifications are sent by certified or registered mail to Sessoms Development, Inc., or a member of the Architectural Committee, as the case may be, and a return receipt is received, acknowledging the receipt thereof by such member.

Neither Declarant, nor any member or manager of the Declarant, nor any member of the Association’s Board of Directors, nor any member of the Architectural Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member or manager of the Declarant, nor any member of the Association’s Board of directors, nor any member of the Architectural Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of, or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, or the exercise of any other power or right provided for in this Declaration. Every person who submits plans or specifications for approval agrees, by submissions of such plans and specifications, and every Owner of any Lot agrees that he or she will not bring any action or suit against Declarant, nor any member or manager of

Declarant, nor Sessoms Development, Inc., or its subsidiaries, nor any member of the Association's Board of Directors or Architectural Committee, to recover such damage.

SECTION 4: RIGHT OF INSPECTION. Declarant, its agents or assigns, shall have the right, at its election, to enter upon any of the Lots in Lochmere II during preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications. If such work is not being performed in conformity with the approved plans and specifications, such work shall immediately cease upon verbal or written notice by Declarant, and shall either be removed, replaced, or repaired so as to conform to the approved plans and specifications, or new plans and specifications shall be submitted to Declarant for approval and no work shall commence until such approval is expressly made in writing by Declarant.

SECTION 5: MAINTENANCE. The maintenance of Lots and the Dwelling Units located thereon and other improvements constructed thereon shall be the duty and responsibility of the owner of such Lot and shall not be the responsibility of the Declarant or the Association. If, however, in the opinion of the Declarant, or the Architectural Committee or the Association any owner shall fail to discharge his or her repair, maintenance or upkeep responsibilities in a responsible and prudent manner to a standard harmonious with that of other Lots in Lochmere II, the Declarant, Architectural Committee, or Association at its discretion, and following ten (10) days' written notice to the Owner, may enter upon and make, or cause to be made, maintenance work or repairs as may be deemed by said persons to be reasonably required. Declarant, Architectural Committee or the Association, shall have an easement upon any Lot for the purpose of accomplishing the foregoing. The costs incurred in rendering such services plus a service charge of twenty percent (20%) of such costs, shall be added to and become part of the assessments to which such Lot is subject.

SECTION 6: ORIGINAL IMPROVEMENTS BY DECLARANT. Nothing herein contained shall in any way prevent or interfere with the right of the Declarant or a member of the Declarant to construct the original improvements desired by them on any Lot, and no approval shall be required for Sessoms Development, Inc., or the Architectural Committee for any such construction.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

SECTION 1: MEMBERS. The Declarant, for so long as it shall be an Owner, and every person or entity who is an Owner of a fee simple or undivided fee simple interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such

Lot shall be the sole qualification for membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Association may promulgate reasonable rules relating to the proof of ownership of a Lot.

SECTION 2: CLASSES OF MEMBERS AND VOTING RIGHTS. The Association shall have one (1) class of Members. The Members shall be all Owners. Members shall be entitled to one (1) vote for each Lot in which they hold the required ownership interest. When more than one person or entity holds the required ownership interest in a Lot, all such persons or entities shall be Members. The vote for each such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot, and no fractional votes may be cast.

SECTION 3: RIGHT OF DECLARANT TO REPRESENTATION ON BOARD OF DIRECTORS OF THE ASSOCIATION. Notwithstanding anything contained herein to the contrary, until December 31, 2010, Declarant (or the assignee of the right granted in this section) shall have the right to designate and select two-thirds (2/3) majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or the Bylaws of the Association. Declarant shall have the right to remove any person or persons with another person or persons to act and serve in place of any Director or Directors so removed. Any Director designated and selected by the Declarant need not be an owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a Member of the Association, shall not be required to disqualify itself upon any vote upon or entrance into any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest.

ARTICLE VI

ASSESSMENTS

SECTION 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Owner of any Lot subject to the provisions of this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed, is deemed to covenant and agrees to pay to the Association:

- (a) Annual assessments or charges as herein provided;
- (b) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and
- (c) To the appropriate governmental taxing authority's pro rata share of ad valorem taxes levied against the Common Area, and a pro rata share of assessments for public improvements to, or for the benefit of, the Common Area if the Association shall default in the payment of either or both for a period of six (6) months.

All annual and special assessments on a Lot, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in North Carolina General Statutes 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by such successor or assign.

SECTION 2: PURPOSE OF ASSESSMENTS.

- (a) The assessments levied by the Association shall be used exclusively for the purposes of the general enhancement and promotion of Lochmere II, including without limitation the recreation, health, safety and welfare of the owners in Lochmere II, the enforcement of the covenants and the rules of the Association, and in particular, the improvement and maintenance of the Common Areas and facilities thereon, including, without limitation, the maintenance of any dedicated streets which are not accepted for maintenance by the appropriate governmental authority, the maintenance of entrance ways, landscaping and lighting of Common Areas, the cost of operating, maintaining and repairing any street light or signs created by the Association or the Declarant, the payment of taxes assessed against the Common Areas, the payment of assessments for public capital improvements levied against the Common Areas, the maintenance of liability and other insurance and for such needs consistent with this Declaration as may arise, the employment of attorneys and other agents to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements, the payment of management fees and such other needs as may arise. In addition, the assessments shall be used as required or deemed appropriate by the Association for the repair and/or maintenance of the permanent (wet detention/retention) pond(s). Repairs and maintenance shall include, but not be limited to the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision. Assessments shall also provide for the procurement and maintenance of insurance in accordance with the Bylaws, the provision of adequate reserves for the replacement of major structures incorporated into the permanent (wet detention/retention) pond(s), and such other needs as may arise.
- (b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operation and managing Lochmere II, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member

of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of Lochmere II.

SECTION 3: ANNUAL ASSESSMENT.

- (a) To and including December 31, 1999, the annual assessment for each Lot shall be \$200.00 and shall be collected annually at the time of conveyance of each Lot by Declarant. There shall be no assessment for any Lot owned by the Declarant. Thereafter, the maximum annual assessment shall be established by the Board of Directors as an amount reasonably and prudently necessary to fund the Association's performance of its duties under this Declaration, under any agreement to which the Association is a party, and under any applicable law. The maximum annual assessment may be increased by the Board of Directors without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year; and
- (b) After December 31, 1999, the annual assessment may be increased without limit by the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting called for such purpose.
- (c) At any time, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

SECTION 4: SPECIAL ASSESSMENT FOR REPAIRS. In the event any portion of the Common Area is damaged or destroyed by an Owner, or any of his guests, tenants, licensees, agents, or family members, the Association is hereby authorized to repair such damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material, including a twenty percent (20%) fee, shall become a special assessment upon the Lot of said Owner.

SECTION 5: SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy one or more special assessments applicable to that year for the purpose of defraying the costs of construction or reconstruction, unexpected repair, or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the foregoing, the Association may levy special assessments that may be necessary to defray costs necessary to maintain the water quality of any pond(s) on the Common Area.

SECTION 6: NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 5 shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and no quorum shall be required at the subsequent meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 7: EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Assessments authorized by this Declaration shall be due and payable on the dates established by the Board of Directors, from time to time. Fees, fines, and other charges authorized by this Declaration shall be due and payable thirty (30) days after written notice thereof from the Association to an Owner. Any assessment, fee, fine, or other charge not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust. Interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot, nor shall damage to or destruction of any improvement on any Lot or fire or other casualty result in any abatement or diminution of the assessments provided herein.

SECTION 8: EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in Lochmere II shall become personally obligated to pay the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in Lochmere II. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representative and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 9: SUBORDINATION OF THE LIEN TO MORTGAGES AND AD VALOREM TAXES. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage or Deed of trust on such Lot, and subordinate to ad valorem taxes. The sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure on a first mortgage or first Deed of Trust thereon, or any proceeding in lieu of foreclosure thereof shall extinguish the

lien of such assessments, fees, fines or other charges as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments, fees, fines or other charges thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first Deed of Trust.

SECTION 10: EXEMPT PROPERTY. Any portion of Lochmere II dedicated to, and accepted by a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein; provided, however, no land or improvements devoted to use as a dwelling shall be exempt from said assessments.

SECTION 11: RESERVE FUND. The Board of Directors of the Association, in establishing the annual budget for operation, management and maintenance of Lochmere II, may designate therein a sum to be collected and maintained as a reserve fund for replacement or any extraordinary repairs or maintenance of any capital improvements to the Common Area (Capital Improvement Fund). The amount to be allocated to the Capital Improvement Fund shall be established by the Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacements or extraordinary repairs or maintenance in the Common Area. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such money shall be used only to make capital improvements to the Common Area. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Although the funds held in the Capital Improvement Fund, and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. The funds held in the Capital Improvement Fund shall not be subject to withdrawal by an Owner.

ARTICLE VII

EASEMENTS

SECTION 1: WALKS, DRIVES, UTILITIES, ETC. Common Areas shall be subject to such easements for walkways, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and cables, and other utilities, ingress, egress and regress and otherwise as shall have been established or hereinafter are established by the Declarant /Association, whether by express easement, or by the recording of a plat dedication or otherwise establishing an easement. The Association and the Declarant, as long as it owns a Lot or any of the additional property described in Exhibit A, shall have the power and authority to grant and establish further easements upon, over, under and across the Common Area.

SECTION 2: EASEMENT RESERVED BY DECLARANT. Declarant hereby reserves such easements on across and over the Common Area as shall be reasonably necessary for (i) the exercise by Declarant of any right herein reserved, including without limitation, Declarant's right, should Declarant elect, to annex additional property and (ii) the development by Declarant, its successors and assigns, of additional property, should Declarant elect not to annex

the additional property, including without limitation, easements for ingress, egress and regress over private roads and streets now or hereafter erected in Lochmere II and easements for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing water, light, power, telephone, sewage and sanitary service to the additional properties.

Declarant further reserves unto itself, its successors and assigns, and its agents, a perpetual, alienable, and releasable easement, or right to go on, over and under any bermes and the entrance area to erect, maintain, and use suitable equipment to erect and maintain the bermes and entrance. Such rights shall not create any obligation on the part of the Developer to provide or maintain such bermes or entrance.

SECTION 3: EASEMENT FOR GOVERNMENTAL BODIES AND UTILITY COMPANIES. An easement is hereby established for county, municipal, state or public utilities serving Lochmere II, their agents and employees over all Common Areas hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing utility or drainage facilities and connections, and acting with other purposes consistent with the public safety and welfare, including without limitation, police and fire protection, and collection of garbage.

SECTION 4: SIGN EASEMENTS. Declarant and the Association shall each have the right to erect within the Common Area, subdivision signs and landscaping and lighting surrounding same. Declarant hereby reserves unto itself and grants, gives and conveys to the Architectural Committee and the Association a perpetual non-exclusive easement over the portions of Lots to maintain, repair and replace, the subdivision signs which may be located thereon, and the lighting fixtures and landscaping surrounding same. The Association shall be responsible for maintaining, repairing and replacing any such signs, landscaping and lighting and the costs of such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners. In addition to the easements reserved and granted above as to the portion of lots designated "sign easement," Declarant hereby reserves unto itself and gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the property.

ARTICLE VIII

GENERAL PROVISIONS

SECTION 1: ENFORCEMENT. The Declarant, Association, Architectural Committee, 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. The non-compliant Lot Owner shall be assessed interest at the maximum legal rate, attorney's fees and court costs should legal action be taken. Failure by the Declarant, Association, Architectural Committee, 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. Should any Lot Owner fail to comply with these Declarations following ten (10) days written notice by Declarant, the Architectural Committee or the Association, Declarant, the Committee members or a member of the Board of Directors have an easement to and may enter upon any Lot to make or cause to be made such work or repairs to create compliance with these Declarations. The costs incurred for such work plus a service charge of twenty percent (20%) of such costs, shall be added to and become a part of the assessments to which such Lot is subject.

SECTION 2: TERM AND AMENDMENT BY OWNERS. The covenants, conditions and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated or amended as hereafter provided. Prior to the sale of any Lot by the Declarant, this Declaration may be amended or revoked by Declarant, in its sole discretion. After the sale of Lots commences, this Declaration may be amended by an instrument signed by the Declarant and not less than fifty-one percent (51%) of the Lot Owners. No amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant, and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection, and no amendment shall alter any obligation to pay ad valorem taxes of assessments for public improvements or affect any lien for the payment thereof established herein. For the purposes of this Section, additions to Lochmere II shall not constitute an “amendment.” In the event this Declaration is terminated, in accordance with the provisions hereinabove provided, then in such event the Owner of Record of the Lots at the time of the required maintenance shall be jointly and severally liable for any and all costs associated thereto.

SECTION 3: ANNEXATION. Additional residential property and Common Area may be annexed to the properties by Declarant.

SECTION 4: CONFLICTS. In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

SECTION 5: SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect other provisions which shall remain in full force and effect.

SECTION 6: MINOR VIOLATIONS. Minor violations of these covenants may be waived by Declarant or the Association or their agents or successors or assigns, by written instrument.

SECTION 7: INTERPRETATIONS OF THESE COVENANTS. DECLARANT, ITS SUCCESSORS AND/OR ASSIGNS SHALL MAKE ALL FINAL INTERPRETATIONS AS TO THE MEANING AND INTENT OF THESE COVENANTS.

SECTION 8: CONTRACT RIGHTS OF ASSOCIATION. The undertaking and contracts authorized by the initial Board of Directors (including contracts for the management of Lochmere II) shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by any Board of Directors duly elected by the membership after recording of this Declaration, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of Directors of the Association in accordance with this Declaration, the Articles of Incorporation and the Bylaws.

IN WITNESS WHEREOF, the undersigned Declarant herein has caused this Declaration to be duly executed this 17th day August, 1999.

Sessoms Development, Inc.,

By: William T. Monroe, President

ATTESTED TO BY:
Belinda H. Covington,
Secretary

Susan L. Hunt
Notary Public, Guilford County, NC
Commission expires 6/27/2000