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# **BEACON POINTE PHASES III & IV**

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

35

Drawn by and mail to:

Joseph N. Tissue  
Mitchell, Rallings & Tissue, PLLC  
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STATE OF NORTH CAROLINA  
COUNTY OF IREDELL

BEACON POINTE PHASES III & IV  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

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**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** made this the 9th day of January 2004, by **Beacon Pointe Partners, LLC**, which is seised of the fee simple estate in that real property located in Iredell County, North Carolina described in the following Article II, Section 1;

**WITNESSETH THAT**

In order to (1) create a restricted, structured and high quality residential environment; (2) provide for high quality design of homes, site arrangements, and amenities; (3) assure a satisfactory integration of the Subdivision into the surrounding area; (4) enhance general development within the Subdivision; (5) enhance the value, marketability, and quality of all property within the Subdivision; (6) prevent construction of inappropriate Improvements; (7) provide for compliance with Applicable Laws concerning zoning, construction, safety, the public welfare and environment; (8) provide for an association of property owners within the Subdivision (which will own and maintain Common Facilities); and (9) provide the owners of Lots with the best possible value for their investment and to protect that investment; Beacon Pointe Partners, LLC, does hereby, for the use and benefit of itself and its successors and assigns, **DECLARE, RESERVE AND IMPOSE** upon the property described in the following Article II, Section 1, the following conditions, covenants, reservations, easements and restrictions.

**ARTICLE I**  
**Definitions**

Words or phrases defined in this Article I shall be interpreted in accordance with that defined meaning whenever those words or phrases are used in this Declaration.

- (a) **Additional Property** - Any real property subjected to this Declaration in addition to that 59.491 acres (approximately) described in Article II, Section 1. The procedure for adding Additional Property is described in Article II, Section 3.
- (b) **Applicable Laws** - All enforceable laws, regulations and ordinances effective in the County of Iredell, the State of North Carolina, and the United States of America including all zoning regulations as well as sign, street, tree and floodway ordinances; land use, Lake Norman watershed development, environmental resources, and hazardous materials laws; and such other laws of all appropriate jurisdictions as may affect the Subdivision.
- (c) **Architectural and Site Guidelines** - Those rules, regulations and guidelines promulgated from time to time by the Architectural Review Committee pursuant to the power set forth in Article VIII,

Section 3. All Architectural and Site Guidelines, whenever promulgated shall have the same force and effect as if they were originally set forth in this Declaration as Restrictions.

- (d) **Association** - BPHOA - 3 & 4, Inc., a North Carolina not-for-profit corporation that was formed by Declarant by Articles of Organization filed on December 17, 2003, having an effective date of January 1, 2004. The North Carolina Secretary of State ID # for the Association is 703407.
- (e) **Board of Directors** - shall mean the Board of Directors of the Association.
- (f) **Buffer Area** - That portion of any Lot within fifty feet (50') of: [i] the 760' contour line of Lake Norman as defined by Duke Energy Corporation or its successors from time to time; or (ii) the landward side of any rip rap or other shore stabilization improvements installed in accordance with Applicable Laws and the approval of Duke Energy Corporation or its successors. This is a protected zone subject to strict limitations upon development, clearing and use as stated herein and in Applicable Laws.
- (g) **Bylaws** - Bylaws shall mean the Bylaws for the Association adopted by the initial Board of Directors of the Association as amended from time to time.
- (h) **Committee** - The Architectural Review Committee established pursuant to Article VIII.
- (i) **Common Facilities** - shall mean [i] any Common Open Space, [ii] all property specifically and expressly declared to be Common Facilities by Declarant, [iii] such property as may, from time to time, be owned in fee simple by the Association for the common use and benefit of all or some Owners, including all related fixtures, improvements, apparatus or amenities, [iv] any Private Road, lake access area, signage, lighting, Monument, marker, or the like, and [v] any other property designated as "Common Facilities" on the Map, in this Declaration, or any deed from the Declarant.

Both before and after those dates when Declarant conveys Common Facilities to the Association, all Common Facilities shall be maintained by the Association (subject to the rights of the Declarant provided for in this Declaration) for the common use, benefit and enjoyment of the Owners, or of only certain Owners to the exclusion of other Owners as designated in this Declaration. The Declarant reserves the right, but not the obligation, to provide additional Common Facilities within the Subdivision.

The term "Common Facilities" as used in this Declaration includes all real estate that would be defined as "common elements" in the Planned Community Act at the time this Declaration is filed.

Amenities, streets, plantings, and the like which may be illustrated upon marketing materials which hypothetically project the appearance of the Subdivision at a future stage of development do not constitute the commitment of Declarant to build such amenities, or dedicate them as Common Facilities.

- (j) **Common Open Space** - shall mean the generally unimproved areas within the subdivision which are dedicated for the benefit and use of the Owners by inclusion on the Map labeled as "common open space", "common open area", "COS" or like designation. The Septic Field Easement Areas are dedicated as Common Open Space.
- (k) **Declarant** - Beacon Pointe Partners, LLC, a North Carolina limited liability company, or an assignee of the powers granted herein to Beacon Pointe Partners, LLC.

- (l) **Declaration** - This Declaration of Covenants, Conditions and Restrictions (and any future amendments or supplements) as executed by the Declarant and Filed.
- (m) **File** - Recording in the Office of the Register of Deeds for Iredell County, North Carolina.
- (n) **Half Story** - means a story which contains fifty percent (50%) or less Heated Living Area than the story in the house containing the most Heated Living Area.
- (o) **Heated Living Area** - as applied to a residential dwelling, excludes:
- basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and have interiors finished to a quality equal to the above grade levels of the dwelling;
  - vaulted ceiling areas;
  - attics;
  - unheated porches;
  - attached or detached garages;
  - porte-cocheres;
  - unheated storage areas;
  - decks; and
  - patios.
- (p) **Improvements** - All buildings, out buildings, underground installations, roads, driveways, fences, screens, retaining walls, stairs, decks, windbreaks, plantings (excluding ground covers, grass, flower beds, non-massed shrubbery or trees, and any shrubbery with expected height at maturity of less than five feet), poles, signs, piers, docks, cuts and fills, and all other structures or landscaping hardscape of every variety and nature.
- (q) **Interior Lots** - Interior Lots shall mean those Lots in the Subdivision, if any, which are not Waterfront Lots.
- (r) **Lot** - Lot or Lots shall mean the separately numbered single-family lots depicted on the Map, but does not include any Common Facilities. Although the Septic Field Easement Areas shown on the plat of Beacon Pointe Phase III Filed in Plat Book 44, Page 79, refers to the combined Septic Field Easement Areas as "lots 13 and 14", these areas are not "Lots", but Common Open Space subject to the Septic Field Easements. All Lots referred to by number (e.g. "Lot 9") are references to the specific Lot as numbered for identification purposes on the Map.
- (s) **Map** - Map shall mean (i) the plat of Beacon Pointe Phase III Filed in Plat Book 44, Page 79; (ii) any Filed plats of other portions of the Property described in Article II, Section 1, for the purpose of subdividing those lands into Lots, dedicating roadways or Common Facilities, or any other purpose; (iii) any Filed plats of Additional Property subjected to this Declaration, and (iv) any revisions of such Filed plat or plats.
- (t) **Monument** - Monument shall mean and refer to any entrance monument, general monument, entrance sign, general identification or decorative monument, together with any lighting, irrigation system, landscaping and other Improvements which may be constructed as an entryway, "marker" or recurring decoration for the Subdivision.

- (u) **Mortgage** - Any deed of trust, mortgage, or other voluntary encumbrance resulting from a monetary obligation of an Owner or other party in interest, which attaches to any Lot and is perfected or Filed.
- (v) **Offsite Septic Lot** - Offsite Septic Lot shall mean Lots 2, 3, 4, 6, 7, 8, 9, 10, and 11, and any other Lot designated as such on the Map or in the Declaration, which shall have the right to utilize an appurtenant Septic Field Easement Area.
- (w) **Outbuilding.** A storage building, workshop, utility building, greenhouse or any similar buildings. Outbuildings must be specifically approved by the Committee. The Committee may exercise its discretion and may withhold approval of any such proposed structure which is not in keeping with the standard of construction and appearance of Beacon Pointe Phases III & IV.
- (x) **Owner** - Any person or entity other than Declarant who holds the fee simple title to any Lot individually or as a co-owner. The Declarant is not deemed an "Owner".
- (y) **Planned Community Act** – The North Carolina Planned Community Act, North Carolina General Statutes Chapter 47F, as amended hereafter, and any successor Statute that is enacted to amend or replace Chapter 47F.
- (z) **Private Road(s)** - Private Road(s) shall mean any roads or streets constructed by Declarant until such time as those roads or streets are accepted by a municipality or the DOT for public maintenance. The phrase "Private Roads" shall not include any common driveways which are employed solely for the use of a limited number of lots pursuant to a driveway easement and maintenance agreement whether such agreement is set forth in this Declaration or in a separate instrument.
- (aa) **Property** - All that real estate described in Article II, Section 1, plus such other real estate which may be additionally made subject to this Declaration as provided in Article II, Section 3.
- (bb) **Rear Setback** - The Setback Distance from a rear (opposite the access street side) boundary line of a Lot, which shall be at least 35' on all Lots.
- (cc) **Setback Distance** - The distance between either a Lot boundary line or the edge of a public roadway right of way, to a line within the Lot and parallel to the boundary line or the right of way edge, and within which distance no buildings, as more specifically described in Article X, Section 5, are permitted. Setback distances shall be the larger of the setbacks (rear, side, or street) defined in this Declaration, or as noted on the Map for any specific Lot.
- (dd) **Septic Field Easement** - The easement burdening the Septic Field Easement Areas for the benefit of an Offsite Septic Lot. Said easement permits the Owner of an Offsite Septic Lot to install a Septic System and to discharge effluent from that Septic System into the appurtenant Septic Field Easement Area.
- (ee) **Septic Field Easement Areas** - Septic Field Easement Areas shall mean those drainage field areas burdened by the Septic Field Easements as reserved and declared herein or which are identified on the Map as "COS/SFE #\*\* - \*\*A", "SFE for Lot \*\*", "Septic Field Easement Area - Lot \*\*A", or similar identifying nomenclature.
- (ff) **Septic Supply Line Easement.** A Septic Supply Line Easement for the installation, repair and maintenance of a Septic System is specifically imposed upon the front ten feet (10') of all Lots, ten

feet (10') along the back, front and all sides of every Septic Field Easement Area and those areas shown on the Map as "Septic Supply Line Easement" or similar identifying nomenclature.

- (ff) **Septic System** - Septic System shall mean any and all piping, lines, pumps, equipment or other systems used to transport sewage from the Offsite Septic Lots to the Septic Field Easement Areas, including any percolation\drainage field and equipment actually installed within the Septic Field Easement Areas.
- (gg) **Side Setback** - The Setback Distance from a side boundary line of a Lot which shall be not less than 15'. The Side Setback shall be 25' along any side boundary lines which run with the right of way edge of Fern Hill Road (SR # 1300).
- (hh) **Story** - shall mean a finished horizontal division of Heated Living Area in a dwelling extending from the floor of such division to the ceiling above it.
- (ii) **Street Setback** - (referred to on the Map as "Front Setbacks", the terms shall be deemed synonymous) The Setback Distance from the right of way edge of the Declarant installed access street at the front of each Lot, which shall be not less than 35'. The Map does impose Street Setbacks on certain Lots which are substantially greater than 35'. Owners of Waterfront Lots are cautioned that building codes and other ordinances, in certain counties, may use the term "front" to refer to the lakefront side of a lot rather than the street side - refer to the definitions when reviewing any such document.
- (jj) **Subdivision** - All property described in Article II, Section 1, any Additional Property added and made subject to this Declaration as provided in Article II, Section 3, and such residential lots, streets, Common Facilities, and Improvements as shall come to be constructed therein, also known as "Beacon Pointe Phases III & IV".
- (kk) **Utilities** - Those lines and services in the nature of electric, telephone, catv, water, sewer and natural gas which may be laid or distributed throughout the Subdivision.
- (ll) **Waterfront Lot** - Waterfront Lot shall mean any Lot having at least 75' of shoreline on Lake Norman at the 760' elevation line.

## **ARTICLE II**

### **Property**

**Section 1. Description.** The real property initially subjected to this Declaration is all of the approximately 59.491 acres conveyed to Beacon Pointe Partners, LLC, by Special Warranty Deed of Crescent Resources, LLC, Filed in Book 1490, Page 1184, in the Iredell County Registry on October 3, 2003.

**Section 2. Subdivision Name.** The Property, the homes constructed therein and the amenities and infrastructure of the Subdivision shall henceforth, collectively, be known as "Beacon Pointe, Phases III & IV".

**Section 3. Additions.** At any time hereafter, Declarant may add additional real estate to the Property, which additional real estate shall be subject to this Declaration upon the Filing of amended or supplementary declarations. Upon the Filing of such amended or supplementary declaration, the real estate added to the Property shall be subject to and entitled to the benefit of this Declaration and all terms of the subsequent supplementary or amended declarations.

**Section 4. Form of Amendment.** Each amendment or supplementary declaration as referred to immediately above shall contain the following provisions:

- (a) Reference to this Declaration and the date, book and page of its Filing in Iredell County, North Carolina;
- (b) A precise legal description of the additional real estate (if any);
- (c) Language subjecting the additional real estate (if any) to this Declaration and its subsequent amendments or supplementary declarations; and
- (d) Such other covenants, restrictions or easements as Declarant shall, in its discretion, additionally impose upon the subject real estate.

**Section 5. Adjacent Property Not Specifically Described.** From time to time, Declarant, its predecessors or successors, may hold title or other interests in real estate adjacent to the Property. Unless such adjacent property is specifically described or included in Article II, Section 1 or the legal description of future supplementary or amended declarations, such adjacent real estate shall not be deemed a part of the Property or the Subdivision.

### **ARTICLE III Declaration**

The Property shall hereafter be held, sold, leased, transferred, conveyed and encumbered subject to the herein contained covenants, conditions, restrictions, reservations, and easements which: (1) are made for the direct, mutual and reciprocal benefit of each and every portion of the Property and shall create mutual, equitable servitudes upon each part of the Property in favor of every other part of the Property; (2) create reciprocal rights and obligations between the respective Owners and privity of estate between all grantees of portions of the Property, their successors and assigns; (3) shall operate as covenants running with the land; and (4) shall inure to the benefit of Declarant and each Owner. By acceptance of any deed conveying title to a portion of the Property, execution of a contract of purchase or acceptance of a lease or license concerning any portion of the Property or by taking possession of any portion of the Property; whether from Declarant or a subsequent owner or lessee, any future owner, lessee, licensee or occupant shall accept such deed, contract, lease, license or possession upon and subject to each and all of the covenants, conditions, restrictions, reservations and easements set forth herein. Each person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to the covenants, conditions, restrictions, reservations and easements set forth herein, and in all future supplementary or amended Declarations, whether or not any reference thereto is contained in the instrument by which such person or entity acquires an interest in the Property.

### **ARTICLE IV Common Facilities**

**Section 1. Ownership of Common Facilities.** Declarant shall, not later than the date when 85% of all Lots have been sold to Owners, convey to the Association by Special Warranty Deed any Common Open Space and any other Common Facilities which are to be owned in fee simple and maintained by the Association. The Declarant at all times reserves the right to construct one or more: (i) Monuments; (ii) Septic Systems; (iii) Private Roads; or (iv) other Common Facilities for the use and enjoyment of the Owners. So long as Declarant holds fee simple title to any portion of the Property, the Declarant may subject that portion to a Septic Field Easement by filing a revision to the Map identifying such portion as a Septic Field Easement Area. Portions of any Common Open Space, other than Septic Field Easement Areas, may be used for burial of stumps by Declarant during initial construction of the Subdivision provided



such use is accomplished in compliance with Applicable Laws. With the exception of the Private Roads, all Common Facilities shall remain private property and shall not be dedicated to the use and enjoyment of the general public.

**Section 2. Owner's Rights to Use and Enjoy Common Facilities.** Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Facilities, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) The Association shall have the right to promulgate and enforce reasonable rules and regulations to insure the safety and reasonable availability of the right to use the Common Facilities to the Owners;
- (b) The Association shall have the right to suspend the rights of an Owner to vote in the Association and to use certain Common Facilities (excluding the Private Roads) for any period during which any assessment against the Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The Declarant or the Association shall have the right to grant utility, drainage, septic and other easements across the Common Open Space; and
- (d) The right of the Declarant or the Association to restrict the use of certain Common Facilities to specific designated Owners as described in this Declaration.

**Section 3. Delegation of Use.** Any Owner may delegate, subject to the rules promulgated by the Association, the Owner's right of enjoyment to certain Common Facilities to the members of the Owner's family, guests or invitees.

**Section 4. Prohibited Activities.** Common Open Space shall not be used for off-road motorized vehicles including motorcycles, "four-wheelers", ATV's, or the like. No hunting shall be permitted within the Common Open Space.

The discharge of firearms is strictly prohibited within the Subdivision.

The Association shall have authority to create and implement reasonable rules from time to time concerning the use and enjoyment of all Common Facilities.

**Section 5. Rights in the Private Roads.** Each Owner, the Declarant, the Association, and their successors and assigns, are hereby granted the perpetual, non-exclusive right to use the Private Roads for the purpose of pedestrian and vehicular access, ingress, egress and regress to and from each Lot and the Common Facilities, and for installation and maintenance of drainage facilities and other utilities facilities to serve the Lots. The private easements granted herein shall terminate as to the portions of any Private Roads that are accepted for maintenance by state or municipal authorities. When a Private Road is accepted for public maintenance, such road shall no longer be a Private Road and shall no longer be maintained by the Association. Declarant or the Association may, without notice, remove any obstructions of any nature located within the Private Roads (including but not limited to building materials, trees, shrubs, and mailboxes) which, in the opinion of the Declarant or Association, create a safety hazard.

**Section 6. Prohibited Access.** No private driveways will be constructed providing access from a Lot to Riverbend Drive, Carleton Drive, Bullfinch Road (SR # 1400) or Fernhill Road (SR # 1300) except with the express written consent of the Declarant.

**Section 7. Common Pier and Boat Slips in adjoining Beacon Pointe Subdivision - Phases I & II.**

The neighboring subdivision of Beacon Pointe ("Beacon Pointe I & II") was developed by Crescent Resources, Inc., in two phases (see Plats recorded at Book 24, Page 153 and Book 27, Page 26). Two piers and certain attached boat slips are common elements for Beacon Pointe I & II. Twelve of the boat slips (the "Available Boatslips") are not appurtenant to lots in Beacon Pointe I & II.

By the "Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Beacon Pointe Subdivision" (the "Fourth Amendment") Filed in Book 1501, Page 1148, the owners of Beacon Pointe I & II, with the joiner of Crescent Resources, Inc., gave Declarant the right and ability to designate twelve Lots in this Beacon Pointe Phases III & IV Subdivision as "Final Phases Boat Slip Lots". Such designated Lots will have an appurtenant right to the use of a specific Available Boatslip.

If a Lot is a Final Phases Boat Slip Lot, the Owner shall: (i) enter into a boat slip lease agreement for the appurtenant Available Boat Slip with the Beacon Pointe Owners Association, Inc. (the owners association of Beacon Pointe I & II, not the Association of this Beacon Pointe Phases III & IV Subdivision); and (ii) shall be liable for Boat Slip Assessments, Supplemental Boat Slip Assessments, Special Boat Slip Assessments and Lot 17 Maintenance as such liabilities are more fully stated in the "Declaration of Covenants, Conditions and Restrictions - Beacon Pointe" Filed in Book 0934, Page 1972 (as amended and specifically including the Fourth Amendment - the "Beacon Pointe I & II Declaration").

The Owner of a Final Phases Boatslip Lot shall have the rights and privileges more fully stated in Article II of the Fourth Amendment including the full use and enjoyment of his or her appurtenant Available Boat Slip and the adjoining parking area and water access Lot # 17. The use of an Available Boat Slip shall be subject to the Beacon Pointe I & II Declaration, and the Rules and Regulations enacted by the Beacon Pointe Owners Association, Inc.

Declarant does hereby join in the Fourth Amendment and impose the provisions of that instrument upon those Lots which Declarant may designate as Final Phases Boat Slip Lots. Declarant shall designate those Lots which will be Final Phases Boat Slip Lots by express statement to that effect in the deed of the Lot to its first Owner or by other Filed specific notice of designation.

**ARTICLE V**  
**Property Owner's Association**

**Section 1. Membership.** The Declarant and every Owner shall be a Member of the Association. Membership is appurtenant to the ownership of each Lot and is only available to Declarant and Owners. Membership shall be extinguished upon the complete transfer of all Property held by any Member.

**Section 2. Classes of Membership.**

- (a) Owners Class Membership. The Owners Class Members shall consist of all Owners.
- (b) Founders Class Membership. The Declarant or its successor or assignee only, shall be the sole Founders Class Member. The Founders Class Membership shall terminate at such time as Declarant has conveyed all of its interest in the Property (including any Additional Property).

**Section 3. Duties.** The Association will maintain in its files up-to-date copies of its organizational documents, the Declaration, rules concerning use of Common Facilities, financial records, records of the current ownership of the Lots, and such other documentation and records as are necessary for its management and oversight functions or as required by the Planned Community Act. All documentation

maintained by the Association shall be available to the Owners for inspection during Association business hours upon reasonable notice. The Association may employ an individual or business entity to act as managing agent. The Board of Directors shall determine the length of engagement and the compensation to be paid to such managing agent.

Beginning on a date selected by the Association which shall not be earlier than July 1, 2004, (the "Assessment Start Date") the Association may begin collection of annual assessments from each Owner for maintenance of any Common Facilities and all other permissible purposes.

Prior to the Assessment Start Date, the Common Facilities shall be maintained by the Declarant, but after such date, the Common Facilities shall be maintained by the Association, except that Declarant reserves the right, at Declarant's discretion, to repair or maintain any portion of the Common Facilities which Declarant, in good faith, determines is not maintained to acceptable standards and shall be reimbursed for such maintenance by the Association (but see Article VII, Section 11).

Maintenance of Common Facilities, which shall be the duty of the Association, includes (by way of example) the following:

- (a) Maintenance of any Monument, including irrigation if appropriate, plantings of both permanent and seasonal nature, lighting, mowing, weeding, other landscaping, utility charges for irrigation and lighting, maintenance of signage;
- (b) Maintaining liability insurance upon all of the Common Facilities, with such companies and in such coverage amounts as the Board of Directors may deem appropriate; and
- (c) keeping all Private Roads and Common Open Space in a clean and orderly condition.

The Association is charged with the duty to establish and maintain adequate reserve funds for periodic repair, reconstruction or replacement of any necessary Common Facilities having a limited service life.

## **ARTICLE VI**

### **Voting**

**Section 1. Owners Class.** The Owners of each Lot shall be entitled to one (1) vote for that Lot. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be split or cast separately.

**Section 2. Founders Class.** The Declarant shall be entitled to four (4) votes for each Lot owned by the Declarant.

**Section 3. Actions.** Special Assessments may only be assessed upon receiving seventy-five percent (75%) of a vote.

**Section 4. Period of Declarant Control.** For a period ending not earlier than two years following the recordation of this Declaration, and for so long as the Declarant owns at least two (2) Lots in the Subdivision, the Declarant shall have the exclusive authority to designate, appoint and remove all members of the Association's Board of Directors and Officers. To the fullest extent permitted by the Planned Community Act, no Director or Officer appointed by the Declarant shall be removed by the Members or Board of Directors. The time period during which the Declarant holds the exclusive authority to appoint and remove members of the Board of Directors and Officers may be referred to in this Declaration and the Associations Bylaws as the "Period of Declarant Control".

## **ARTICLE VII**

### **Assessments**

**Section 1. Creation of Lien and Personal Obligation of Assessments.** Each Owner shall, by acceptance of a conveyance of a Lot, whether or not it is so expressed in any conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration specifically including the duty to pay to the Association both Annual and Special Assessments ("Annual Assessments" and "Special Assessments") and charges as hereinafter provided. The Annual and Special Assessments and charges, together with such interest thereon and costs of collection as are hereinafter provided, shall be a charge and continuing lien upon the Lot against which assessment is made as of the effective date of said assessment. Each assessment, together with interest thereon and any costs of collection, shall also be the personal obligation of the person or entity who was Owner of such Lot at the time when the assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of any assessment.

**Section 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used for the improvement, maintenance, operation, repair, replacement of and additions to, the Common Facilities, including but not limited to: [i] the payment of ad valorem taxes and insurance premiums, [ii] payment of utility charges related thereto, [iii] maintaining, operating and improving, (but not initial construction) of Private Roads and other Common Facilities, [iv] collection and disposal of garbage, rubbish and the like, [v] employing security service, maintenance personnel, or other labor, and [vi] equipment, materials, and the management and supervision thereof. Declarant may employ a related entity or entities to manage the maintenance, operation and repair of the Common Facilities. In addition, the Association may use Annual Assessments for the purpose of doing any other things necessary or desirable, in the discretion of the Association, to keep Common Facilities in neat and good order, to provide for the health, welfare and safety of the Owners and Occupants of the Property (including payment of fees to a management company to assist in the affairs of the Association), to advance or maintain the general appearance and function of the Subdivision, and to carry out the goals described in the preliminary statement of this Declaration.

Without limiting the general statements set forth in the immediately preceding paragraph, Annual Assessments shall specifically be used as follows:

- (a) to repair, maintain, reconstruct (when necessary), keep clean and free from debris, the Common Facilities (see Article V, Section 3 concerning Common Facilities Maintenance);
- (b) to maintain and repair the Private Roads, road shoulder and drainage facilities of any public roadways within or adjoining the Subdivision to the standards of maintenance (if one is ascertainable) required by the North Carolina Department of Transportation or to such standards as are deemed appropriate by the Association. (see easement reserved in Article XIV, Section 5);
- (c) to pay all operating costs associated with any street lights, Monuments, or similar Common Facilities, including but not limited to, lease payments and utility costs;
- (d) to pay all ad valorem taxes levied against the Common Facilities and any other property owned by the Association;
- (e) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

- (f) to pay all legal, accounting, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (g) to maintain contingency reserves as to the amounts described in subsections (a) and (b) above for the purposes set forth in this Section 2 in amounts determined by the Board of Directors.

**Section 3. Maximum Annual Assessment.** The initial maximum Annual Assessment shall be Four Hundred Dollars (\$400.00) for each Lot, with fractions of the calendar year to be computed and prorated equitably. For each calendar year after the initial year, the maximum Annual Assessment may be increased by the Association at the rate of up to fifteen percent (15%) of the prior year's assessment. In the event the Annual Assessment is not increased by the maximum amount permitted during any calendar years, the difference between any actual increase in the maximum permitted increase for such years shall be computed, and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase otherwise permitted. The fifteen percent (15%) limit on annual increases may be increased for one or more years, but only by a vote of no less than two-thirds (2/3) of the Owners Class Members and with the approval of the Declarant.

**Section 4. Supplemental Annual Assessment.** In the event the Association fixes the Annual Assessment in an amount less than the permitted maximum Annual Assessment, the Association shall have the right to later increase (the increase being a "Supplemental Annual Assessment") the total Annual Assessment for such calendar year if the Board of Directors determines that the required duties and functions of the Association cannot be funded by the originally determined Annual Assessment. The Association shall set the due date for such Supplemental Annual Assessment which shall not be less than 45 days following after the mailing of notice to the Owners of such Supplemental Annual Assessment. The original Annual Assessment and the Supplemental Annual Assessment shall not, under any circumstance, exceed the permitted maximum Annual Assessment for the subject calendar year.

**Section 5. Special Assessments.** In addition to the Annual Assessments hereinabove authorized, the Association may levy Special Assessments ("Special Assessments") for the purpose of defraying, in whole or in part: [i] the cost of any reconstruction, unexpected repair or replacement of the Common Facilities; [ii] the cost of legal defense of the Association or its agents (specifically including any management company); or [iii] any lawful purpose permitted under the Planned Community Act.

**Section 6. Surplus Funds.** During the Period of Declarant Control, to the fullest extent permitted by the Planned Community Act, the Association shall have no obligation to reimburse any surplus funds to Owners, provided such funds must be retained for future use by the Association.

**Section 7. Declarant Obligation to Pay Assessments.** The assessments, special assessments, charges and liens provided for by this Declaration shall not apply to the Common Facilities or any Lot or other property owned by the Declarant including assessments accrued as to any Lots to which Declarant obtains title by deed in lieu of foreclosure, or by foreclosure.

**Section 8. Commencement.** Assessments upon an individual Lot shall commence on the date fixed by the Association as the Assessment Start Date or upon purchase of that Lot from Declarant, whichever later occurs. Assessments shall be billed on a calendar year basis with appropriate prorations.

**Section 9. Due Date.** Unless otherwise provided herein, assessments shall be due and payable in full within 30 days after they are billed to an Owner.

**Section 10. Effect of Non-Payment of Assessment.** If any assessment is not paid on the date when due, then such assessment shall be delinquent and shall accrue interest thereon at the "prime rate" of interest announced from time to time by The Wall Street Journal, plus two percent (2%) per annum (such rate to change from time to time as The Wall Street Journal prime rate changes) never to exceed a maximum of 18% per annum, unless a lesser rate is required under Applicable Law in which event interest will accrue at the maximum required lesser rate. If such assessment is not paid within ten (10) days after the due date, then the Association may bring an action at law against the Owner directly and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessments all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessments as indicated above. If the Wall Street Journal shall cease to publish its "prime rate" the Declarant or Association shall designate a comparable replacement index.

**Section 11. Contribution by Declarant.** Declarant agrees to contribute to the Association such funds as may be required to maintain the Common Facilities, to the extent that the maximum Annual Assessments are insufficient to pay the cost thereof, through the calendar year 2004.

**Section 12. Assessment Rate.** General Annual Assessments, Supplemental Annual Assessments and Special Assessments must be fixed at a uniform rate for all Owner's Lots.

**Section 13. Right to Borrow.** The Association shall have the right and authority to borrow funds, evidenced by one or more promissory notes, for [i] payment of Common Facilities maintenance subsequent to January 1, 2005, but prior to the time that assessments will cover the reasonable cost of such, and [ii] to pay the costs incurred in adding to Common Facilities. Such loans shall be at such interest rates and upon such repayment terms as the Board of Directors (see the Association Bylaws) approves, provided the Association at a called-meeting may grant authorization that limits the authority of the Board in these matters. The Board is specifically authorized to borrow from the Declarant for payment of Common Facilities maintenance.

## **ARTICLE VIII**

### **Architectural Review Committee**

**Section 1. Membership.** There is hereby established an Architectural Review Committee whose members will be appointed by the Declarant. The Committee will consist of three (3) members. One of the members must be selected from the following groups: licensed architects, engineers, landscape architects and persons with building construction experience. The second and third members need not have any specific professional certification and may be representatives of the Declarant. Declarant will select the initial membership of the Committee. In the event of future vacancies upon the committee, Declarant shall appoint successor members. Declarant may also appoint members to terms of limited duration or replace any or all members at intervals. By written notice to the Association, Declarant may delegate its power to appoint members of the Committee to the Association. The power to appoint members of the Committee shall automatically be transferred to the Association immediately following the Period of Declarant Control.

**Section 2. Duties and Powers.** The Committee shall: (1) review and act upon proposals and plans submitted to it by Owners pursuant to the terms of this Declaration, (2) adopt Architectural and Site Guidelines, and (3) perform all other duties delegated to and imposed upon it by this Declaration.

**Section 3. Architectural and Site Guidelines.** The Committee may promulgate certain rules, guidelines and statements of policy, which will be known as the "Architectural and Site Guidelines." At all times, the Committee shall maintain copies of the most recently adopted Architectural and Site Guidelines in writing so that copies are available, upon request, to all Owners. Said Guidelines may interpret and implement the

provisions of this Declaration by detailing the standards and procedures for review, guidelines for building and site design, landscaping, lighting, parking, exterior materials which may be used, or are required, within the Subdivision. Such guidelines may be interpretations and expansions of, but not in contradiction to, the terms of this Declaration.

Any Architectural and Site Guidelines as well as all such rules, guidelines and statements of policy as may be approved and adopted, from time to time, by the Committee as Architectural and Site Guidelines shall be deemed incorporated as a part of this Declaration.

**Section 4. Right of Inspection.** Members and agents of the Architectural Review Committee, and the Declarant and its agents may, at any reasonable and safe time enter upon the Lot of an Owner for the purpose of inspecting the Improvements and site development and their compliance with the Architectural and Site Guidelines.

**Section 5. Variances.** The Committee is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration or the Architectural and Site Guidelines in order to overcome specific development problems or hardship caused by strict application of the provisions of either this Declaration or the Architectural and Site Guidelines. Such variances, however, must not materially injure any of the Property, amenities or Improvements in the Subdivision and must be made in furtherance of the spirit and purpose of this Declaration. The committee is specifically empowered to, at its sole discretion, grant variances of setback requirements up to ten percent (10%) of the total Setback Distance required. The Committee will not, however, grant any variance for setbacks less than those required by applicable zoning ordinances unless the Owner also obtains a variance from the appropriate governmental authority empowered to grant such variances. Notwithstanding the foregoing, without the written Consent of Declarant, no variance shall be granted with regard to Street Setbacks which are: [i] specifically imposed on a Lot by denotation on the Map and [ii] are in excess of the minimum Street Setback stated in Article I.

**Section 6. Limitation of Scope of Approval.** Approval by the Committee of any Improvement or use for a designated Lot shall not be a waiver of the Committee's right to reject a similar or identical Improvement or use upon another Lot (or the same Lot at another time) if such Improvement or use is of a nature that it may be rejected under the terms of this Declaration or the Architectural and Site Guidelines. Similarly, in light of the purpose of this Declaration, approval by the Committee of any specific set of plans does not bind the Committee to approve an identical set of plans submitted at another time.

**Section 7. Exoneration of Architectural Review Committee** The Committee shall not be subject to liability to any Owner or any other party by reason of its failure to enforce any covenant, condition or restriction stated herein. Neither the Committee, nor any member thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, plans, drawings or specifications, construction or performance of any work or the development of any Property within the Subdivision.

## **ARTICLE IX Review Procedures**

**Section 1. Meeting.** The Committee may meet informally, by meeting, telephone, written communication, facsimile transmissions or such other means as the members may agree upon and as may be sufficient to conscientiously, and fully, perform its duties.

**Section 2. Materials to be Submitted for Site Plan Approval.** Before initiating any construction, alteration of existing Improvements, grading or any site or structural work upon any Lot, the Owner must

first submit construction, site and landscape plans plus such other materials as the Committee may request. At a minimum, the plans shall show in detail:

- (a) The grading work to be performed on the Lot;
- (b) The nature, materials and location of all Improvements including buildings, paving, significant plantings and screening;
- (c) Setback Distances; and
- (d) The location of Improvements on adjoining Lots.

The plans shall provide specific detailed information concerning (1) landscaping for the Lot, (2) exterior lighting and (3) a building elevation plan showing dimensions, materials and exterior color scheme.

**Section 3. Filing Fee.** In order to defray the expense of the Committee, the Committee may require a reasonable fee for review of plans. The initial filing fee shall be Three Hundred Dollars (\$300.00). The filing fee may only be increased to defray actual out-of-pocket costs to the Declarant, such as attendance fees or travel reimbursements to the Committee Members, and in no event may the fee exceed Four Hundred Dollars (\$400.00).

**Section 4. Approval Criteria.** The Committee shall have the right to disapprove plans, specifications or details submitted to it for any of the following reasons:

- (a) The submission fails to comply with the terms of this Declaration or the Architectural and Site Guidelines (including payment of the review fee);
- (b) Insufficient information or failure to provide detail reasonably requested by the Committee;
- (c) The submission fails to comply with the appropriate zoning ordinance or other Applicable Laws that may be in effect from time to time;
- (d) Objection to the grading plan for any portion of the Lot; or
- (e) Objection to the color scheme, finish, proportions, style, height, bulk or appropriateness of any structures.

**Section 5. Time for Review.** Upon submission of all detail reasonably requested by the Committee (received in the office of Declarant or other office as designated by Declarant), the submitting Owner shall receive, in writing, the decision of the Committee within thirty (30) business days. Failure of the Committee to render a written decision within thirty (30) business days shall be deemed approval of the submission.

**Section 6. Certification of Approval.** Upon the request of Owner, the Committee shall confirm its approval of the Owner's plans by issuing a written certificate describing the specific Lot and plans that have been approved.

**Section 7. Approval is not a Warranty.** Approval of the plans submitted by any Owner or other party to the Committee shall not be construed as a certification or warranty, by either Declarant or the Committee, that (1) the plans meet with any minimum standards of suitability for use, (2) are acceptable under any Applicable Laws, (3) conform to any other standards of quality or safety or (4) describe structures or development which would be safe, prudent or feasible. Neither Declarant, the Committee, nor any member



thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, plans, drawings or specifications, construction or performance of any work or the development of any Property within the Subdivision.

**Section 8. Commencement of Work.** Beginning with the approval of the Committee as described in this Article IX, the Owner or other parties submitting plans shall, as soon as practical, satisfy all conditions of the Committee and proceed with all approved work described in the plans and such other work as may be necessary for improvement of the Lot in accordance with this Declaration. Commencement of Construction must begin within one hundred eighty (180) days from the date of such approval or, the approval of the Committee shall lapse. The Committee may, at its discretion and upon the request of Owner, extend the one hundred eighty (180) day period for Commencement of Construction in the event that good cause is shown for such extension. For purposes of this Section 8, the term "Commencement of Construction" shall mean that a licensed contractor has been employed, necessary construction permits have been obtained, and construction of grade beams, footers, slabs or like initial construction steps has started.

**Section 9. Completion of Work.** All Improvements upon the Lot, including alteration, construction and landscaping shall be completed within twelve (12) months after the Commencement of Construction upon the Lot. This time period may be extended in the event that work or completion is rendered impossible due to strikes, fires, national emergencies, force majeure or other supervening forces beyond the control of Owner, lessee, licensee, Occupant or their agents. Installation of large items of shrubbery or trees may be delayed beyond the 12-month completion period in order to plant during the best seasons for such plantings. Installation of sod and seeding of rear yards shall, however, be completed within the 12-month period. See also Article X, Section 19.

**Section 10. Construction Deposit.** Prior to grading or commencement of any construction activity upon a Lot, an Owner shall deposit with the Declarant or the Association (as instructed by Declarant) the sum of Five Hundred Dollars (\$500.00) per Lot. This "Construction Deposit" will be held until the completion of construction activity upon the Lot. The Construction Deposit may be applied by Declarant or the Association toward the repair of any damage caused by construction (e.g. broken curbing, damaged street shoulder or pavement, and the like), street cleaning or storm water culvert clean out necessitated by silt or grading runoff from the Owner's Lot, or other repairs or clean-up necessitated by acts of the Owner or his agents.

**Section 11. Special Watershed Development Restrictions.** The Property shall be subject to the following special development requirements.

- a. No portion of a Lot greater than two thousand (2000) square feet shall be: (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.
- b. All denuded, graded, excavated or filled areas upon any Lot shall be stabilized and replanted on or before: (i) the thirtieth (30<sup>th</sup>) day following the initial denuding, grading, excavation, or filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of thirty (30) continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in Article IX, Section 11 a, above shall be allowed to commence without compliance with the following requirements:

- i. The surveying and flagging of the Buffer Area and any portion of the Buffer Area that may be disturbed as a result of any activities permitted hereunder;
  - ii. The flagging of all trees in the Buffer Area that equal or exceed six (6) inches in diameter, measured four and one-half feet (4.5') from the base of the tree, as is reasonably necessary to prevent the unintentional violation of these restrictions by parties performing work upon the Lot; and
  - iii. The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Lot to be disturbed, and any other areas which may be impacted by silt runoff from the Lot
- c. Except as expressly permitted by this Declaration, no portion of any Buffer Area may be disturbed in any way, including any disturbance or removal of topsoil, trees and other natural growth. The following activities are permitted within the Buffer Area:
- i. Trees, which are less than six (6) inches in diameter, measured four and one-half feet (4.5') from the base of the tree, may be removed. Any tree removal shall be performed using hand held gas or electric chain saws and/or manual handsaws. No other mechanical equipment or vehicles may be used in removing any trees. Additionally, trees having a greater diameter than that set forth above that have become diseased or damaged through natural processes may be removed in the same manner;
  - ii. Underbrush (defined as nuisance shrubs, vines and similar plant growth beneath the tree canopy, and generally growing less than six feet (6') in height) may be removed;
  - iii. Pruning and trimming of trees is permitted, provided that pruning is limited to tree branches beginning with the lowest to the ground and extending up the tree trunk no more than one-half of the total height of the tree. Trimming may also be performed on any limbs or branches that are diseased or naturally damaged; and
  - iv. The use of rip-rap, bulkheading or other shoreline stabilization methods or materials may be initiated with the prior written approval by Duke Energy Corporation (all references in this Declaration to "Duke Energy Corporation" shall be deemed to also refer to any entity which might succeed to that corporation's management authority concerning Lake Norman) which and any shoreline stabilization shall be performed in compliance with Duke Energy Corporation's Shoreline Management Guidelines which are in effect at the time such stabilization occurs. Generally, Duke Energy Corporation allows structural stabilization to extend only to a height five feet above the Contour Line of the Lake. If Duke Energy Corporation authorizes Grantee to perform certain shoreline stabilization, then at all points where shoreline stabilization occurs, the inner boundary line of the Buffer Area (i.e. the boundary line opposite the Contour Line of the Lake) shall be adjusted inward (i.e. away from the Contour Line of the Lake) by the same distance that the stabilization activity extends from the Contour Line of the Lake into the Lot.

**Owners are reminded that development in the Catawba River/Lake Norman watershed area is regulated by state and local laws and ordinances that tend to be more restrictive in nature than those outside the watershed. Owners should pay particular attention to such laws and ordinances concerning vegetative buffers between developed areas of a Lot and the shoreline which may be more restrictive than those imposed by this Declaration.**

## **ARTICLE X**

### **Improvements, Uses And Restrictions**

**Section 1. Land Use, Building Type and Residential Restrictions.** All Lots in the Subdivision shall be used only for Common Facilities or private residential and recreational purposes. No structure shall be erected or permitted to remain on any Lot other than one single family residential dwelling not exceeding 2-1/2 Stories in height and those other structures expressly listed in this Article X.

No mobile home, modular home or shell home may be erected or permitted to remain on any Lot. No condominium, townhouse, duplex, apartment, bed and breakfast facility or any other multi-family residential uses are permitted on any Lot. No camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle, or similar habitable or transportable unit or structure shall be allowed to remain on or adjacent to any Lot as a place of residence.

A private garage (one not exceeding three [3] car capacity or two garages each of two [2] car capacity), Outbuildings, fixed piers and floating boat dock facilities incidental to the residential use of a Waterfront Lot are expressly permitted upon the condition that they are not rented or used for commercial purposes. No enclosed boathouse, or two-level piers are permitted. Piers, docks, and boathouses shall be subject to approval by Duke Energy Corporation and/or any governmental entity having jurisdiction at the time such Improvements are made.

Detached garages and Outbuildings may not exceed fourteen feet (14') in height and the total square footage contained within all such buildings combined on any one Lot shall not exceed two thousand (2000) square feet. Outbuildings shall be permanently affixed to the Lot and shall only be covered with the approved exterior materials permitted for a primary residence (see Article X, Section 3 below). No detached garage or any Outbuilding shall be located wholly or partially within any Buffer Area.

Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures may be constructed upon a Lot. The total square footage contained within such structures when combined shall not exceed one thousand (1000) square feet in area on any one Lot. No such recreational structure shall be located wholly or partially within any Buffer Area.

The following activities are prohibited in the Subdivision:

- a. Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats, or other usual and common household pets (which are registered, licensed and inoculated as required by law – not to exceed four per household) are permitted.
- b. Any activity which violates Applicable Laws;
- c. Institutional uses, including but not limited to day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, beds and breakfasts; and
- d. Any business or trade, except that an Owner or Occupant residing on a Lot may conduct business

activities upon that Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all zoning requirements; (iii) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on the Lot, or for which any material amount of parts, equipment, supplies, raw materials, components or tools are stored on the Lot and (v) the business activity is consistent with the residential character of Beacon Pointe Phases III & IV and does not constitute an unreasonable disturbance to other Owners and Occupants, a nuisance, or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities provided that such activities are not held on a Lot more than once in any six-month period. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of any Lot for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

- e. Camping on any unimproved Lot.

**Section 2. Dwelling Size.** Within Beacon Pointe Phases III & IV, each single-family residential dwelling shall comply with the following size requirements:

- a. One Story dwellings on Water Front Lots shall not contain less than 2,200 square feet of Heated Living Area and One Story dwellings on Interior Lots shall not contain less than 2,000 square feet of Heated Living Area;
- b. One and a Half Story dwellings on Water Front Lots shall not contain less than 2,400 square feet of Heated Living Area and One and a Half Story dwellings on Interior Lots shall not contain less than 2,200 square feet of Heated Living Area;
- c. Two (or more) story dwellings on Water Front Lots shall not contain less than 2,600 square feet of Heated Living Area with at least 1,600 square feet of Heated Living Area on the ground Story. Two (or more) Story dwellings on Interior Lots shall not be less than 2,400 square feet of Heated Living Area with at least 1,400 square feet of Heated Living Area on the ground Story

**Section 3. Building Construction and Quality.** All buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a high quality, workmanlike manner. No building shall be erected unless it is completely underpinned with a solid brick, or stucco, brick or stone-covered foundation.

The exterior surfaces of all dwellings and accessory structures shall be covered only in brick, stone, hard stucco, wood, engineered cement composite wall coverings (e.g.: Hardiplank® or Hardishingle™ siding), or engineered coverings specifically approved by the Committee. Any siding installed with a horizontal orientation must be fully back supported to maintain a straight and even outer surface and must be fully and properly finished.

The following exterior surfaces are specifically prohibited: [i] synthetic stucco of any type; [ii] logs; [iii] cladding with sawmill strips; [iv] siding with the appearance of logs or sawmill strips; [v] Masonite™ or similar composite siding manufactured primarily from compressed cellulose or similar non-durable materials; and [vi] vinyl or aluminum siding.

Aluminum, vinyl and materials clad with aluminum or vinyl may be employed for soffit, fascia, boxing and trim applications.

The exterior surface of any garage or Outbuilding erected on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on said Lot.

All dwellings, garages and Outbuildings shall have roofs (except for dormers, porches, bay windows, and greenhouses) of not less than 6 in 12 pitch and not less than 12 inch overhang, covered with slate, wooden or architectural metal shakes, terra cotta tile, copper sheathing, or architectural fiberglass shingles.

The Committee shall have the authority to approve and authorize the use of any material that is not expressly prohibited by this Declaration. This authority is vested in the committee so as to provide flexibility and permit the use of new materials and building techniques that may be developed after the date of this Declaration.

**Section 4. Temporary Structures.** No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, except that nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto the Lots owned by Declarant, to be used for storage or construction or sales offices.

**Section 5. Building Setback Lines.** No building on any Lot (including any stoops, porches, or decks, whether attached or unattached) shall be erected or permitted to remain within any Side Setback, Street Setback, or Rear Setback as defined in this Declaration or as noted on the Map. Boathouses, piers and dock facilities are exempt from the Rear Setback restrictions. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements. No masonry mailboxes or other Improvements may be constructed or placed within any Private Road or public road right of way.

**Section 6. Minor Setback Violations.** In the event of the unintentional violation of any of the building setbacks set forth in this Declaration by an amount of ten percent (10%) or less, Declarant reserves the right, which right shall be vested in and may be exercised by the Association after Declarant's Founder's Class Membership in the Association has converted to Owner's Class Membership, but is not obligated, to waive in writing such violation of the setback upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation, or, if in violation, provided that a variance or other similar approval has been received from the appropriate governmental authority.

**Section 7. Combination or Subdivision of Lots.** Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. However, a Lot Owner may combine with a portion or all of another contiguous Lot so long as the parcel or parcels which result from such combination do not violate any zoning ordinance or other Applicable Law. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this Article X, but shall continue to be considered as two Lots for all other

purposes (including voting and assessments). Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant as may be needed to meet Septic System requirements or for any other reason.

**Section 8. Utility Easements.** Declarant hereby reserves easements for the installation and maintenance of utilities (electricity, sewer (including a Septic System), water, gas, telephone, catv, street lights, etc.) and drainage facilities over: [i] all of the area labeled on the Map as "Drainage and Utility Easement", "Utility & Access Easement" or like phrase; [ii] fifteen feet (15') along the side of any Lot adjoining a public roadway or Private Road; [iii] the front ten feet (10') of any Lot; [iv] the rear twenty feet (20') of any Lot; and [v] ten feet (10') in width along each side lot line of each other Lot.

This reserved utility easement shall also run for the benefit of Crescent Resources, LLC, a Georgia limited liability company. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the construction and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company.

Declarant additionally imposes an easement over and upon all Common Open Space for the installation, maintenance and repair of the Septic System piping, lines, pumps and equipment installed by Declarant. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for driveways, road drainage, utility and entry signage installation purposes by the recording of appropriate instruments and such easements shall not be construed to invalidate any of these covenants.

**Section 9. Monument Easement.** Declarant hereby grants, establishes and reserves, for the benefit of Declarant and the Association, and their successors and assigns, a non-exclusive perpetual easement (the "Monument Easement") for the purpose of erecting and maintaining entrance monuments, general monuments, signs, lights, or other Improvements or markers for the Subdivision over any portion of the Subdivision identified as "Sign Easement", "Monument Easement", or similar identifying nomenclature on the Map. A non-exclusive ten foot (10') wide perpetual easement is also specifically reserved along the boundary line of any Lot which boundary line adjoins the right of way edge of a public roadway or a Private Street, for the purpose of erecting and maintaining general monuments in the nature of piers, columns, decorative fencing, small signs, down-cast lighting, small lights illuminating signage or Improvements, or other Improvements which may serve to identify or benefit the Subdivision. Declarant or the Association shall have the right to enter the area of all Monument Easements to construct, inspect, maintain, repair or replace installations therein.

**Section 10. Stormwater Drainage Easement.** Declarant hereby establishes and reserves over the Common Open Space an easement for drainage of stormwater runoff from the Lots within the Subdivision.

**Section 11. Flood Easement.** Duke Energy Corporation has reserved easements and rights with respect to the Subdivision for the right to clear and flood property up to the elevation of 770 feet above mean sea level, USGS Datum, in connection with the operation of its power facility. The clear and flood easements may affect building plans for the Lots.

**Section 12. Fences and Walls.** No fence or freestanding wall, may be erected nearer the front lot line of a Lot than the front face of the dwelling located on such Lot. In the case of a corner Lot, no side yard fence shall be located nearer than the side of the house facing the side street line. No fences or walls, greater than five (5) feet in height are permitted. Chain link or similar industrial metal fencing is not permitted. Decorative wrought iron or high quality aluminum or vinyl-clad fencing made with the appearance of wrought iron is expressly permitted. Split rail wooden fencing is expressly permitted. Perimeter fencing shall not have more than fifty (50) percent of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test. The restrictions described in this Section 12 shall not apply to any Improvements originally installed by Declarant on any Common Facilities.

**Section 13. Signs.** Except as expressly authorized in this Declaration, no signs may be erected or displayed on any Lot except for the following, which may not exceed six (6) square feet in size: (a) one sign on the Lot only advertising the Lot for sale or rent; (b) one sign on the Lot only used by a builder to advertise the Lot during the construction and sales period (such sign may list subcontractors, suppliers, lenders, architects, engineers and like parties involved in the construction of Improvements on the Lot but all such parties are limited to being listed together on one sign, not separate signs); and (c) political, yard-sale or similar temporary signs. Strictly prohibited during the period of construction on a Lot are the following: (a) separate signage listing subcontractors; (b) signage advertising services or goods for sale, specifically including construction services; and (c) general advertising in the nature of handbills.

These restrictions do not apply to any Monument, to temporary entry signs or advertising by Declarant, or "for sale" signs installed by Declarant or its agents prior to the sellout of the Subdivision. Declarant reserves the right to erect and maintain such signs designating streets, Common Facilities, and such other signs that will aid in the development of the Subdivision.

Use of unapproved signage shall be a violation of this Declaration and the Declarant or the Association may levy a fine of not more than One Hundred Fifty Dollars (\$150.00) per day for such violation. Such fines shall be assessments and shall constitute a lien upon the Owners Lot when a claim of lien is Filed of record in the office of the Clerk of Superior Court of Iredell County. Owners are strictly responsible for all signage erected by their agents, contractors, subcontractors, suppliers, and any other parties employed directly or indirectly by Owner, or who provide services or materials to the Owners Lot. Declarant or the Association may enter onto a Lot at any time to remove signage that is in violation of this Article X, Section 13.

**Section 14. Antennas; Satellite Dishes or Discs.** Except as hereinafter provided, no transmission or reception towers, antenna, dishes or discs shall be erected or maintained on any Lot. The following are specifically permitted:

1. Any antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, of one meter or less in diameter;
2. An antenna designed to receive video programming services via multi-point distribution services, including multi-channel, multi-point distribution services, instructional television fixed services, or local multi-point distribution services, of one meter or less in diameter or diagonal measurement; or
3. An antenna designed to receive television broadcast signals.

A roof-mounted antenna may be mounted on the roof of the house; provided, however, no antenna or related structures may be mounted on masts exceeding ten (10) feet in height above the highest roof line ridge of the house. Any dish, disc, or antenna (with associated mast if any) shall be reasonably screened from view from Lake Norman and the street, and shall not be located in the area between the street right-of-way line and the front of any house or within the setbacks of Buffer applicable to the Lot. No antenna, discs or like transmission or reception device shall be mounted on a freestanding tower without the express consent of the committee.

**Section 15. Lot Maintenance; Trash Disposal.** Each Owner shall keep his Lot in a clean and orderly condition and shall keep the Improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection authorities or companies. Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated, or otherwise fallen into disrepair, shall not be kept on any Lot. Owners shall not allow trashcans to remain at the curb for more than 24 hours for each pick up date.

**Section 16. Off-Road Parking; Off-Water Boat Storage.** The residence on each Lot shall be served by a driveway constructed of concrete, asphalt, brick or other hard finished surface approved by the Committee. If any driveway crosses a drainage ditch or swale, the Owner is required to install, at the Owner's expense, any necessary piping or culverts before the commencement of any other construction or grading on the Lot. Specifications for any such piping or culvert must be approved by the Committee and installed in accordance with the approved specifications and Applicable Laws.

No truck or commercial vehicle in excess of one-ton load capacity, any truck of more than two axles, any vehicle under repair, or wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, or the Common Open Space. No boat or boat trailer may be parked, left or stored on Common Open Space. No trailer, motor home, recreational vehicle or camper shall be used as a residence, either temporarily or permanently, or be parked upon or be permitted to remain on any Lot for a period exceeding 24 hours unless it is parked off the street and not within the street or side setbacks of the Lot. All trucks, trailers, campers, motor homes and recreational vehicles must have a current license plate affixed. All automobiles must have a current license plate affixed and must be parked in a carport, enclosed garage, or driveway.

Other than incidental street parking for not more than twenty four (24) hours at a time, all automobiles and other vehicles must be parked in a carport, enclosed garage, or driveway. From time to time guests, however, may park automobiles in the streets when an Owner conducts social functions and the like. This limited right of street parking may be restricted by reasonable rules adopted by the Committee if such parking creates a bona-fide nuisance or safety hazard.

Unless parked within an enclosed garage, no "large" (over 28 feet in length) boat and/or boat trailer, shall be kept upon any Lot. Boats or boat trailers less than 28 feet in length, not stored within an enclosed garage, must be stored to the rear of the house, but not within any Side Setback.

**Section 17. Sewage Disposal and Individual Wells.** Every dwelling unit erected on any Lot shall be served by an approved septic system for the disposal of sewage, or connected to a private or public sewage disposal system. All well water and all septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with, all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction. Owners shall construct a well only at the site identified in the improvement permit provided to the Owner by Declarant, or if no such identification has been made, at such location as is expressly approved by the Committee. Deviations on the



permitted location of well sites may only be made with the written consent of Declarant because the location of a well on one Lot affects the permissible location of septic fields on that Lot and other Lots.

Owners are advised that grading or other alteration to the designated septic field area may void existing improvement permits and no such alteration should be performed without the consent of the applicable health department.

**Section 18. Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot or in any residential dwelling or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace and quiet of the Owners or Occupants of the surrounding Lots

**Section 19. Diligent Construction, Construction Site Hygiene.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. (See Article IX, Section 9)

No construction materials of any kind may be stored within twenty-five (25) feet of any road curbs on any Lot.

Any damage to any street, curb, shoulder, side ditch, street planting, or any part of any Common Facilities or any utility system caused by Declarant, an Owner or any builder shall be repaired by such responsible party. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its out of pocket expenses in making such repairs.

In the event that the responsible Owner fails to reimburse the repairing party, the Declarant or Association may take reimbursement from the Construction Deposit posted by the Owner. The Owner shall thereafter immediately deposit an additional sum to the Construction Deposit so that the balance is not less than \$500.00.

The Owner of each Lot and any builders shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements on the Lot. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. All Owners and builders shall, consistent with standard construction practices: (i) keep all portions of the Lots and the Common Facilities free of unsightly construction debris; (ii) shall at all times during construction provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction on a Lot; (iii) keep the Lot and all Common Open Space free of such garbage, trash, or other debris; and (iv) provide a port-a-john on the construction site maintained in a sanitary manner. Each Owner and any Owner's builder shall be responsible for erosion control protection during any earth-disturbing operation

**Section 20. Removal of Trees and Other Vegetation - Enforcement.** Declarant and/or the Association shall have the authority, but not the obligation, in their sole discretion, to assess a fine against an Owner who cuts, damages, or removes any trees, shrubs or other vegetation on any part of the Common Open Space, its Lot or any other Lot contrary to the above provisions of this Declaration.

**Section 21. Docks, Piers, and Boat Houses.** Duke Energy Corporation manages access to, use of, and water levels in Lake Norman. Any Owner, the Declarant and the Association must receive permission from Duke Energy Corporation (or a successor manager of Lake Norman under authority from FERC) prior to

placing or constructing any pier or other Improvement within or upon, or conducting any activity altering the topography of Lake Norman. Declarant makes no oral, express or implied representation or commitment as to the likelihood of any Owner obtaining such permission, nor as to the continued existing purity, depth or levels (including clearance of over-water bridges or trestles) of water in Lake Norman, and Declarant shall have no liability with respect to these matters.

Any waterfront Improvement shall have an open design to minimize obstruction of neighbors' views. Enclosed or multi-level docks or boat houses will not be allowed.

The placement, construction, or use of any pier, dock, boatslip structures or other Improvements within or upon, or the conducting of any activity altering the topography of Lake Norman, is and shall be subject to each of the following:

- (a) easements, restrictions, rules and regulations for construction and use promulgated by the Association;
- (b) all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereof, including, without limitation, FERC;
- (c) rules, regulations, privileges, and easements affecting the Property and the waters and submerged land of Lake Norman established by Duke Energy Corporation or any its successor manager of Lake Norman.

**Section 22. Boat Ramps.** No private boat ramps of any kind shall be permitted on any Lot.

**Section 23. Grading Rights.** Until such time as the Owner's plans have been approved by the Committee, Declarant may make cuts and fills upon any Lot or other portion of the Subdivision and do such grading, panning and earth moving, as in its sole reasonable discretion, may be necessary to improve or maintain the streets within the Subdivision or to drain surface waters therefrom.

**Section 24. Violations.** In the event that any Lot is developed other than in strict conformity with this Declaration and the approval of the Committee, such development must be removed or altered so as to be in compliance. Any unauthorized use of the Lot must be ended so as to extinguish any violations of this Declaration or the approval granted by the Committee. At any time a violation of this Declaration or the approval granted by the Committee may be found to exist, regardless of the length of time of such violation, the Declarant or the Committee may deliver written notice of such violation to the Owner of the Lot in violation and any other responsible parties. If reasonable measures have not been taken by the Owner or other responsible parties to terminate the violation within ten (10) business days, the Declarant or Committee may, through agents or employees, enter onto the Lot and take such measures as may reasonably be necessary to abate the violation. Such entry shall not be deemed a trespass and those parties entering on behalf of Declarant or the Committee shall have no liability to the Owner or other parties having an interest in the Lot for any entry taken in connection with the abatement of a violation. All costs and expenses, including legal fees, permits, mobilization costs and insurance plus a fifteen percent (15%) allowance for general overhead and intangible costs, shall be a binding obligation of the Owner of the Lot in violation. In addition, all costs shall be a lien upon the Lot, enforceable in the same manner as an assessment made upon the Lot.

**Section 25. Construction.** Construction of all Improvements and other development upon the Lot shall be the responsibility of the Owner. Neither Declarant nor the Committee shall have any responsibility whatsoever for monitoring or control of construction.

There shall be no occupancy of any residence until such time as the residence and all other completed Improvements and work upon the Lot (including any off site Septic Field Easement Area) are inspected and approved by the Committee as being in accordance with the plans approved by the Committee. Upon written notice of the completion of a residence, the Committee shall have ten (10) days to make such reasonable inspections, as it deems necessary. In the event that the Committee discovers that Improvements or other work upon the Lot have been done other than in accordance with the plans approved, the Committee shall give Owner written notice of such violations. In the event that the Committee finds that all Improvements and work upon the Lot have been accomplished in accordance with the plans approved, then, the Committee may, upon request of the Owner, issue a certificate of compliance to the Owner.

**Section 26. General Repair and Maintenance.** It shall be the duty of Owner to keep and maintain all of the Lot, except as expressly stated otherwise herein, including those areas within setbacks, utility easements, and the like. The Owner shall keep the entire Lot safe, neat, free of hazards and shall comply with all fire, zoning, health, environmental and other requirements as may legally apply to the Lot. Owner shall keep the Lot clear, clean and free of all unsightly scrap, rubbish or other materials at all times, including the construction period.

**Section 27. Utility Lines.** All utility service lines from the street or from existing power or telephone poles to the Improvements (and between any Improvements) on any Lot shall be installed underground.

**Section 28. Non-Waiver.** No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

**Section 29. Rights of Duke Energy Corporation.** Duke Energy Corporation and/or Crescent Resources, LLC, have certain privileges and easements affecting the Subdivision which include the right to enforce certain restrictive covenants, and the right, privilege and easement of backing, ponding, raising, flooding, or diverting the waters of Lake Norman and its tributaries upon and over the Subdivision, as more specifically described in the Deed from Crescent Resources, LLC to the Declarant Filed in Book 1490, Page 1184.

**Section 30. Mailboxes.** Mailboxes shall be of a consistent design, color and material designated by the Declarant or, if the Declarant so delegates, by the Committee, and may not violate North Carolina Department of Transportation standards.

**Section 31. Driveways.** All connections of private driveways to the North Carolina State or any municipal road system, and all connections of private easements and right-of-ways to that road system shall be constructed and maintained in accordance with all Applicable Laws and the rules, regulations and specifications as approved from time to time by the Committee.

**Section 32. Private Road Easement.** Declarant specifically establishes, reserves, and grants to the Owners of the Lots, the Association and Declarant, their heirs, successors and assigns, non-exclusive, perpetual easements over any Private Roads which may be constructed, in the widths and in the locations as may be shown on the Map, for the purpose of pedestrian and vehicular access, to the Lots and Common Areas, and for the installation and maintenance of paved roadways and of utilities and drainage facilities. Within the Private Roads, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the roadways located therein or the other utilities or drainage facilities installed therein.

**Section 33. House Numbers.** House numbers are to be displayed in compliance with all Iredell County ordinances.

## **ARTICLE XI Environmental Hygiene**

Underground storage tanks for petroleum products, chemicals, or other substances having the potential to cause damage by accidental discharge into the soil, are prohibited in the Subdivision.

## **ARTICLE XII Duration, Modification and Termination**

**Section 1. Amendment.** The covenants, conditions and restrictions of this Declaration may be amended at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Subdivision including any Additional Property. Any such amendment shall not become effective until the instrument evidencing such change has been Filed.

Notwithstanding anything in this Article XII, Section 1 to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association, or other similar agency. Declarant, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

**Section 2. Term.** The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-one (21) years from the date this Declaration is originally Filed; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Owners holding a majority of the votes appurtenant to the Lots, plus Declarant, if Declarant then owns any Lot, has been recorded, agreeing to terminate or modify said covenants and restrictions in whole or in part. Provided, however: [i] the residential use restrictions set forth in Article X Section 1 of this Declaration shall run with the land and shall be binding upon all parties and persons claiming under them in perpetuity, and [ii] this Declaration shall not be terminated except by a Filed instrument signed by Owners holding 100% of the votes appurtenant to the Lots (plus Declarant if Declarant then owns any Lot) so long as any septic percolation/drain field and Septic System is operated for the benefit of any Offsite Septic Lot or so long as any Private Roads are maintained by the Association and have not been accepted for public maintenance.

## **ARTICLE XIII Enforcement**

Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any party empowered to enforce this Declaration may avail itself of all remedies available under Applicable Laws for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law. This Declaration may be enforced by Declarant, its successors and assigns (including without limitation the Association after the termination of Founders Class Membership), by proceedings at law or in equity against the person or entity violating or attempting to

violate any covenant or restriction, either to restrain the violation thereof, abate or remediate damage caused by the violation, or to recover damages, all together with reasonable attorney's fees and court costs. Further, after the termination of Declarant's Founder Class membership in the Association, in the event the Association fails to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these covenants and restrictions as aforesaid against any other Owner.

#### **ARTICLE XIV**

##### **Declarant Retained Rights and Easements for Offsite Septic Systems**

**Section 1. Assignability of Rights.** All rights, powers and reservations of Declarant stated herein may be assigned. If at any time Declarant ceases to exist and has not previously made an assignment of its rights, a successor Declarant may be appointed by the written vote of a majority of the Owners. Any assignment made pursuant to the terms of this section shall be Filed in Iredell County, North Carolina.

**Section 2. Exoneration of Declarant.** It is agreed by all Owners and by any other party having an interest in any Lot that Declarant has no duty to enforce any of the covenants and restrictions contained herein. Declarant shall not be subject to liability to any party by reason of its failure to enforce any covenant, condition or restriction herein.

**Section 3. Septic Field Easements and Septic Supply Line Easements.** Non-exclusive easements for the benefit of Declarant and all Offsite Septic Lots are reserved and granted, over, across and under all areas burdened by the Septic Supply Line Easements for installation, repair, maintenance and replacement of Septic System components for the purpose of transporting sewage from an Offsite Septic Lot to its Appurtenant Septic Field Easement Area.

Non-exclusive easements for the installation, repair, maintenance and replacement of offsite percolation/drainage fields for the discharge of effluent are reserved and granted over, across and under all areas burdened by the Septic Field Easements. The construction of offsite percolation/drainage fields for the discharge of effluent from an Offsite Septic Lot shall only be permitted within the specific Septic Field Easement Area which is appurtenant to that Offsite Septic Lot as indicated on the Map or identified in this Declaration.

Septic Field Easement Areas in Phrase III are identified on the Map as: COS/SFE #13 -7A; COS/SFE #13 -8A; COS/SFE #13 -9A; COS/SFE #13 -10A; COS/SFE #14 -2A; COS/SFE #14 -3A; COS/SFE #14 -4A; COS/SFE #14 -6A; and COS/SFE #14 -11A. For purposes of this Declaration, the "#13" and "#14" in each identifying label is of no effect and may be disregarded. The Septic Field Easement imposed on each Septic Field Easement Area shall run for the benefit of the Offsite Septic Lot having the corresponding Lot number preceding the "A" in each identifying label. For example COS/SFE #13 -7A is the Septic Field Easement Area solely for the benefit of Lot 7, and COS/SFE #14 -2A is the Septic Field Easement Area solely for the benefit of Lot 2. Phase IV may also have Offsite Septic Lots and Septic Field Easement Areas which will be identified on the Map in the same manner.

Each Septic Field Easement shall be appurtenant to and shall run with the title of the Offsite Septic Lot to which it is appurtenant. Any deed, deed of trust, mortgage, transfer or other conveyance of any Offsite Septic Lot shall also transfer or convey the Septic Field Easement appurtenant to the Offsite Septic Lot even if not expressly stated in the instrument of transfer.

After transfer from the Declarant, the Association shall hold title to the Common Open Space subject to any and all Septic Field Easements and Septic Supply Line Easements. As long as the Subdivision is not serviced by a public or private sewer line or so long as any Septic Field Easement is in active use, the Association shall not transfer, mortgage, encumber or otherwise convey any Septic Field Easement Area or any portion thereof to any other party.

Each Septic Field Easement herein reserved and granted shall include the right, at the sole expense of the Owner of the Offsite Septic Lot, to construct, maintain, operate, remove and reinstall a Septic System in and upon the appurtenant Septic Field Easement Area and to clear (and continue to clear as necessary) trees, brush and other plants for the proper construction, installation and maintenance of said system. The Owner of the Offsite Septic Lot shall immediately restore the surface of the Septic Field Easement Area disturbed by installation or maintenance of a Septic System to a stable, reasonably compact and safe grade, seeded (with the seeding covered with hay or other appropriate material) or planted and maintained substantially similar to that condition existing prior to the Owner's work. Failure to completely fulfill the requirements of the preceding sentence, including seeding, shall result in a charge of Five Hundred Dollars (\$500.00) for each violation which charge shall be a lien upon the Owner's Lot. If an Owner's attempted seeding does not "take", the Owner is required to repeat the process until a stable grass cover, sufficient to prevent erosion and washing is obtained. Should the Owner of such Offsite Septic Lot fail to restore the surface of the Septic Field Easement Area, in the sole judgment of the Declarant or the Board of Directors, then the Declarant or the Board of Directors shall have the power to specially assess such Owner for any costs of restoration in excess of the Five Hundred Dollar (\$500.00) initial charge. The Declarant or the Association may extract the Five Hundred Dollar (\$500.00) charge or any excess costs of restoration from the Owner's Construction Deposit.

Owners of each of the Offsite Septic Lots and their agents are granted the right of ingress, egress and regress over and across such portions of Subdivision as are burdened by the Septic Supply Line Easements and Septic Field Easements as may be necessary for inspection, maintenance, repair or replacement of the Septic System which services their Offsite Septic Lot.

The Owner of the Offsite Septic Lot for which a Septic System is being installed shall be responsible for obtaining all permits for the use of said Septic System and shall hold the Declarant and the Association, its successors and assigns, harmless from any loss, damage or liability relating thereto, except to the extent that such loss, damage or liability results from the grossly negligent or willful act of the Declarant or the Association. Prior to the installation of a Septic System within the Septic Field Easement Area, the Owner of the Offsite Septic Lot for which the Septic System is being installed shall have the proposed location of such Septic System staked and approved by the appropriate authorities, and such Septic System shall be approved by, and constructed and maintained in accordance with all regulations and requirements of all governmental authorities and agencies having jurisdiction. The Owner of the Offsite Septic Lot to which a Septic Field Easement Area is appurtenant shall be responsible to operate and maintain the Septic System located thereon at such Owner's sole cost and expense.

Two years after any Offsite Septic Lot is connected to a public or private sewer line and is adequately serviced thereby, then the Septic Field Easement reserved and granted for the benefit of that Offsite Septic Lot shall terminate. The Owner of an Offsite Septic Lot shall have no duty to remove an inactive Septic System.

Declarant hereby reserves and grants unto itself, its successors in interest, and assigns, a right and easement benefiting Declarant and burdening each Offsite Septic Lot for the purpose of connecting any residence(s) upon such Lot(s) to any public or private sewer line providing service accessible to such Lots, including access across the Lots and the right to install any pipes and apparatus as may be necessary to connect any such residence(s) to such sewer line (the "Sewer Connection Easement"). By reserving the Sewer Connection Easement, Declarant has not obligated itself or its successors or assigns to connect any public or private sewer line to the above-described Lots or to make any sewer service available to such Lots. The exercise of such rights and the Sewer Connection Easement shall be at the sole discretion of Declarant, its successors in interest and assigns.

Declarant hereby further reserves unto itself and its successors in interest, a right and easement benefiting Declarant and burdening each Offsite Septic Lot. Declarant may, in its discretion, replace the original Septic Field Easement Area appurtenant to an Offsite Septic Lot with another Septic Field Easement Area that shall thereafter be appurtenant to that Offsite Septic Lot. The replacement shall be evidenced by a Filed revision of that portion of the Map showing the Offsite Septic Lot and the appurtenant Septic Field Easement Area if the Offsite Septic Lot is then still owned by Declarant. In the event that the Offsite Septic Lot is then owned by a third party Owner, such Owner shall cooperate with Declarant by executing such title transfer documents as are necessary to consummate the replacement of the original Septic Field Easement Area with a replacement Septic Field Easement Area. If the third party owner has expended money to install part or all of a septic system in the original Septic Field Easement Area, Declarant shall install a comparable system in the new Septic Field Easement Area, pay any applicable governmental fees, and arrange for the switch in service, all at Declarant's sole cost and expense.

Portions of septic connector lines from multiple Offsite Septic Lots may be buried in one or more common trenches in areas subject to the Septic Supply Line Easements. In the event of damage to, or leakage from, the portion of any septic connector line which is: (i) buried in a common trench; and (ii) located between the Lot line of an Offsite Septic Lot and that Lot's appurtenant Septic Field Easement Area; the repair of such septic connector line shall be the responsibility of the Association and all costs shall be deemed an expense for Common Facilities maintenance. This allocation of repair duty and expense is made so that the Association may control and monitor all work in the common trench area where use of contractors unfamiliar with the installation could result in errors and damage with resulting loss of septic function to multiple Owners. The Association shall promptly act to repair any damage or leakage and will seek expeditious repair when any affected Owner might otherwise be without a functional Septic System. The Association shall, by subrogation, succeed to the rights of any affected Owner against any parties who caused damage to such septic connector lines.

**Section 4. Temporary Construction Easements.** Declarant reserves for itself and its agents the right and easement to, from time to time, go over and upon (including trucks, equipment and the like) any Lot for the purpose of installing wells, Septic Systems, infrastructure or other work necessary in the Subdivision, whether the work benefits the Lot over which access is made or other Lots. Declarant will repair any material damage to the Lot over which access is made and will exercise care to minimize the time of such work and the damage made by the work or access.

**Section 5. Reservation of Maintenance Option Easement.** Declarant hereby reserves, for the benefit of the Association, an option and right of maintenance (including landscaping and beautification) upon and over the rear or side of any Lot up to ten (10) feet in width which adjoins the right of way of Fernhill road (SR # 1330), Bullfinch Road (SR # 1400), Riverbend Drive or Carlton Drive. The Association may exercise its right of maintenance either on a continuing basis, or from time to time, at its sole discretion. This option may be exercised with respect to all subject Lots or only to selected areas, all in the sole discretion of the Association. All expenses of this maintenance option shall be appropriate uses of funds raised by the Association through annual, supplemental or special assessments. An easement is reserved in favor of the Association and its agents to go upon the burdened ten feet (10') strips of any subject Lot for the purpose of carrying out the maintenance option created herein and to perform any permissible work upon the shoulder or drainage facilities of any public roadway.

## **ARTICLE XV**

### **Partial Taking**

In the event that any portion of the Subdivision is taken or purchased in any manner in the nature of a condemnation or other governmental taking, such taking will not render invalid any provision contained in this Declaration.

## **ARTICLE XVI**

### **General**

**Section 1. Mortgagees' Protection.** Violation of this Declaration shall not defeat the lien of any Mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder shall be subordinate to any such Mortgage unless a lis pendens or notice of the lien shall have been Filed prior to the recordation of such Mortgage; provided, however, that any Mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner.

**Section 2. Chain of Title.** Each grantee, lessee or other person in interest or occupancy accepting a conveyance of a fee or lessor interest, the demise of a leasehold interest, or a license, in any Lot, whether or not the instrument of conveyance refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by reference in any conveyance, demise of a leasehold estate, or the grant of a license, of all or any portion of his interest in any real property subject hereto.

**Section 3. Ambiguities.** If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all parties or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

**Section 4. No Reversionary Interest.** This Declaration shall not be construed as creating conditions subsequent, or as creating a possibility of reverter.

**Section 5. Zoning Requirements.** This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any other Applicable Laws, or by specific restrictions imposed by any deed or other conveyance. In the event of any conflicts, the most restrictive provision among the conflicting terms shall be taken to govern and control.

**Section 6. Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court or other body of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration and all remaining restrictions, covenants, reservations, easements and agreements contained herein shall continue in full force and effect.



**Section 7. Gender.** All pronouns used herein shall be deemed to be singular, plural, masculine, feminine or neuter as application to specific circumstances may require.

**Section 8. Liability Limitations.** Neither Declarant, nor any Owner nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board, its officers, employees and agents from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for such resulting from the gross negligence or willful misconduct of the person(s) to be indemnified. The Association may maintain liability insurance for members of its Board, its officers, employees and agents.

All Owners acknowledge that they and their invitees will use any walking paths constructed by Declarant at their own risk and do hereby release and agree to hold harmless and indemnify Declarant and the Association from liability for any property damage or injury suffered through such use.

**IN WITNESS WHEREOF,** Declarant has executed this Declaration the day and year first written above.

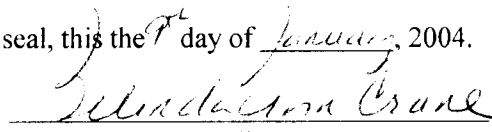
**BEACON POINTE PARTNERS, LLC**

by:   
Jeffrey Cernuto, Manager

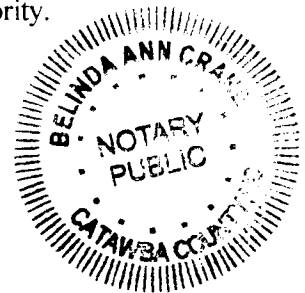
STATE OF NORTH CAROLINA  
COUNTY OF Bechtel

I, Belinda Ann Crane, a Notary Public for said County and State, do hereby certify that Jeffrey Cernuto, Manager of Beacon Pointe Partners, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is the Manager of Beacon Pointe Partners, LLC, and that he executed the foregoing instrument on behalf of that company with due authority.

WITNESS my hand and official seal, this the 7<sup>th</sup> day of January, 2004.

  
Notary Public

My Commission Expires: 12-12-06



THIS JOINDER AND CONSENT is made this 15<sup>th</sup> day of January, 2004 by Peoples Bank, a North Carolina corporation ("Beneficiary"); and Lance A. Sellers, ("Trustee") a resident of North Carolina, Trustee under that certain Deed of Trust and Security Agreement recorded in Book 1490, at Page 1194, in the Iredell County Public Registry (the "Deed of Trust").

The undersigned Beneficiary and the Trustee do hereby consent to, and join in, the conditions, covenants, reservations, easements and restrictions that are herein declared, reserved and imposed upon the Property and additions to the Property. The undersigned Beneficiary and Trustee hereby subordinate the Deed of Trust to this Declaration of Covenants, Conditions and Restrictions (including future amendments and supplementary declarations) so that any foreclosure or other conveyance of the Property subject to this Declaration pursuant to the deed of trust, shall not cut off, invalidate or otherwise affect the covenants, conditions, restrictions, easements and other terms of this Declaration.

IN WITNESS WHEREOF, the Beneficiary and the Trustee have caused this Release to be duly executed under seal, this the 15<sup>th</sup> day of January, 2004.

BENEFICIARY:

PEOPLES BANK

By: Eric Hagler  
Title: Eric Hagler, Business Development Officer

TRUSTEE:

Lance A. Sellers (SEAL)  
Lance A. Sellers, Trustee

STATE OF NORTH CAROLINA  
COUNTY OF Lincoln

This 15 day of January, 2004, personally came before me, Eric Hagler, who being by me duly sworn, says that she/he is Business Development Officer of PEOPLES BANK; and that said writing was signed by her/him on behalf of said corporation. And the said Officer acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 15 day of January, 2004.

My commission expires:



MY COMMISSION EXPIRES MARCH 31, 2008

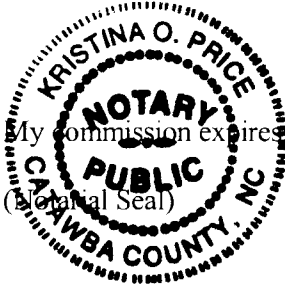
Notary Public

Kimberly M. Hults

STATE OF NORTH CAROLINA  
COUNTY OF ~~MECKLENBURG~~ Catawba

I, Kristina O. Price, a Notary Public for said County and State, do hereby certify that Lance A. Sellers, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 16<sup>th</sup> day of January, 2004.



My commission expires 2-26-2007

Notary Public

Kristina O. Price

NORTH CAROLINA  
IREDELL COUNTY

THE CERTIFICATE OF: Belinda Ann Crane,  
Kimberly M. Hults +  
Kristina O. Price  
IS CERTIFIED TO BE CORRECT.

BRENDA D. BELL, REGISTER OF DEEDS

BY: Sheila D. Campbell  
ASST./DEPUTY

# Beacon Pointe

Phases III and IV

## **ARCHITECTURAL AND SITE GUIDELINES**

**Beacon Pointe - Phases III and IV**  
**ARCHITECTURAL AND SITE GUIDELINES**  
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## **INTRODUCTION**

Beacon Pointe is a planned community in which manmade improvements have been designed and installed in a manner in harmony with the natural environment. Care has been taken to respond to natural features and to create Homesites ("Lots") which take maximum advantage of the physical features of the development. Architectural Guidelines ("Guidelines") are established and enforced so that similar care will be taken to assure that Homes within Beacon Pointe will contribute to, rather than detract from, the attractiveness of Beacon Pointe. For more additional and information pertaining to specific issues contained in These Guidelines, please refer to the Declaration of Covenants, Conditions and Restrictions for Beacon Pointe ("The Restrictions") as may be noted herein. If there arises any conflict between the Guidelines and Restrictions, it is the Restrictions that will prevail.

## **DESIGN PHILOSOPHY**

The Dwelling Units ("Homes" or "Buildings") in Beacon Pointe should respond to the environment, the homeowners' need for comfort, function, and beauty, and the overall plan for the community. These Guidelines provide basic information, which should be used to produce a community with a cohesive identity with varied traditional and harmonious architecture without unduly restricting the designer's interpretation of any Owner's particular needs or desires.

## **ARCHITECTURAL REVIEW COMMITTEE (see Article VIII of The Restrictions)**

In accordance with The Restrictions which have been recorded in **Book 1526 at Page 720 et seq.** of the Fredell County Registry of Deeds, as it may be amended from time to time, an Architectural Review Committee ("The Committee") will review all plans for Homes and any other structures to be built in the residential community known as Beacon Pointe Phase III which is reflected on the present plat recorded in **Plat Book 44 Page 79** of the Fredell County Registry of Deeds, and any subsequent residential phases of Beacon Pointe platted of record and submitted to the terms and conditions of The Declaration. The purpose of The Committee is not to restrict design freedom or to make design decisions, but to ensure that each of the Homes reflect the overall objectives of the entire community and that the unique natural setting of the community is preserved and enhanced.

## **PLAN SUBMISSION PROCEDURES**

Refer to Article IX of The Restrictions

### **1. Meeting**

The Committee may meet informally as a group or by telephone, written communication, facsimile transmissions or such other means as the members may agree upon and as may be sufficient to conscientiously, and fully, perform its duties.

### **2. Materials to be Submitted for Site Plan Approval**

Before initiating any construction, alteration of existing Improvements, grading or any site or structural work upon any Lot, the Owner must first submit construction, site and landscape plans, including 2 full sets of working plans, plus such other materials as the Committee may request. At a minimum, the plans shall show in detail:

- (a) The grading work to be performed on the Lot;
- (b) The nature, materials and location of all Improvements including buildings, septic, wells, piers, paving, plantings and screening, etc.;
- (c) Setback Distances; and
- (d) The location of Improvements on adjoining Lots.

### **The plans shall provide specific detailed information concerning**

- (a) Landscaping for the Lot;
- (b) Exterior lighting; and
- (c) A building elevation plan showing dimensions, materials and exterior color scheme samples which we will keep on file

3. **Filing Fee**

In order to defray the expense of the Committee, the Committee will require a reasonable fee for review of plans. The initial filing fee shall be Three Hundred Dollars (\$300.00). The filing fee may only be increased to defray actual out-of-pocket costs to the Declarant, such as attendance fees or travel reimbursements to the Committee Members, and in no event may the fee exceed Four Hundred Dollars (\$400.00).

4. **Approval Criteria**

The Committee shall have the right to disapprove plans, specifications or details submitted to it for any of the following reasons:

- (a) The submission fails to comply with the terms of this Declaration or the Architectural and Site Guidelines, including payment of the review fee;
- (b) Insufficient information or failure to provide detail reasonably requested by the Committee;
- (c) The submission fails to comply with the appropriate zoning ordinance or other Applicable Laws that may be in effect from time to time;
- (d) Objection to the grading plan for any portion of the Lot;
- (e) Objection to the color scheme, finish, proportions, style, height, bulk or appropriateness of any structures; or
- (f) The plans are not prepared by licensed architects, engineers or landscape architects.

5. **Time for Review**

Upon submission of all detail reasonably requested by the Committee (received in the office of Declarant or other office as designated by Declarant), the submitting Owner shall receive, in writing, the decision of the Committee within thirty (30) business days. Failure of the Committee to render a written decision within thirty (30) business days shall be deemed approval of the submission.

6. **Certification of Approval**

Upon the request of Owner, the Committee shall confirm its approval of the Owner's plans by issuing a written certificate describing the specific Lot and plans, which have been approved.

7. **Approval is not a Warranty**

Approval of the plans submitted by any Owner or other party to the Committee shall not be construed as a certification or warranty, by either Declarant or the Committee, that

- (a) the plans meet with any minimum standards of suitability for use,
- (b) are acceptable under any Applicable Laws,
- (c) conform to any other standards of quality or safety, or
- (d) describe Structures or development, which would be safe, prudent or feasible.

Neither Declarant, the Committee, nor any member thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, plans, drawings or specifications, construction or performance of any work or the development of any Property within the Subdivision.

8. **Construction Deposit**

Prior to grading or commencement of any construction activity upon a Lot, an Owner shall deposit with the Declarant or the Association (as instructed by Declarant) the sum of Five Hundred Dollars (\$500.00) per Lot. This "Construction Deposit" will be held until the completion of construction activity upon the Lot. During the construction period, the Construction Deposit may be applied toward the repair of any damage caused by construction (e.g. damaged street shoulder or pavement, and the like), street cleaning or storm water culvert clean out necessitated by silt or grading runoff from the Owner's Lot, or other repairs or clean-up necessitated by acts of the Owner or his agents.

9. **Commencement of Work**

Beginning with the approval of the Committee as described herein, the Owner or other parties submitting plans shall, as soon as practical, satisfy all conditions of the Committee and proceed with all approved work described in the plans and such other work as may be necessary for improvement of the Lot in accordance with this Declaration. Commencement of Construction must begin within one hundred eighty (180) days from the date of such approval or the approval of the Committee shall lapse. The Committee may, at its discretion and upon the request of Owner, extend the one hundred eighty (180) day period for Commencement of Construction in the event that good cause is shown for such extension.

10. **Completion of Work**

All Improvements upon the Lot, including alteration, construction and landscaping shall be completed within twelve (12) months after the Commencement of Construction upon the Lot. This time period may be extended in the event that work or completion is rendered impossible due to strikes, fires, national emergencies, force majeure or other supervening forces beyond the control of Owner, lessee, licensee, Occupant or their agents. Installation of large items of shrubbery or trees may be delayed beyond the 12-month completion period in order to plant during the best seasons for such plantings. Installation of sod and seeding of rear yards shall, however, be completed within the 12-month period.

**BUILDING POLICIES**

The following requirements shall apply to all builders involved in construction at Beacon Pointe, their employees, and their subcontractors, and to any person who visits Lot in Beacon Pointe.

1. **GENERAL**

- (a) All activity by the builder shall be restricted to the Lot on which he is building.
- (b) Delivery and storage of materials shall be confined to the building Lot only.
- (c) Existing vegetation shall not be disturbed except as approved where necessary to construct the Home, driveway, and utilities.
- (d) A sign, with a maximum area of six (6) square feet, indicating Lot number, property owner, and general contractor, should be put up for the Building Inspector and supply companies. (see Article X, Section 13 of The Restrictions)

2. **Before beginning construction and after approval of plans:**

- (a) Building contractors shall locate a temporary driveway in the same location as the future permanent driveway to ensure that ingress and egress are within the building Lot only. There shall be no traffic, vehicular or pedestrian, on adjacent Lots.
- (b) Building contractors shall arrange for a suitable container for waste building materials and trash to be placed on the Lot in a clearing, which is existing or has been approved, without damage to existing plant materials required or designated to remain.
- (c) Builder contractor will arrange for a port-a-john to be placed on the property.

3. **During construction:**

- (a) Building contractors and subcontractors shall be responsible for the condition of adjoining roads and roadsides.
- (b) Builder shall be responsible for regular clean-up of the Lot. Scrap and trash too large to be put in the container shall be removed from the Lot on a weekly basis.
- (c) There shall be a weekly clean-up and stacking of building materials by the builder.
- (d) There shall be a port-a-john on site.

4. **At the end of construction**

The Lot shall be completely cleaned at the end of construction and or when the building inspectors give occupancy permit whichever is earlier.



**BUILDING RESTRICTIONS (see Article X, Section 1 of The Restrictions)**

These policies concern all new construction, additions and/or modification of existing Homes, structures and other improvements in the community and any clearing, grading, filling or other alterations to any Lot within the community.

**1. MAXIMUM HEIGHT/SIZE (see Article X, Section 1 of The Restrictions)**

The maximum height for a Home is two and one-half (2 ½) stories above the ground. A basement is not deemed a "level" or a "story".

The maximum height for detached garages and Outbuilding may not exceed fourteen feet (14') in height and the total square footage contained within all such buildings combined on any one Lot shall not exceed two thousand (2000) square feet.

Private garage may not exceed three (3) car capacity; or two garages each of two (2) car capacity.

The total combined square footage of recreational structures (including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures) may not exceed one thousand (1000) square feet in area on any one Lot.

**2. MINIMUM SIZE (see Article X, Section 2 of The Restrictions)**

The following minimum square footage requirement are for enclosed finished heated floor area and are exclusive of the area in basements, unheated porches of any type, attached or detached garages, carports, and unheated storage areas, decks or patios, except as otherwise provided below:

- (a) Any one-story dwelling shall contain no less than:
  - (i) 2200 square feet of Heated Living Area if erected upon any Waterfront Lot
  - (ii) 2000 square feet of Heated Living Area if erected upon any Interior Lot
- (b) One and a Half Story dwellings shall contain no less than:
  - (i) 2400 square feet of Heated Living Area if erected upon any Waterfront Lot
  - (ii) 2200 square feet of Heated Living Area if erected upon any Interior Lot
- (c) Two or more story dwellings shall contain no less than:
  - (i) 2600 square of Heated Living Area with at least 1600 square feet of Heated Living area on the ground level if erected upon any Waterfront lot
  - (ii) 2400 square of Heated Living Area with at least 1400 square feet of Heated Living area on the ground level if erected upon any Interior lot

**3. BUILDING SETBACKS AND LOCATION (see Article X, Section 5 of The Restrictions)**

The location and design of each Home and all other Improvements shall be tailored to the specific features of each Lot. All Improvements should be sited so as to minimize disruption to the existing natural setting, including existing vegetation, drainage ways, and views.

The buildable area of each Lot is determined by easements and setbacks shown on the subdivision plats as recorded in the Iredell County Registry of Deeds and the following setbacks, or as indicated in the Iredell County Zoning Regulations:

- (a) Typical side yard 15 Feet
- (b) Front yard facing street 35 Feet
- (c) From the waters of Lake Norman 50 Feet; or  
From the rear on an Interior Lot 35 Feet

In addition, The Committee may control the location and orientation of any Home within the area enclosed by the above setbacks. All building on the Lot (including any stoops, porches, patios, terraces, decks, etc.) and any recreational improvements shall be located within the area enclosed by the above setbacks; provided that docks, piers, boatslips and

inland boathouses on waterfront Lots are exempt from this requirement provided they are in conformity with the applicable portions of these Guidelines.

**4. EXTERIOR MATERIALS, COLORS, AND FINISHES (see Article X, Section 3 of The Restrictions)**

Materials and color constitute a dominant visual element of the community and require careful attention.

Permitted exterior materials are brick, stone, hard stucco (synthetic stucco is not permitted), wood (no logs or siding with a log appearance), engineered cement composite wall coverings (e.g.: Hardiplank® or Hardishingle™ siding), or engineered coverings specifically approved by the Committee. Any siding installed with a horizontal orientation must be fully back supported to maintain a straight and even outer surface and must be fully and properly finished.

The following exterior surfaces are specifically prohibited: synthetic stucco of any type; logs; cladding with sawmill strips; siding with the appearance of logs or sawmill strips; Masonite™ or similar composite siding manufactured primarily from compressed cellulose or similar non-durable materials; and vinyl or aluminum siding. Aluminum, vinyl and materials clad with aluminum or vinyl may be employed for soffit, fascia, boxing and trim applications.

The exterior materials and colors used on a Home should blend together to create a harmonious whole. To this end, samples of proposed exterior materials and colors of paints and stains must be submitted to The Committee for approval. Trim colors should not contrast strongly with the exterior wall color. Foundation colors should blend rather than contrast with the exterior wall color.

The exterior surface of any garage or Outbuilding erected on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on said Lot.

**5. DOORS, WINDOWS, AND SHUTTERS**

Doors and windows should be carefully proportioned and located to enhance the exterior appearance of the Home while taking advantage of opportunities for special views, natural light and ventilation. Window and doorframes may have anodized aluminum, vinyl, or painted or stained wood finishes. All windows, doors, shutters and all colors stains must be approved by The Committee. Natural color aluminum or other metal finishes are not allowed.

**6. ROOFS**

Roofs and roof pitches should be in proportion to the overall size and shape of the Home. A minimum roof slope of six in twelve is required with not less than 12" overhang. The main roof should slope equally in both directions from the main peak. Not permitted are flat roofs (which constitute more than 25% of the total roof area), A-frame roofs, dome roofs, or shed roofs composed of only one plane as an overall roof shape for the majority of the building.

Permitted roofing materials are slate, wooden or architectural metal shakes, terra cotta tile, copper sheathing, or architectural fiberglass shingles (see Article X, Section 3 of The Restrictions).

Covered porches and other structures on the Lot (e.g. detached garages, pool houses or other accessory structures permitted by The Committee) should have the same roofing material and color as the main Home.

Copper flashing may be permitted to weather to a natural patina. All other flashing shall be painted to match or blend with the shingle color as approved by The Committee.

**7. CHIMNEYS**

Exterior chimneys should be full foundation based and made of brick, stone, hard-coat stucco or other material approved by The Committee, and of a design, location and material appropriate to the Home. Exposed metal flues are not permitted. All chimney caps should be finished in a finish blending with the colors of the Home.

**8. ANTENNAE**

Refer to Article X, Section 14 of The Restrictions

**9. MAILBOXES**

No masonry mailboxes or other improvement may be constructed or placed within any private road easement. All mailboxes and newspaper boxes (including supporting posts) shall be of standard color, size, and design as approved by The Committee. Mailboxes may not violate North Carolina Department of Transportation Standards.

10. **GREENHOUSES**

The use of manufactured greenhouse rooms or units as an integral element in the overall design of the Home shall be permitted with the approval of The Committee.

11. **DECKS AND PORCHES**

Decks and porches should be designed with substantial, well-proportioned railings, flooring, and support posts meeting building code requirements. The space below decks should be screened with lattice, shrubbery or other means appropriate to the design of the Home.

12. **HOUSE NUMBERS AND HOME NAMES**

House numbers must be installed in an easily visible location near the front entrance of the Home as approved by The Committee and in accordance with Fredell County Zoning Ordinance.

13. **PARKING AND DRIVEWAYS (see Article X, Section 16 and Section 32 of The Restrictions)**

Driveways shall be constructed of concrete, asphalt, brick or other hard finished surface approved by the Committee. Exposed aggregate concrete may be permitted with the written approval of The Committee. Unpaved driveways and parking areas are prohibited. If any driveway crosses a drainage ditch or swale, the Owner is required to install, at the Owner's expense, any necessary piping or culverts before the commencement of any other construction or grading on the Lot. Specifications for any such piping or culvert must be approved by the Committee and installed in accordance with the approved specifications and Applicable Laws.

14. **SERVICE AREAS**

All service areas containing heating or air conditioning apparatus, propane tanks, garbage containers, or other equipment stored outside the Home may not be located within any front yard or side yard facing a street and must be appropriately screened by landscaping or approved fencing. All such service areas shall be shown on the plans submitted to The Committee.

15. **GRADING AND EROSION AND SEDIMENTATION CONTROL**

Plans for any grading, excavation, or filling of Lots must be approved in writing by The Committee before any site work can begin. During any clearing, grading and construction activities on a Lot, all run-off, erosion, and sediment beyond that which occurs in the natural, undisturbed condition of the Lot must be contained within the perimeter of the Lot. Particular care must be exercised on waterfront Lots to avoid negative impacts upon Lake Norman.

Grading must be designed as much as possible to conform to the natural site contours. Lots have generally been located to minimize grading and avoid disruption of natural drainage patterns. Excessive grading should not be necessary and will be viewed as undesirable by The Committee. Final grading should produce gently rounded contours rather than sharp changes in slope and should allow for transition at the head and toe of slopes.

The creation of fill section to artificially elevate Homes will generally be disallowed. In the event of particularly low-lying Lots, or in areas where artificial elevation will not adversely affect views from surrounding Lots, filling to provide elevation may be approved by The Committee.

16. **LANDSCAPING**

Plans for any landscaping, grading, excavation or filling of Lots must be approved by The Committee before any site work can begin.

All landscaping plans including (without limitation) all structures, driveways, mailboxes, service yards, terraces, patios, walks, paths, outdoor lighting fixtures, walls, fences, pools, piers, docks, decks, gazebo and screens are to be shown on the plan submitted to The Committee and are subject to approval by The Committee. All landscaping of Lots must be completed within thirty (30) days of occupancy.

The owner of each Lot is responsible for maintaining in a healthy condition all natural and introduced vegetation on the Lot. Removal of dead or diseased plant material must be done on a regular basis in accordance with the best practices for the plant material involved. Maintenance of plant materials and landscaping required of the Owner includes all planting beds, trees, shrubs, flowers, ground cover and lawn areas, including any areas mulched with pine needles, pine bark nuggets or other materials.

The fundamental design criterion to be considered in the review and approval of landscaping plans is the need for gardens and lawns to harmonize with the native vegetation, terrain, and natural beauty of the community. Plants native to or traditional in North Carolina are encouraged.

A significant factor will also be the need to preserve wherever possible scenic views of Lake Norman or other prominent natural features.

**17. EXTERIOR LIGHTING**

Exterior lighting is subject to approval by The Committee. In general, such lighting must not result in excessive glare and must not interfere with the privacy of nearby Homes.

Directional lights (such as flood or spotlights) shall be aimed in such a way that no light from them shines on adjacent properties and shielded in such a way that the directed light from their filaments is not visible from adjacent properties.

Non-directional lights should have enclosures that conceal the shape of the lamp (light bulb) and prevent the view of the lamp from above. Ideally, positioning of exterior light fixtures to conceal the source of light is preferable.

**18. FENCES AND WALLS (see Article X, Section 12 of The Restrictions)**

Fences and walls should be considered an extension of the architecture of the residence and a transition of the architectural forms to the natural forms of the Lot. All fence and wall designs should be compatible with the total surrounding environment. Special consideration should be given to design, placement, impact, and view of the fence or wall from other properties within the community. Fences and walls should be considered as design elements to enclose and define courtyards, pools and other private spaces provide security and relate building forms to the landscape. They should not be unnecessarily obtrusive. Perimeter fencing shall not have more than fifty (50) percent of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test. The location, materials, size and design of all fences and walls must be approved in advance in writing by The Committee prior to installation. Chain link fences are specifically prohibited within the community except that decorative wrought iron or high quality aluminum or vinyl-clad fencing made with the appearance of wrought iron is permitted. Split rail wooden fencing is expressly permitted.

No fence or wall shall be erected, placed or maintained on any Lot nearer to any street fronting such Lot than the front face of dwelling located on such Lot. Fences and walls shall generally not exceed five (5) feet in height.

The use of retaining walls on Lots will generally be permitted where such omission would result in excessive slopes, erosion, excessive maintenance or excessive clearing. Retaining walls visible from streets, from Lake Norman, or from adjoining Lots must be constructed of or faced with material of a type approved by The Committee.

**19. DOCKS, PIERS, BOATSLIPS, SEAWALLS AND INLAND BOATHOUSES**

Refer to Article X, Section 21 of The Restrictions.

Docks, piers, boatslips, seawalls and inland boathouses must be constructed of new materials, and must be compatible in style with the other Improvements on the Lot, the Lot width on the lake side, the shoreline configuration and vegetation massing.

**20. SIGNS (see Article X, Section 13 of The Restrictions)**

Except during periods where approved construction activities are underway, no sign shall be placed, erected, maintained or permitted to remain on any Lot except as expressly approved in writing by The Committee.

**21. TIME LIMITS (see Article IX, Section 8 and Section 9 of The Restrictions)**

Any construction, once approved and undertaken, shall be completed within one (1) year of the date of commencement unless a written extension of time is granted by The Committee.

All landscaping shall be completed within thirty (30) days of occupancy of any Homes within Beacon Pointe.