

FILED  
DAVIDSON COUNTY, NC  
DAVID T. RICKARD  
REGISTER OF DEEDS  
January 03, 2011 03:46:23 PM  
DEED BOOK 2004  
PAGE 1343 - 1362  
INSTRUMENT # 2011000000135  
DOCTYPE: R/C  
RECORDING:\$69.00  
VERIFICATION:\$2.00  
Deputy: PPHIPPS

Drawn by-Mail to: Samuel M. Booth, 156 Mayfield Road, Winston Salem, NC 27104

NORTH CAROLINA

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
WINTER GARDEN**

DAVIDSON COUNTY

**SHUGART DEVELOPMENT, LLC** is the owner of the land described in Exhibit A attached hereto and incorporated herein by reference (herein "Declarant"). Current anticipated use of the property is for single-family detached dwellings and common areas. The present conceptual plan is subject to change from time to time as development progresses and conditions change and is not binding on the Declarant. The Declarant may annex additional land, now owned and which may be acquired at a later date, which may be subjected to this Declaration in full or in part. The property described in **Exhibit A**, attached, is hereby subjected to this Declaration.

Each and every one of these covenants, conditions, reservations, and restrictions is for the benefit of each current and future owner of any part of the real property or interest therein to the extent subjected hereto, and shall bind the successors in interest being construed as running with the land.

**I. DEFINITIONS**

**1.1 Association:** The Association will be known as Winter Garden HOA, Inc., its successors and assigns ("Association") which will own, maintain and administer the open spaces and Common Areas or Elements brought under its jurisdiction; collect and disburse the assessments and charges herein created, and promote the recreation, health, and welfare of the Members of the Association and Declarant has incorporated under the laws of the State of North Carolina Winter Garden HOA, Inc. as a non-profit corporation for the purpose of exercising the foregoing functions, those set forth herein and in other Association documents and those set forth in Chapter 47F of the General Statutes of North Carolina.

**1.2 Owner:** The record Owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation or leasing part of the Premises.

**1.3 Premises or Property** shall mean that real property described Exhibit A and such additions thereto which may be subsequently annexed, if any, that are subjected to this Declaration by the Declarant by Phase or Annex Declaration(s).

**1.4 Common Area, Open Space or Common Elements:** All real property and improvements thereon included within the Premises, which are conveyed to the Association by Declarant, by deed or easement as Common Area, Common Open Space or Common Elements, but excluding that real property which is part of the fee simple title to any Lot, as the same may be shown on any amended plat on the Premises. The Common Area shall be used for the common purposes, benefit, and enjoyment of all Owners and the Declarant as stated herein or as may be set forth in a deed of conveyance from the Declarant. Declarant reserves and retains the right to adjust the location of the Lots and Common Area as hereinafter stated.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its Members, additional property and may include any portion of the Properties, including any Additional Property annexed by Declarant. The Association shall accept any such conveyance of property and thereafter such property shall be held and maintained by the Association as Common Elements. The Association shall maintain the Common Elements and be required to promptly repair and replace any portion of the Common Area that is damaged or destroyed for which the Association is required to maintain casualty insurance

The Association also may acquire additional Common Elements with the consent of the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Area must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite Owner approval has been obtained; and (3) be properly recorded in the Register of Deeds Office where the land lays.

**1.5 Limited Common Area:** A part of the Common Area that serves one or more Lots, parcels or phases in a particular manner not in common with all the Lots, if any.

**1.6 Phase:** Any part of the Premises or other property designated by Declarant as a Phase and for which a Phase, Annex or Supplemental Declaration is recorded subjecting the same to this Declaration as provided therein.

**1.7 Amenities:** Those certain improvements, if any, constructed by Declarant or the Association on a part of the Common Area for the use and enjoyment of the Members and guests as stated herein or in accordance with the terms stated in the conveyance of the area by the Declarant.

**1.8 Single Family Dwelling:** A detached dwelling structure on a Lot containing only one residential unit.

**1.9 Lot** shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision plat of the Properties intended for residential purposes and shall include any improvements constructed thereon and "Lots" shall refer to all such Lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or its affiliates and to thereby create additional Lots, eliminate existing Lots and Common Area or create additional Common Area; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the appropriate governmental authority(ies). If Declarant elects to exercise its right to revise the boundaries of one or more Lots or add or eliminate a Lot(s), Declarant shall record a revised plat of the affected Lot or Lots. Upon recording by Declarant of such a revised plat, each Lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a Lot as defined in this Declaration and each newly configured Lot shown on the revised plat shall be a Lot as defined in this Declaration.

**1.10 Declarant** shall mean and refer to Shugart Development, LLC, as well as its successors and assigns, pursuant to an express assignment or conveyance of any special Declarant rights hereunder, in part or in full, to such successor or assign, all of which rights, including Declarant's voting, architectural review, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

**1.11 Member:** The status of each Owner in the Association being the Owner of a Lot or Lots in the Premises.

**1.12 Architectural Review Committee ("ARC"):** A committee appointed by Declarant or its successors and assigns until final development and sale of the Premises, as it may be expanded, and thereafter by the Board of Directors, for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for external improvements, deletions and additions to any

residence, improvements on any Lot within the jurisdiction of the Association, in order to control external design, appearance, construction and location of dwellings, and other improvements to be constructed, erected, placed, installed, remodeled or rebuilt upon said Lots, including landscaping and the subsequent repair and maintenance thereof following conveyance of the Lot by Declarant. The Board of Directors may delegate its day to day enforcement of the rules and regulations of the Association with final appeal to the Board of Directors of Association, (herein Board or Board of Directors) to this committee or to another committee.

**1.13 Period of Declarant Control** shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds in which the land lays and continuing until the earlier of: (i) fifteen (15) years from the date this Declaration is recorded; or (ii) such time as Declarant together with all affiliated entities, shall cease to own a lot in the development as it may be expanded.

**1.14 BOARD, EXECUTIVE BOARD, OR BOARD OF DIRECTORS** shall mean those persons appointed or elected to the Board of Directors of the Association.

**1.15 MASTER ASSOCIATION** No Master Association is anticipated.

## II. COMMON AREA OWNERSHIP AND MAINTENANCE

**2.1: Owner's easement of enjoyment:** Every Owner in good standing shall have a right of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

**2.2 Delegation of Use:** Any Owner may delegate his rights of enjoyment of the Common Area to the members of his family, his lessees, contract purchasers who reside on the Premises, or his guests (the Association Rules and Regulations adopted from time to time may limit the number of guests and in some instances may require the owner to accompany the guests).

**2.3 Common Area Restrictions:** Common Area shall be used, improved and devoted to the welfare and benefit of the Owners and for the general benefit and enhancement of the Premises and the use thereof may be subject to rules and regulations adopted by the Board and/or the Members from time to time.

**2.4 Rules and Regulations:** The Declarant may establish initial rules and regulations and thereafter the Association will have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area and Lots. Such rules and regulations shall be maintained in a place reasonably convenient to the Members affected and available to them for inspection during normal business hours by appointment.

**2.5 Common Area Offensive Use and Damage:** No immoral, improper, offensive or unlawful use shall be made of the Common Area or the amenities owned or leased by the Association, if any. All dwelling ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. Each Owner shall be liable to the Association for damage to the Common Area caused by the owner, his family, tenants, guests, agents, contractors, employees or invitees in accordance with Section 47F-3-107 of the General Statutes of North Carolina.

**2.6 Regulation of Use of Common Area:** The Board of Directors shall have the power to limit the number of guests, to regulate hours or use and to curtail any use or uses of the Common Area it deems necessary or desirable for either the protection of the facilities, if any, or the best interest of Members together with the right to suspend use for a reasonable time and to invoke fines for violation of the published rules and regulations.

**2.7 Common Area Construction or Alteration:** No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except with the express written consent of the Association. The Declarant reserves and retains the right to use and/or improve the Common Area, grade for drainage and install utilities of all types over and on all Common Area and to impose easements and grant easements to utility companies until the full development of the land it now owns or may acquire and annex together with the right to adjust the boundaries of the Common Area by recording corrective plats to correct surveying errors, construction problems or mistakes in layout of improvements without the consent or approval of the Association or its members.

**2.8 Common Area Facilities Admission Fees:** The Association may charge reasonable deposits for a Member's allowed reserved private use of a common facility, if any, admission and other fees for the use of any Common Area in accordance with its policy and rules and regulations adopted from time to time for all or a part of the Common Area.

**2.9 Suspensions and Fines:** The Association shall have the power to suspend the right to the use of any Common Area, excluding access to a Lot of a Member or any person to whom that Member has delegated his right of enjoyment for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations as amended and expanded from time to time to meet current problems and conditions. The Association shall also have the authority to impose fines for failure to comply with this Declaration or the rules and regulations as established from time to time. The Member shall be entitled to notice and opportunity for hearing before the Board of Directors or a panel appointed by the Board prior to suspension or levy of fine.

**2.10 Conveyance of the Common Area by Declarant:** The Declarant, its

successors and assigns, will determine the Common Area and will convey the same to the Association by recorded easement or deed, and the Association shall accept all Common Area as conveyed by Declarant. Such conveyance shall be subject to all the restrictions and limitations of this Declaration and limitations stated herein or as stated or modified in the conveyance of the Common Area.

**2.11 Common Area Dedication and Transfer:** The Association shall have the right to dedicate, transfer or encumber all or any part of the Common Area in accordance with Section 47F-3-112, of the General Statutes of North Carolina as the same may be amended, provided the Declarant has retained the right to grant easements and use the common area until the full development with dwellings and sale of all the land it owns or may acquire in the furtherance of the development of the Premises.

**2.12 Wet Detention and Retention Ponds:** If there are any drainage, wet detention, retention or erosion control ponds upon the Common Elements included in the Lot assessment shall be funds for the purpose of repairing, maintaining, replacing and operating the ponds, pipes, rip rap, drains and all equipment associated therewith, and other water quality or erosion control devices required, and installed in accordance with the requirements of the governmental office(s) having jurisdiction for watershed protection. If the Association should be dissolved or cease to exist, then in that event all Owners of a Lot in the Property shall be responsible for a pro rata share of the expense by dividing the total number of Lots into the costs of operating, maintaining, repair and replacement of the water quality ponds and equipment. If governmental requirements are not met then the same may be complied with by the governmental authority having jurisdiction and all Lot Owners shall be personally liable for a pro rata share of the costs and if not paid when requested each non paying Owner shall become personally liable and each non paying Lot may be foreclosed upon to obtain funds to pay for such requirements. The ponds are for erosion and water quality control. Unless the Board of Directors sets forth other uses and rules, the ponds shall not be used for recreational purposes or any other use except those for which the pond(s) were designed.

### III. PERMITTED AND PROHIBITED USES

**3.1 Lots:** Upon each Lot as shown on the plat as the same may be replatted by Declarant there shall be constructed only one detached single family dwelling and such other improvements as may be approved. The uses shall be in accordance with this Declaration and with the applicable state, city or county laws or ordinances affecting the Premises as the same may be amended or changed from time to time.

**3.2 Parking:** All Owners by acceptance of a deed for a Lot agree not to park their vehicles on the access ways or streets (private or public) in the Premises at

any time or allow any occupant of a dwelling to do so unless the parking is temporary, not an obstruction to the flow of traffic and except as is authorized by the Association. The Association may designate parking areas, duration of stay and adopt regulations concerning parking to address situations as they occur.

**3.3 Outbuildings:** Following the conveyance of a Lot by the Declarant outbuildings will be considered exterior additions or alterations and shall not be placed on the premises until approved by the ARC. Any permitted outbuilding shall be of similar material, quality, general appearance and workmanship as the residence on the Lot and shall be constructed and placed only as approved by the ARC.

**3.4 Driveways.** All driveways shall be paved with concrete, brick, or asphalt unless otherwise approved by the ARC in writing.

**3.5 Nuisance:** No owner will do or permit to be done any act upon the Premises, which may be, is, or may become a nuisance. Any question of whether an activity constitutes a nuisance shall be determined in the discretion of the Board of Directors of the Association or the committee to which such matters has been delegated with the right of hearing or appeal to the Board of Directors. Some acts or events that will be considered a nuisance, not to the exclusion of others, are: Loudspeakers or other sound producing devices played at a late hour, at an excessive volume anytime; household pets allowed to roam; failure to remove and dispose of droppings of the pet; excessive barking or other annoying animal noise of a household pet.

**3.6 Signs:** No sign of any character shall be displayed or place upon any part of a Lot or Common Area except Declarant's signs; signs erected or approved by Declarant or the Association committee charged with the control thereof; small signs identifying the Owner of the Lot and/or house number; or one "For Sale" sign, referring only to the Lot on which displayed not to exceed four square feet in size.

**3.7 Pets - Animals:** No poultry, cattle, farm animals, or livestock of any kind shall be kept on the Premises and no enclosure therefor shall be erected or maintained on the Premises. No animals of any kind may be kept, bred or maintained on a Lot for any commercial purpose. Dogs, cats, and pet birds may be kept within the dwelling in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial use or purpose. Birds shall be confined in cages. Pets shall not be permitted to run loose and must be confined within the dwelling, by owner held leash or approved fence. The ARC must approve any enclosure, visible or invisible, outside the walls of a dwelling. Such request may be denied and if approved the approval may be conditional and may be terminated for failure to follow the conditions or a nuisance results. Provided, further, that such permitted pets must not constitute a danger or nuisance to other Owners or the Premises as determined in the sole discretion of the Board of

Directors of the Association with notice and right to hearing prior to fine or other enforcement action by the Board of Directors.

**3.8 Clothes Lines:** Clothes lines or drying yards shall not be permitted unless temporary and any temporary clothes lines shall be so located as not to be visible from any road adjacent to the Lot and must be approved by Declarant or the committee in charge of such matters as determined or designated by the Board of Directors.

**3.9 Trash receptacles:** Trash receptacles shall be in complete conformity with sanitary rules and regulations adopted by the Association and shall not be visible from the road. If the governmental authority or trash collection company requires the trash receptacles to be placed on the road for collection then the receptacles may be placed where required for collection on the day before collection and removed the day of collection.

**3.10 Trucks, Tractors, Trailers, Boats, ATVs, Go-carts, Motor homes, Campers Unlicensed vehicles:** Following conveyance of a Lot by the Declarant to an Owner no trailers, boats, all terrain vehicles, go-carts, campers, motor homes or unlicensed vehicles of any nature shall be kept on or stored on any part of the premises except within an enclosed garage or other enclosure approved by the ARC or committee charged with regulation unless the appropriate committee so authorizes in writing. Such vehicles shall not be operated on the premises except to load to exit the premises and to unload to return to the storage area. No trucks (other than mini vans, sports utility vehicles and pick-up trucks), farm machinery of any nature, including tractors and riding mowers, shall be parked on any Lot except in an enclosed garage or approved enclosure. Provided trucks parked temporarily as is necessary for moving the Owner's personal property to and from the Premises and to perform repairs and renovations are permitted. The Association for its members may provide an area on the common property for parking of certain types of vehicles, which may be for common use, or a fee charged for use thereof. If provided, use to Members may be on a first come first serve basis or lottery to its capacity and will be used in accordance with the policy rules and regulations adopted.

**3.11 Exterior Maintenance:** The exterior maintenance repair and replacement of improvements on Lots including landscaping, shall be the duty and responsibility of the Owner of such Lot, except where specifically provided otherwise herein, and shall not be the responsibility of the Association unless specifically assumed by it. If in the opinion of the Board any Owner shall fail to discharge his or its repair, maintenance, replacement or upkeep responsibilities, including the routine mowing of grass, pruning of shrubs and watering thereof, in a reasonable and prudent manner to a standard harmonious with that of other development on the Premises. The Association, at the discretion of the Board of Directors, and following ten (10) days written notice to correct or a reasonable time if correction requires longer to correct, to the Owner may enter upon the Lot



or Dwelling Unit and make or cause to be made maintenance work, repairs or replacements as may be deemed reasonably required by the Association. The Association or its agents shall have a license and easement granted automatically by any Owner of a Dwelling by acceptance of a deed for the Lot for the purpose of accomplishing the foregoing. The costs incurred by the Association in rendering such services plus a service charge of fifteen percent (15%) of such costs shall be added to and become a part of the assessments to which such Lot is subject, which shall be immediately due and payable and may be enforced as other assessments. This is a right of the Association and not an obligation. The Association in the discretion of the Board may pursue other action of enforcement. The owner will have notice and the opportunity of a hearing prior to the Association performing such correction which opportunity of hearing may occur during the notice period.

**3.12 Leases:** Any lease agreement between an Owner and a lessee for the lease of Owner's dwelling shall provide in the terms of the lease that the leased premises is subject to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation, Bylaws and rules and regulations of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. All leases shall be in writing and the Association may require a copy be provided to the Association. Failure of a lessee to comply shall result in action by the Association against the fee simple Owner. Failure to comply will allow the Association to suspend the rights of the Owner and thereby the right of the lessee to the use of the Association's Common Area, excluding access to the dwelling. The Association may impose fines and take other action for failure to comply, which will also require notice, and opportunity for hearing before enforcement.

**3.13 Commercial activity:** Following conveyance of a lot by Declarant no commercial or business activity of any type shall be conducted thereon except for a home office within the dwelling provided that only limited business with the general public is conducted from the office other than by phone or other electronic communication and provided the office is in accordance with all applicable laws and ordinances. Offices of the Declarant and its agents during development, and offices for Association business will be allowed. The Association may allow, regulate, limit or prohibit any temporary commercial use such as yard sales or benefits for a charitable purpose or other purposes. A majority of the members of the Board of Directors, in their sole discretion, may establish the extent of the contact any home business may have with the general public upon a Lot. Any such use would have to be in compliance with any governmental authority having jurisdiction.

**3.14 Pools and exterior tubs:** No above ground swimming pool shall be permitted on any Lot. In ground swimming pools may be permitted by the Declarant. Approval of the ARC shall otherwise be obtained prior to contracting for or beginning construction of any swimming pool or exterior hot tubs other

than those constructed by the Declarant or Association.

**3.15 Satellite Dish, Exterior Antennas:** No satellite dish larger than 25 inches in diameter shall be permitted on any Lot. Any permitted dish shall be placed on the rear of the dwelling or other building. Rear of a dwelling is defined as away from the street the dwelling faces. Requests for all satellite dishes and other antennas for broadcast or reception will be considered and exterior change and shall be submitted to the ARC for approval, conditional approval, or denial.

**3.16 Buffer Yards:** The uses of any buffer yards shown on the recorded plat(s), if any, over portions of any Lot(s) must be used and maintained by the owner in accordance with Association rules adopted from time to time and the zoning and code regulations of the governmental authorities having jurisdiction thereof.

**3.17 Single Family Use:** The Lots shall be used for single-family detached residential dwellings and their customary accessory use(s) subject to the requirements of the Residential Single Family-9 (RS-9) District of the Development Ordinance subject to the following conditions:

- A. Density: The total number of residential dwelling units permitted on this property shall be limited to a density of 52 dwelling units.
- B. Architectural Design Features: (1) All buildings shall have a minimum roof pitch of 6:12; (2) A minimum of Fifty percent (50%) of the dwellings shall be one story in height. (3) A minimum of sixty percent (60%) of the dwellings shall have brick accents.

#### IV. SETBACKS, WALLS AND FENCES

**4.1 Setbacks and Building Lines:** Setbacks for all structures shall be in accordance with the zoning and building code requirements, as the same may be amended by any adjustment board. The plans and specifications for any structure not constructed by the Declarant shall be submitted to the ARC for plan approval as set forth herein, which will include the location of all improvements and may exceed the requirements of the zoning and applicable codes.

**4.2 Walls and fences:** Following the sale of a Lot by the Declarant no walls and fences may be erected upon a Lot without written approval of the ARC. Unless the Declarant or proper committee shall approve it is not anticipated that (i) any fence will be allowed to extend out of the rear yard beyond the rear corner of the dwelling house toward the road the dwelling faces and (ii) chain link, woven wire, or barbed wire fencing materials are not anticipated to be approved for use on the premises.

## V. STREETS, EASEMENTS AND RIGHTS OF WAY

**5.1 Easements reserved:** Declarant reserves from all Lots and Common Area easements for installation and service of utilities or drainage systems with full rights of ingress and egress for itself, its agents, utility companies, employees, and its successors and assigns over any part of the Common Area or a Lot for the purpose of installing and servicing the utilities, drainage and correction of problems for which the easements are reserved herein or of record. Common Area shall be subject to easements for walkways, vehicles related to management, construction by Declarant, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line, television lines and other utilities, together with ingress, egress and regress and otherwise as shall have been established by the Declarant whether by express easement or by the recording of a plat dedicating an easement or by the Declarant subsequently creating, dedicating or establishing an easement for correction, necessary or desirable to the full development and sale of the Premises. The Declarant reserves and retains the right to dedicate streets and/or access easements over the established Common Area or any Lot owned by it for a subsequent Phase, individual dwelling, parcel or amenity in the further development of the Premises, including service to land which is not subjected to this Declaration, resulting from an unanticipated event or in the opinion of the Declarant such granting or dedication would be desirable in the further development of the Premises or the real property owned by Declarant. Such access way, if not public, may be Limited Common Area for the purpose of maintenance, repair and replacement. The Association shall have the power and authority to grant and establish further easements upon, over, under and across the Common Area.

The Declarant reserves and retains an easement for ingress, egress and regress over all dedicated streets, private access ways and over the Common Property until such time as the Premises is fully developed and the last Lot is sold. Such access may be in connection with a parcel of land that is not being brought under the jurisdiction of this declaration.

**5.2 Obstructions:** No fill, structures, including walls, fences, paving, or planting, shall be erected upon any part of the Premises, which will interfere with any easement for the construction, or maintenance of any utility or drainage system for the benefit of the Development and or a Lot or with the rights of ingress and egress provided above. No grade changes that change the natural or developed grade of a Lot or uses of a Lot shall be made that creates and obstruction or undesirable change in flow of drainage. The party creating such interference with the installation or servicing of a utility or drainage for the benefit of any part of the Development, shall be solely responsible for the costs of circumventing or removing the interfering fill, structure, planting or other obstruction to alleviate the flow or easement obstruction.

## VI. DURATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

**6.1 Term:** The covenants, conditions, restriction, and reservations herein set forth shall continue in full force and effect, as the same may be amended and supplemented, until terminated by written consent of 80% of the voting authority of the Members of the Association in accordance with the Planned Community Act, Chapter 47F of the General Statutes of North Carolina, provided no amendment shall take away any right of the Declarant until full development and sale of all the property has occurred without the written consent of the Declarant.

## VII. MEMBERSHIP AND VOTING RIGHTS

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

**7.2** The Association may have two classes of voting membership:

**Class A.** Class A Members shall be all Owners, except Declarant, and shall have one (1) vote for each Lot owned and will be obligated to pay a pro rata assessment based on the total membership to meet the approved budget of the Association. The assessment due would be obtained by dividing the total number of Lots subjected to this declaration into the sum due under the adopted budget and that amount would equal the assessment due from each Lot owner upon full development. Prior to full development, annexation of all property to be annexed, the sum due from the Class B member, based on the Lots then subjected to this Declaration, shall be subtracted from the approved budget and the amount remaining shall be divided by the number of Class A members to arrive at the assessment due.

**Class B.** The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned and shall be assessed twenty-five percent (25%) of the assessment amount levied on the Class A Members for each Lot with an unoccupied dwelling or model dwelling it owns subjected to this Declaration and shall remain at 25% of the regular assessment until the dwelling constructed thereon is occupied even though it be beyond the termination of the Class B membership. Vacant lots shall not be subject to assessments. The Class B membership shall cease and be converted to Class A membership when seventy-five percent (75%) of the total number of Lots subjected to this Declaration including land owned by the Declarant for annexation, if any, are sold to Owners other than the Declarant or its affiliate or on or before Fifteen (15) years from the date of recording of the sale of the first Lot subjected to this Declaration, whichever comes first. The Class B membership may be reinstated should it be terminated by untimely annexation of Lots, upon such annexation, but not beyond the fifteen-year limitation.

( When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more or less than one vote be cast with respect to any Lot.

The Declarant will hold the first meeting of the Members as soon as deemed necessary or desirable. A quorum for such meeting will be members present at the call of the roll constituting ten per cent (10%) of the total vote of the Association, as it will increase from time to time until the development is complete. The date of subsequent annual meetings will be established by the Declarant and inserted into the By Laws.

### VIII. COVENANT FOR ASSESSMENTS

( **8.1 Creation of the Lien and Personal Obligation for Assessments.** The Declarant, for each Lot owned hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (3) direct assessments as hereinafter defined. The annual, special and direct assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made and when filed of record in the Office of the Clerk of Superior Court in the county in which the Lot lays, shall be a lien upon the Lot to all who acquire an interest therein. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment was levied and any heir or devisee shall be deemed to have consented to make such payments. The personal obligation for delinquent assessments shall not pass to the successors in title by deed unless expressly assumed by them, however a lien filed prior to the recording of the deed shall be in full force and effect upon the Lot.

( **8.2 Direct Assessments.** Each Owner shall have the obligation to maintain and keep in good repair and replace the improvements on his Lot, including the roof, gutters, windows, doors, shutters, and exterior walls of the dwelling unit thereon, and any other exterior improvement such as garden walls, carports or garages and landscaping, including the routine pruning or mowing and watering of grass and shrubs, and other maintenance and replacement to present a good exterior appearance. If any Owner shall fail to comply then the Board of Directors may proceed as set forth in paragraph 3.11, hereof. Amounts incurred in the foregoing manner shall be deemed "Direct Assessments" and shall be due on demand in addition to any other assessments herein provided for.

**8.3 Purpose of General Assessment:** The assessments levied by the Association shall be used exclusively to promote recreation, health, security, safety and welfare of the residents in the Premises to the extent the Members desire and in particular for the maintenance and replacement of landscaping, wet retention or detention ponds located upon the Common Elements, excluding Limited Common, the acquisition, improvement and maintenance of property, services and facilities devoted to this purpose for the maintenance, use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, utilities, desired security, lighting (including decorative lighting), management and supervision, payment of governmental taxes and assessments, if any, assessed or levied against the Common Area, the procurement and maintenance of liability and other types of insurance deemed necessary or desirable, including director's insurance and fidelity bonds related to the Association and to the Common Elements, its facilities and use in accordance with this Declaration, the employment of managers, attorneys and accountants to represent the Association when necessary, and such other common needs as may arise and/or be declared a common expense by a majority of the Members present at a meeting for consideration of such matter.

**8.4 Maximum Annual Assessments.** Until the adoption of a new budget, the maximum annual assessment: for a Class A Member shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) per Lot improved with a dwelling, and for a Class B Member the assessment for any Lot containing an unoccupied, unsold home or model home shall be twenty-five percent (25%) of the regular assessment for Class A Members. Assessments shall commence as to a Lot upon a dwelling being substantially completed thereon as evidenced by a certificate occupancy being issued or equivalent.

**8.5 Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate as provided for the Class A and B Members. The assessments may be collected on a monthly, quarterly or annual basis in advance as the Board of Directors may direct, or the membership may approve, except as herein provided. Without regard to the foregoing, where there is a change in ownership, and no lien has been filed for past due assessments, annual and special assessments, in such event, shall become collectible on such change of ownership of a Lot in twelve monthly installments from the date the assessment was levied so that a new owner acquiring title will be obligated for the assessment for the pro rata remainder of the month title is acquired in and for the remainder of the assessment year (assessment year being the twelve months following the date of levy). Should an Owner default the Board of Directors on behalf of the Association, may file notice of claim of lien for the entire annual, special, or direct assessment past due and remaining due for the assessment year, including costs. The assessment year for regular assessments shall initially be the calendar year and thereafter shall be the twelve (12) months following the approval of the budget or the levy for a change in the assessment amount. No Owner may waive

or otherwise escape liability for any the assessment provided for herein due to non-use or inability to use or abandonment of his Lot.

**8.6 Enforcement of Collection.** Filing of lien and enforcement thereof for the collection of all assessments provided for in this Declaration shall be in accordance with the Planned Community Act, Section 47F-3-116, of the General Statutes of North Carolina as the same may be amended from time to time. The assessment shall be and remain the personal obligation of the Owner of the Lot at the time the assessment was levied or became delinquent and suit may be filed, claim made therefore in bankruptcy or collected in any other manner provided by law for debts due, including costs and reasonable attorney fees associated therewith in addition to the rights against the Lot. The Association may pursue either or both remedies without bar to the other remedies. Any amount collected from any action would be a credit against the total due. Any amount not collected shall be a common expense of the Association.

**8.7 Date of Commencement of Assessment, Due Dates.** The annual and special assessments provided for herein may be collected on a monthly, quarterly or annual basis as determined by the Board of Directors. Annual assessments shall commence as to each Lot subjected to this Declaration in advance on the first day of the month following substantial completion of the dwelling constructed thereon, as evidenced by the issuance of a certificate of occupancy or equivalent for that unit or Lot. The first annual assessment as established by the Declarant shall be adjusted according to the number of months remaining in the calendar year and ensuing thereafter until the first meeting of the Members. The Board of Directors shall have the right to increase the amount of the prior year assessment by up to ten per cent (10%) upon a majority vote of the members of the Board. If the Board so elects it shall notify all Members of the Association by hand delivery or U. S. Mail of the new assessment amount. If no increase is made then no action is required. If a budget in excess of the cap is proposed or it is deemed necessary due to a shortage of funds due to increased expense in excess of that anticipated prior to the end of the annual year, then the following shall apply:

At least thirty (30) days in advance of the assessment meeting, the Board shall establish and fix the amount of the proposed assessment. Within fifteen (15) days of the adoption of the proposed budget, the Board shall provide to all of the Owners a summary of the budget and a notice of the meeting to consider ratification of the budget. Such meeting to be held not less than 15 nor more than 40 days after mailing of the summary and notice. The budget is ratified unless at that meeting the Owners of a majority of the Lots present reject the proposed budget. In the event the proposed budget is rejected, the existing assessment as it may be or have been increased by the Board shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

**8.8 Subordination** of the Lien to Deeds of Trust. The liens provided for herein

shall be subordinate to the lien of any first and second deed of trust or mortgage filed prior to a lien for assessments by the Association and will be extinguished upon foreclosure of the mortgage or deed of trust, but the personal obligation of the Owner of the Lot when the assessment fell due shall survive. No such foreclosure sale shall relieve such Lot from liability for any assessments, monthly or otherwise, which is due or may be collected from the date of foreclosure conveyance forward and the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any subsequent first or second deed of trust filed prior to a lien for assessments being filed by the Association.

## **IX. ARCHITECTURAL CONTROL.**

**9.1 Purpose.** The Declarant desires to establish an Architectural Review Committee ("ARC") in order to provide and maintain certain standards as to harmony of external design and location in relation to surrounding structures and topography.

**9.2 Architectural Control.** Unless expressly authorized in writing by the ARC no building, fence, wall, driveway or other structure nor any exterior addition deletion or alteration to any existing structure on any Lot, other than replacement identical to the original construction, any clearing or site work shall be commenced, erected or maintained upon a Lot, or any other alteration, addition, replacement or reconstruction of a destroyed or damaged improvement, which in anyway varies the external appearance of the improvements on any Lot until plans and specifications therefor showing the shape, dimensions, square footage, materials, basic exterior finish and colors, location on site, driveway, parking, landscaping and elevations therefor (all of which is hereinafter referred to as the "Plans"), shall have been submitted in duplicate to and approved in writing, as to harmony of external design, size and location in relation to any surrounding structures and topography, by the ARC. The ARC shall have the right to refuse to approve or approve with conditions, any such Plans and specifications which are not suitable or desirable in the opinion of the ARC for any reason, including purely aesthetic reasons, which in the discretion of the ARC shall be deemed sufficient; provided that the ARC's decision to deny an application may be appealed to the Board of Directors for review which Board may confirm, amend or modify the decision of the ARC. The ARC shall articulate its reasons for denial and may send a representative to any hearing. Approval of some item at one location shall not be construed as approval at any other location nor set a binding precedent for approval at any other location as conditions differ and prior experience may dictate a reason for denial. Any construction approved shall be completed within eleven months from commencement of construction or work.

**9.3 The ARC.** The Architectural Review Committee shall be composed of three (3) persons appointed by the Declarant. At the time when all Lots subjected to this Declaration have been sold with a dwelling house thereon, the ARC will be appointed by the Board of Directors of the Association and may be expanded to



five members in the discretion of the Board of Directors. Representatives, such as Executors or Trustees will not be entitled to be members of the Committee.

**9.4 Plans Review Procedure.** Prior to the commencement of any construction or alteration of external appearance on any Lot, the Plans shall be submitted in writing to the ARC. The ARC's approval, disapproval or waiver as required in these covenants shall be in writing. A quorum of the ARC shall be a majority of the total members of the ARC. The decision of a majority of the Committee present, at which a quorum is present, shall be the decision of the ARC. The decision may be rendered without a meeting if a majority of all members sign. The ARC shall make its decision within thirty (30) days from the date the Plans are submitted to it. If the ARC fails to act within such thirty (30) day period, the Plans shall be deemed accepted. The Member submitting the Plans shall obtain a written dated receipt from the Committee member submitted to or a dated return receipt from submission by Certified US Mail. Time shall run from receipt and not the date of mailing. If the ARC requests additional materials or information, the time for approval shall be extended for thirty (30) additional days after the materials or information requested are delivered to the Committee for which a dated receipt is obtained.

#### **X. SPECIAL DECLARANT'S RIGHTS.**

**10.1** Any right reserved or retained by the Declarant in this Declaration, any supplemental declaration, the by-laws, the articles of incorporation(s), or by deed shall not be subject to amendment, deletion or change by the Association or its members without Declarant's written permission until such right terminates or until the full development and sale of the Premises together with any land the Declarant may subsequently acquire for annexation into the Association. One or more of the specific rights may be surrendered at different times by such written notice(s) to the Board of Directors.

**10.2** Declarant reserves the right to annex additional land now owned or which may be acquired which adjoins or is in the general area of the land described in Exhibit A, which Declarant may acquire at a future date.

**10.3** Declarant reserves and retains the right to amend this Declaration and all other Association documents in order to meet any requirement to make Lots eligible for loans which may be guaranteed or insured by the Department of Housing and Urban Development, Veterans Administration, Federal Housing Loan Mortgage Corporation, Federal National Mortgage Association or other governmental, lending or insuring agency or companies which may have regulations, policies or requirements in conflict with this Declaration or other Association documentation. Such amendment(s) will be recorded by the Declarant and will not require the joinder of the Association or any member.

**10.4** Declarant reserves the right to appoint the majority of the members of the

Board of Directors of this Association, as it may be expanded, until each Lot is fully developed, improved with a dwelling and sold. Declarant may surrender such right at anytime henceforth in part or in full upon written notice to the Board of Directors of the Association.

**10.5** Until the initial sale of the last Lot by the Declarant, excluding the transfer of vacant lots between Shugart and its affiliates, any restrictions, covenants, reservations or conditions set forth herein may be extended, removed, modified or changed by securing the written consent of the Declarant, which written consent, if given, shall be duly executed, acknowledged and recorded in the Office of the Register of Deeds where the property affected lays, and which consent may be given or withheld within the uncontrolled discretion of the Declarant.

**10.6** Declarant retains the right until final development of all Lots with dwellings to add to or take away Common Area by adding Lot(s), adding common to a Lot or Lots or by incorporating a part of a Lot(s) owned by Declarant into the Common Area, however Lots in excess of the number allowed by governmental authorities will not be allowed.

**10.7** Any right reserved by the Declarant shall include its successors and specific assigns to which such rights, in part or in full, have been assigned and accepted by the assignee.

## **XI. GENERAL.**

**11.1 Approvals Following Meeting.** At any place herein or in the Association documents where it is required that a certain percentage of Members approve or consent to any matter, such percentage requirement may be obtained after any required meeting at which a quorum was present, provided the motion for approval was not defeated at the meeting, by obtaining the signatures of Members sufficient to meet the required percentage of membership vote.

**11.2 Conflicts. Planned Community Act.** This Declaration is not intended to be in conflict with Chapter 47F, of the General Statutes of North Carolina, as it may be amended, and if any of the terms and conditions hereof are not in compliance with such Act, then the Act shall control in such instances and this Declaration is expanded to incorporate matters set forth in the Act that are not covered hereby.

**11.3 Notices.** Any notice required to be sent to a Member under the provision of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, post paid, to the last known address of the Member. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of such Lot.

**11.4 Enforcement.** In addition to all other enforcement provisions and remedies

at law or in equity, enforcement of this Declaration shall be an appropriate civil proceeding by an owner, the Declarant or the Association against any person or persons violating or attempting to violate the terms of the Declaration, either to restrain violation or to recover damages, or both, and against the Lot owned by such persons to enforce any lien created by the Declaration. Failure to enforce any terms of this Declaration shall not be deemed a waiver of the right to do so thereafter.

**11.5 Default by Association:** Upon default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Lot in the development, subjected to this Declaration, shall become personally obligated to pay to the jurisdiction a portion of the taxes and assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number the Lots in the development subjected to this Declaration. If the sum due from each such Owner is not paid within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the non paying Owner, its successors, his heirs, devisees, personal representatives and assigns. The taxing or assessing jurisdiction may either bring an action at law against the Owner personally obligated to pay the same, or may elect to foreclosed the lien against the property of the Owner or both.

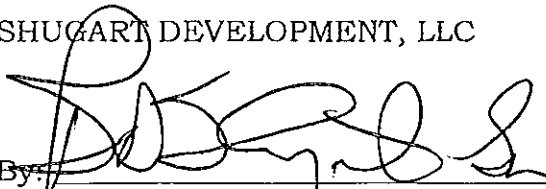
**11.6 Severability.** Invalidation of any one of these covenants, conditions, reservations or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

**11.7 Association Documents.** In the event of conflict in the Association's documents then the documents shall control in following order: First, this Declaration as it may be amended; Second, the Articles of Incorporation; Third, the By Laws; and Fourth the rules and regulations.

In Testimony Whereof, the duly authorized Manager of Shugart Development, LLC has executed this instrument for and on behalf of the limited liability company.

SHUGART DEVELOPMENT, LLC

(Seal)

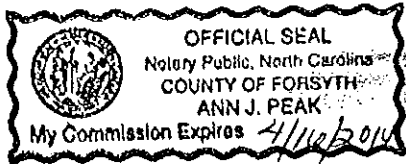
  
By: \_\_\_\_\_

Brian D. Shugart, Sr., Manager

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NORTH CAROLINA - FORSYTH COUNTY

I, a Notary Public of the County of Forsyth and State aforesaid, certify that **Brian D. Shugart, Sr.** who personally appeared before me and said that he is a Manager of **SHUGART DEVELOPMENT, LLC** a North Carolina limited liability company, and that the foregoing instrument was voluntarily and duly executed by him for an on behalf of said limited liability company. WITNESS my hand and official stamp or seal, this 29 day of December, 2010.



Ann J. Peak  
Print name: ANN J. PEAK Notary Public

My commission expires: 4/16/2014

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**EXHIBIT A  
TO DECLARATION FOR WINTER GARDEN**

Being Known and Designated as **Lots 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52**, as shown on the Plat of **WINTER GARDEN, PHASE 1**, as recorded in **Plat Book** 56 page 93, in the Office of the Register of Deeds of Davidson County, North Carolina, to which reference is hereby made for a more particular description.

