

FORSYTH CO, NC **306** FEE:\$ 80.00  
PRESENTED & RECORDED: 08/05/2003 3:24PM  
DICKIE C. WOOD REGISTER OF DEEDS BY: DAVIS  
BK2384 P4582 - P4604

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Drafted by: N. Alan Bennett - Box 20

**PLAN OF DEVELOPMENT  
WITH RESTRICTIVE COVENANTS, EASEMENTS AND PROVISIONS FOR  
OAKMONT EAST**

THIS DECLARATION, made on the date hereinafter set forth by Calmit Properties, a North Carolina General Partnership ("Declarant").

**WITNESSETH**

Declarant is the Owner of a certain tract of real property located in Kernersville, Forsyth County, North Carolina, which is being developed as a planned community (as defined by North Carolina General Statute Chapter 47F) known as **Oakmont East**. Oakmont East is being developed and this Declaration is being prepared in accordance with North Carolina General Statute 47F ("North Carolina Planned Community Act") and in the event of any conflict between the provisions contained in this Declaration and said Act, then in such event the provisions of said Act shall prevail.

Declarant desires to provide for the preservation and maintenance of the Common Area on the property. Declarant desires to create certain other responsibilities in connection with the use and enjoyment of the property and to this end intends to subject the real property referenced herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of the property and each Owner thereof.

Declarant has deemed it desirable for the foregoing purpose to create an entity to which has been delegated and assigned the powers of owning, maintaining, and administering the Common Areas; administering and enforcing these covenants, conditions, and restrictions; collecting and disbursing the assessments and charges hereinafter created; and promoting the health, safety, and welfare of the Owners and residents of Oakmont East. Declarant has created or will create Oakmont East Homeowners Association, Inc. as a non-profit corporation for the purpose of exercising the foregoing functions, among others.

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

The property subject to this Declaration is that property described on the attached Exhibit A which is attached hereto and incorporated herein by reference.

### DEFINITIONS

The following terms when used in this Declaration, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

1. "Act" shall mean and refer to the North Carolina Planned Community Act, North Carolina General Statutes, Chapter 47F.
2. "Association" shall mean and refer to Oakmont East Homeowners Association, Inc., its successors and assigns.
3. "Builder" shall mean and refer to any person engaged in the for-profit construction and sale of residences which have purchased lots from Declarant.
4. "Common Area" shall be any real estate owned or leased by the Association.
5. "Declarant" shall mean and refer to Calmit Properties and its respective heirs, successors, and assigns.
6. "Declaration" shall mean this Declaration and all amendments or supplements thereto.
7. "Lot" shall mean and refer to any numbered lot (together with any improvements thereon) shown on any section and/or phase of any map and/or plat of Oakmont East recorded in the Forsyth County Register of Deeds which is not dedicated as right-of-way or Common Area.
8. "Lot Owner" or "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding Declarant, Builder and those having such interest merely as security for the performance of an obligation.
9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

10. "Mortgage" shall mean a mortgage or deed of trust which constitutes a first lien upon a lot given to a bank, savings and loan association or other institutional lender for the purpose of securing an indebtedness incurred to purchase or improve a lot.
11. "Mortgagee" shall mean the holder of a beneficial interest in any mortgage.
12. "Person" shall mean an individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.
13. "Properties" or "Property" shall mean and refer to that certain real property herein above described, and such additions thereof as may hereafter be brought within the jurisdiction of the Association.
14. "Special Declarant Rights" means, without limitation, the rights as defined in Section 47F-1-103(28) of the North Carolina General Statutes for the benefit of a Declarant, including, but not limited to, the right to complete, repair, maintain, replace and operate improvements indicated on plats or plans filed with a reference in the Declaration; to exercise any development right, to maintain sales offices, manage offices, model and signs advertising Oakmont East; to use easements through the common area and through any lot or lots for the purpose of making, repairing, maintaining, replacing and operating any improvements within Oakmont East or within the property; and to elect, appoint or remove any officer or board member of the Association during any period of Declarant control.

### GENERAL PURPOSE OF DECLARATION

The real property hereof is subject to the covenants, restrictions, conditions, reservations, provisions and easements hereby declared to insure the best use and the most appropriate development and improvement of each residential building lot thereof; to protect the owners of residential lots against such improper use of surrounding residential lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon with appropriate locations thereof on residential lots; to prevent haphazard and inharmonious improvements of residential lots; to secure and maintain proper setbacks from streets, and adequate free spaces between structures, and in general, to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the value of investments made by purchasers of residential lots thereof, and to provide for the care and maintenance of certain common improvements through the Association.

The restrictions, covenants and conditions as hereinafter set forth shall be appurtenant to and run with the land by whomsoever owned, and further the restrictions shall apply to each and every lot in Oakmont East.

The restrictions, easements, and other covenants are as follows:

1. **LAND USE AND BUILDING TYPE.** The real property shall be used for residential purposes only, and no structure shall be erected or allowed to remain on any lot except one detached single family dwelling, not exceeding two (2) stories and an attic (finished or unfinished) in height and a private garage attached thereto for not less than two (2) nor more than three (3) automobiles. There shall be no carports constructed on any lot. No building, including any out building or modular home, may be moved from another location and placed on any lot in this subdivision, it being specifically required that any dwelling house in this subdivision shall be of new construction and constructed on the premises. In addition, no lot shall be resubdivided except as set forth on the plat of Oakmont East.

All single family structures shall be constructed with specifications as follows:

- a. Houses must be at least 70% masonry (brick, stone and/or stucco) on front and each side.
- b. Architectural shingles shall be used on all dwellings.
- c. Declarant shall designate a standard type mail box which shall be used by all dwellings.
- d. No structure built on any lot shall have a flat roof, and the main roof system shall have a minimum of 8/12 roof pitch. Lower pitches for full dormers, porches and other roofs on the structure are subject to Declarant approval.
- e. No portion of any structure placed or erected on any lot shall have exposed concrete blocks on the exterior.
- f. The ceiling height on the first floor of all single family structures shall be not less than nine (9) feet.
- g. Each single family dwelling shall have at least a two (2) car garage and not more than a three (3) car garage. Said garages may be attached or detached and must have garage doors. If the garage is a detached garage, then said garage shall be constructed with the same material as the main house structure. Drive-in basements are allowed but may not be on the front of the dwelling and can only be located on the side or rear of the dwelling.

2. **SIZE OF DWELLINGS.** No detached single family dwelling shall be erected or allowed to remain on any lot unless the ground floor area of said dwelling, exclusive of one story open porches and garages, shall be as follows:

	Minimum Square Footage	Minimum Ground Floor Square Footage
One Story	1,600	1,600
One and one-half story	1,800	1,350
Two story	2,000	1,000

No story or level below the front elevation grade will be considered as countable square footage to meet the requirements herein set forth unless specifically approved by the Declarant in writing.

For a one-story dwelling with a finished bonus room over the garage the "one story" square footage applies. The bonus room over the garage shall not be considered as countable square footage to meet the minimum requirements set forth herein.

3. **BUILDING SETBACK, SIDE YARD AND PLACEMENT OF DWELLING.**

- a. **Building Setback.** No building or part of building other than steps, open porches, overhanging eaves or cornices shall extend nearer to the front property line than twenty (20) feet, and in the case of a corner lot any building may be placed within twenty (20) feet from the side street property line. However, no building or part of a building other than steps, open porches, overhanging eaves or cornices shall extend nearer to the front property line than the footage for those lots set forth on the plat of Oakmont East which require a front building line greater than twenty (20) feet, in which event, the building line as set forth on the said plat shall govern.
- b. **Side Yard.** Any lot shall have two (2) side yards, the combined width of which shall be not less than twenty (20) feet and neither of which shall be less than seven (7) feet in width, except that any side yard abutting upon a street or highway shall be not less than twenty (20) feet in width.
- c. **Rear Yard.** Each lot shall have a rear yard of a depth of not less than thirty (30) feet.
- d. **Zoning Regulations.** In regard to the minimum front setback, the depth of the rear yard, and the width of any side yard shall be in accordance with the Unified Development Ordinance of Forsyth County in effect on the date of the recordation of this Plan of Development, and if there be any conflict between the Unified

Development Ordinance and the provisions of this Declaration then the provisions of the Unified Development Ordinance shall prevail.

- e. **Placement of Residence and Other Buildings.** The single family detached dwelling constructed on any lot shall not be erected or allowed to remain faced in any direction except toward the street abutting the front of said lot, which as to a corner lot, shall be a street upon which said lot has the least frontage. However, the declarant shall have the right to waive the requirement that the dwelling face the narrow side of a corner lot if the Declarant determines that the circumstances warrant this waiver. In addition to the foregoing, all detached private garages or such other outbuildings as allowed by this Plan of Development shall be erected at least sixty (60) feet from the front property line and to the rear of the rear wall of the primary residence, and the general appearance thereof shall conform to that of the primary dwelling. All pools of any type, including swimming pools, shall be below ground, and the same shall be located at the rear of the residence. The plans and specifications for the outbuildings and any pools shall be subject to the approval in the same way as the single family dwelling as herein set forth.
  - f. **Lot Subdivision.** No lot shall be subdivided unless approved by the appropriate governmental authority or by the Declarant so long as the Declarant owns any lot in Oakmont East or by the Association in the event that the Declarant no longer owns any lot in Oakmont East.
4. **UTILITIES, ANTENNAS AND SOLAR PANELS.** All electrical service, telephone lines, cable television, natural gas lines, or any other type of utility shall be placed underground, and no outside electrical, telephone, cable television, natural gas lines or other utility lines shall be placed overhead. In addition to the foregoing, no type of antenna shall be allowed on the roof of the detached single family dwelling, and there shall be no ground antennas. Notwithstanding the foregoing, television dish antennas not exceeding 24 inches in diameter shall be allowed, but must be located no closer to the front property line than the front of the dwelling. Furthermore, no solar panels may be installed on any lot unless its design and location has been approved by the Declarant so long as the Declarant owns any lot in Oakmont East or by the Association.
5. **DRIVEWAY, STREET, FENCES, AND SIGNS.** All driveways must be concrete and must be at least ten (10) feet in width from the street to the single family dwelling.

The owner of each lot shall be responsible for such grading and the completion of other requirements of the Department of Transportation of the State of North Carolina of that portion of each lot so owned bordering on any street including the area within the right-of-way of any such street in order that the street may be accepted as an addition to the highway system of the State of North Carolina.

Any fencing as allowed by this Plan of Development shall not be nearer to the front property line than the rear of the dwelling and shall be wholly constructed within the property boundaries of any lot. However, decorative fencing may be allowed nearer to the front property line than the rear of the dwelling if its design and location has been approved by the Declarant so long as the Declarant owns any lot in Oakmont East or by the Association. Fences shall not exceed six (6) feet in height and shall be made of brick, wood, vinyl, stone, wrought iron and/or aluminum. No chain link or wire mesh fencing shall be allowed, however, chain link fencing may be used around the storm water collection pond.

No billboards or signs shall be erected or allowed to remain on any lot except signs advertising the sale of any dwelling and such sign shall not exceed three (3) feet in length and two (2) feet in width.

6. **APPROVAL OF PLANS AND SPECIFICATIONS.** No building, excavation, structure, fence, wall, driveway or pool shall be erected, placed, altered, or commenced on a lot until the proposed building plans and specifications have been submitted to and approved in writing by the Declarant or the designated representative of the Declarant, as to the quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finish grade elevation. Refusal of approval of plans, location, or specifications may be based by the Declarant upon any reason, including aesthetic considerations, which in the sole discretion of the Declarant shall seem sufficient. No alterations may be made in such plans after approval by the Declarant. No alterations to the exterior appearance of any building or structure shall be made without the approval of the Declarant. The person(s) desiring to erect, construct, or modify a structure shall submit to the Declarant two (2) complete sets of plans and specifications. One (1) set will be returned to the person(s) who has submitted with written approval or disapproval. One (1) set will be retained by the Declarant. The Declarant's approval or disapproval as required in this Declaration shall be in writing. With approval of plans and specifications, the property owner(s) submitting plans will be required to sign a construction agreement stating that all restrictions, requirements, and covenants have been read and agreed to by the property owner.

In the event the Declarant fails to approve or disapprove in writing within ten (10) days after plans and specifications have been submitted to the Declarant, or in any event, if no suit to enjoin the construction or alteration has been commenced prior to the completion of said construction or alteration, after notice in writing of said construction has been received by said Declarant, approval will not be required and the related covenants shall be deemed to have been in full compliance.

7. **COMMENCEMENT AND COMPLETION OF CONSTRUCTION.** For purposes of this provision, commencement of construction means when the grading or excavation for the footings for any detached single family dwelling is commenced. Once construction is commenced, work thereon must be pursued diligently and the structure shall be completed

within twelve (12) months from the date construction commenced as herein defined. Included shall be the completion of all exterior work including but not limited to walks, driveways and landscaping.

8. **DAMAGE TO STREETS AND OTHER IMPROVEMENTS.** The owner of any lot shall be responsible for damages caused to any street, fences or any other improvement of any other lot owner or for the common good in the development which damage is caused by said lot owner, his agent, independent contractor, supplier or any one performing work for said lot owner during the construction and/or repair of any improvements on the lot of said owner. Said owner shall either repair said damage or shall pay the cost thereof to that person or entity responsible for the repair and maintenance of the item so damaged. Any repairs or replacements as herein required shall be made in quality equivalent to, or better than, the original work, or the original work replaced. This provision shall be enforceable in the same manner as all other restrictions, conditions and terms herein set forth. It is specifically provided that the Declarant or the Association shall have authority and standing to initiate and maintain any suits or other legal proceedings either for itself or on behalf of any other person or entity to enforce this provision. However, this provision does not otherwise exclude any other person or entity from maintaining an action on its own under the provisions herein set forth. In addition, the cost of repair of any damage shall constitute a lien upon the property of the lot owner responsible hereunder for said damage in the same manner as the lien for any assessments as set forth herein. Although not inclusive, it is the intent of the Declarant that damage caused by delivery trucks of construction materials and other supplies be paid for or repaired by the lot owner for whose benefit such materials and supplies are being delivered.
9. **PROHIBITED USES.** No lot shall be used for business, manufacturing or commercial purposes, nor shall any animal or fowls be kept or allowed to remain on said property for commercial purposes, and no animals other than household pets shall be kept or allowed to remain on said property for any purpose, nor shall anything be done on said property which is a nuisance or any annoyance to the community. No pet shall be allowed to roam at large, and shall be contained on the lot of the owner. No horses, cattle, chickens, rabbits or goats shall be allowed on any lot. All vegetable gardens shall be located to the rear of the rear wall of the primary residence located on any lot. No lot shall be used in whole or part for the dumping or storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition, or that will be obnoxious to the eye, nor shall any substance, thing, or material be kept on any lot which will emit foul or obnoxious odors, or that will cause any noise that might disturb the peace, quiet, comfort, or serenity of the occupants of the surrounding property.

No structure of a temporary character, trailer, single or double-wide mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, or for any other purpose, temporarily or permanently.



In addition, no storage buildings or other outbuildings detached from the single family dwelling (with the exception of detached garages as permitted) shall be erected or used on any lot except an outbuilding may be built on the lot provided that such outbuilding is of similar construction to the dwelling on said lot. Any and all outbuildings as allowed by this Plan of Development shall be built in the rear yard area of the lot and its design and location must be approved by the Declarant so long as the Declarant owns any lot in Oakmont East or by the Association. No junk automobiles, trucks, tractors, or any other type of non-operating vehicle shall be permitted on any lot or street. It is further prohibited that no motorcycle, moped, go-cart, or any type of vehicle will be allowed to be operated in any area of this subdivision except on the lots of the owner thereof and on any public streets.

There shall be no outside clothes line and no above ground pool on any lot.

Swings, sliding boards, trampolines, gym sets, and other children's play apparatus shall be located in the rear yard only.

In addition, no unlicensed vehicle shall be allowed to be parked on any public street unless otherwise allowed herein.

No trucks larger than three quarter (3/4) ton, motor homes, trailers, campers, boats or any other type of recreational vehicle may be parked in the driveway or on the streets overnight. All such vehicles must be parked and kept in a garage with garage doors or in the rear yard area of the lot and not visible from the street.

The owner of each lot shall develop and beautify the lawn and yard of each lot in keeping with the other lawns and yards of the other homes located within the development.

10. **EASEMENTS.** Easements for the installation and maintenance of utilities, including, but not limited to, storm drains, sanitary sewers, electrical, water, telephone, natural gas, home television and other utilities are reserved for the rear ten (10) feet and five (5) feet along the side lines of each lot and such other easements as may be shown on the plat of the real property.
11. **DRAINAGE.** No down spout shall be constructed or piped away from any dwelling on any lot in this subdivision so as to empty on any adjoining lot of the subdivision. The interference of any streams or future waterways so as to cause pollution, flooding or stagnation is prohibited.
12. **MODIFICATION AND AMENDMENT.** For a period of forty eight (48) months from the date of the recordation of this instrument, any restrictions, covenants, and/or conditions herein relating to building set backs and side yard requirements as set forth herein may be removed, modified, or changed by securing the written consent of the Declarant. Any other

restriction, covenant and/or condition contained herein may be removed, modified or changed as provided in this Declaration.

### **PROPERTY RIGHTS**

1. **OWNER'S EASEMENTS OF ENJOYMENT.** Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:
  - a. the right of the Association to limit and regulate the use of the Common Area;
  - b. the right of the Association to suspend an Owner's right to use of the Common Area;
  - c. the right of the Association to grant easements and rights of way, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and/or the Association.
  - d. the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;
  - e. the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities thereon; and to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
  - f. the right of the Association to exchange portions of Common Area with the Declarant for substantially equal areas of the Properties for the purpose of eliminating unintentional encroachments of homes or other improvements onto portions of the Common Area.
  
2. **DELEGATION OF USE.** Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### **THE ASSOCIATION (POWERS, MEMBERSHIP AND VOTING RIGHTS)**

1. Unless otherwise stated in this Declaration, the Association shall have all of the powers granted to the Association by North Carolina General Statute 47F-3-102.

2. Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to assessment.
3. The Association shall have two classes of voting membership.

**Class A.** Class A Members shall be all Owners (including Builders) with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B Member shall be the Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- b. on July 1, 2013.

4. **REPRESENTATION OF BOARD OF DIRECTORS.** Notwithstanding any other provision of this Declaration, the Declarant shall have the right to designate and select the Board of Directors of the Association through July 1, 2013. Declarant shall have the right to remove any persons selected by it and to replace such persons with other persons to act and serve in their place for the remainder of the unexpired term of any Director so removed. Any Director designated and selected by Declarant need not be the Owner of a Lot in Oakmont East. Any person chosen by Declarant to serve on the Board of Directors shall not be required to disqualify himself from any vote on any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. The Declarant shall not be required to disqualify itself upon any contract or matter between itself and the Association where the Declarant may have a pecuniary or other interest.

After July 1, 2013, the Board of Directors shall be elected by the members in accordance with the Bylaws of the Association.

## **COVENANT FOR MAINTENANCE AND ASSESSMENTS**

1. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** Each Owner for 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) to the

appropriate governmental taxing authority: (a) a pro rata share of ad valorem taxes levied against the Common Area and (b) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months, all as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made.

## 2. PURPOSE OF ASSESSMENTS.

- a. The assessments levied by the Association shall be used exclusively for capital improvements to or for the benefit of the Common Area, to promote the health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement, and maintenance of properties, services, and facilities (including a reasonable provision for contingencies and replacements) devoted to this purpose or for the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements, and additions, the cost of labor, equipment, materials, management, and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance and liability insurance, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.
  
- b. The Declarant has constructed a storm water collection pond (the "collection pond") pursuant to the Watershed Protection Ordinance (the "Ordinance") enacted by the Town of Kernersville (the "Town") for the purpose of storm water control which will benefit the Properties. Pursuant to the Ordinance, Declarant (or Declarant's successor or designee) will maintain the collection pond which is constructed on a portion of Declarant's property and will be shown on the plat(s) to be recorded in the Forsyth County Register of Deeds. The Ordinance requires that a property owner enter into an operation and maintenance agreement with the Town requiring such owner to maintain, repair, or reconstruct the collection pond. The Town and Declarant have agreed that Declarant shall enter into the operation and maintenance agreement and perform such obligations until such time as Declarant delegates such duty to the Association in a deed conveying all or part of the real property on which the pond is located. The Declarant will deed the real property containing the collection pond to the Association at which time Declarant shall be relieved of all further liability and obligation under the operation and maintenance agreement (except to the extent Declarant is a member of the Association). Thereafter, the cost of all maintenance, repair and reconstruction of the pond pursuant to the operation and maintenance agreement shall be provided for by the Association.

Should the Association cease to exist, or fail to provide adequate maintenance of the collection pond, or be dissolved, the owners of the property subject to this Declaration are jointly and severally responsible for maintaining the collection pond in accordance with requirements of the ordinance.

- c. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation, and the By-laws of the Association. As monies for any assessment are paid unto the Association by any Lot owner, the same may be commingled with monies paid to the Association by the other Lot Owners. All funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association. No Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

3. **ANNUAL ASSESSMENTS.** Until the first annual meeting of the Members and the adoption of the budget, the maximum annual assessment shall be as follows:

- a. Class A Members shall pay \$100.00 per year per lot. Class A Members who are Builders and who own any vacant lot, lot in the process of being improved, or a lot containing an unoccupied, unsold home shall be exempt from the payment of assessments for a period of one (1) year commencing with the date of the recording of a deed from Declarant unless such lot is conveyed to an Owner as defined herein or occupied prior to the termination of said one (1) year exemption period. During the one (1) year assessment exemption period, the Builder is responsible for its pro rata share of any expenditure incurred by the Association.
- b. Class B Members shall be exempt from the payment of assessments but shall be responsible for its pro rata share of any expenditure incurred by the Association.

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 otherwise herein provided. Should an owner default, the Board of Directors may file notice of claim of lien for the entire annual and/or special assessment past due and remaining due for the assessment year. The assessment year for regular assessments (not special assessments) shall initially begin on July 1 of each year and thereafter shall be the twelve (12) months following the approval of the budget by the members or the levy for a change in the assessment amount.

4. **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the assessments authorized above, the Association may levy a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, or repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereon. All special assessments shall be fixed at a uniform rate for all Lots and shall be collected as determined by the action of a majority vote of the Association. However, if the Board of Directors determines that a special assessment benefits fewer than all the lots then in such event a special assessment may be assessed exclusively against the lots benefitted.
5. **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. The annual assessments shall commence as to all lots subjected to this Declaration in advance on July 1, 2004 or on the first day of the month following the conveyance of the first lot to an Owner whichever first occurs. The first annual assessment as established by the Declarant shall be adjusted according to the number of months remaining in the assessment year and ensuing thereafter until the first annual meeting of the Members. Subsequently, within thirty (30) days following the adoption of a budget by the Board of Directors, a summary of the proposed budget reflecting an increase, decrease or no change in the amount of the annual assessment will be forwarded to the property address of each Member or to the last known address furnished in writing to the Association from a Member for notices to be sent.
6. **ENFORCEMENT OF COLLECTION OF ASSESSMENTS.** Filing of a lien and enforcement thereof for the collection of all assessments provided for in this Declaration shall be in accordance to North Carolina General Statute Chapter 47F ("North Carolina Planned Community Act") and specifically North Carolina General Statute 47F-3-116 as the same may be amended from time to time. Assessments shall be and remain the personal obligation of the Owner of the Lot at the time the assessment was levied and suit may be filed, claim made thereof in bankruptcy or collected in any other manner provided by law for debts due, including costs and reasonable attorney's 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 money collected from any action would be a credit against the total due. Any amount not collected shall be a common expense of the Association. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.
7. **EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES, MAINTENANCE OF THE COLLECTION POND, OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION.** Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied

against the Common Area, or assessments for public improvements to or for the benefit of the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the Owner, his heirs, devisees, personal representatives, and assigns, and the taxing or assessing governmental authority may either bring an action at law against the owner or may elect to foreclose the lien against the Lot of the Owner.

8. **SUBORDINATION OF THE LIEN TO MORTGAGES.** The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding sections. However, the sale or transfer of any Lot which is subject to any such bona fide first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.
9. **EXEMPT PROPERTY.** All property dedicated to, and accepted by, a public and/or governmental authority shall be except from the assessments created herein.

### **SPECIAL DECLARANT'S RIGHTS**

1. **Special Declarant's Rights.** Notwithstanding anything to the contrary contained in this Declaration, Declarant and its respective agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a planned community and for the sale, rental or other disposition of lots in the Property. The rights of Declarant and their agents, employees and contractors shall include, without limitation:
  - a. The right and easement of ingress in, over and upon the common area for the purpose of performing on any part or parts of the Property acts deemed necessary, advisable or convenient for the completion and improvement of the Property as a planned community and for the sale, rental or other disposition of lots;

- b. The right to erect, construct, maintain, demolish or remove structures or other improvements on any common area as it deems necessary, advisable or convenient for the completion and improvement of the Property as a planned community and for the sale, rental or other disposition of lots;
- c. The rights to use lots and improvements owned by Declarant as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs or other sales aids on or about any portion of the Property.
- d. 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.
- e. Any restriction, covenant, reservation or condition 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 Forsyth County Register of Deeds and which consent may be given or withheld within the uncontrolled discretion of the Declarant.
- f. Any and all other right reserved and/or retained by the Declarant within this Declaration.

### INSURANCE

1. **Insurance.** The Association shall carry the insurance as required by North Carolina General Statute 47F-3-113.

### ANNEXATION OF ADDITIONAL PROPERTIES

1. **ANNEXATION BY DECLARANT.** The Declarant may annex additional areas or lands by recording a document in the Forsyth County Register of Deeds describing the lands annexed and incorporating by reference the provisions of this Declaration, and making such modifications or additions to this Declaration as may be necessary or desirable for the annexed area. The additional land shall be deemed annexed to Oakmont East on the date of recordation of a plat of the Property designating the Property as an additional section or phase of Oakmont East and/or by subjecting any Property to the terms and conditions of this Declaration, and no other action or consent shall be necessary.



## DUTIES AND OBLIGATIONS OF ASSOCIATION

1. **POWERS OF ASSOCIATION.** The Association shall have all the powers as set forth in North Carolina General Statute 47F-3-102. The Association shall have an affirmative obligation to maintain all Common Area notwithstanding whether or not such Common Area is used by one or more of its Members, and no Member shall be entitled to avoid the payment of dues or assessments by virtue of lack of utilization of any Common Area. Such services may be provided by the Association directly, a subsidiary owned by the Association or by contract with a third party.
  
2. **RULES.** The Board of Directors may from time to time establish rules for use of any Lot, Common Area or the Property in order to protect the value of Lots, the aesthetic qualities of the Property and the tranquility of the Owners of Lots. All such rules shall be effective after written notice of adoption is mailed to the record owners of all Lots. All such rules shall be enforceable as though set out within this Declaration.
  
3. **FEES AND BONDS.** The Association is specifically authorized, but is not required, to charge application or processing fees for approval of plans, and to require the posting of reasonable bonds or deposits prior to commencement of construction to protect the Association against damage to streets or other Common Area or costs incurred in causing correction of any construction or site work performed otherwise and in accordance with approved plans.
  
4. **OBLIGATION OF ASSOCIATION TO MORTGAGEE.** So long as any Mortgagee shall hold a mortgage upon any Lot, or shall be the Owner of any Lot, such Mortgagee shall have the following rights:
  - a. To inspect the books and records of the Association during normal business hours.
  
  - b. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions, and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association.
  
  - c. To receive notice of any condemnation of the Common Areas or any portion thereof.
  
  - d. To have the right to approve of any alienation, release, transfer, hypothecation, or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article III hereof.

5. **REQUIREMENTS OF MORTGAGEE.** Whenever any Mortgagee desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL identifying the Lot or Lots upon which Mortgagee holds a mortgage or identifying any Lot or Lots owned by such Mortgagee and such notice shall designate the place to which notices, reports, or information are to be given by the Association to such Mortgagee.

### GENERAL PROVISIONS

1. **ENFORCEMENT.** The Association, or any Owner, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation, or By-Laws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety, and animal control officers come on the Properties to facilitate the enforcement of the laws, codes, and ordinances of any governmental authority.
2. **SEVERABILITY.** Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.
3. **AMENDMENT.** This Declaration may be amended only by affirmative vote or written agreement signed Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated or by the Declarant if necessary for the exercise of any right set forth herein of the Declarant to amend this Declaration. Any amendment must be properly recorded in the Forsyth County Register of Deeds.
4. **MINOR AMENDMENT.** Declarant, and its successors or assigns, shall be allowed to amend this Declaration, notwithstanding any other provision contained herein, and without joinder of any other party, for the purpose of correcting any discovered error contained herein, clarifying any ambiguity contained herein, or adding or deleting any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of the Properties, and the owners therein. This right may be exercised, and shall be effective, only upon the recordation of an "Amended Declaration" in the office of the Forsyth County Register of Deeds, which Amended Declaration shall specifically reference this document, and the provision impacted.
5. **WAIVER.** Declarant reserves and retains the right and authority to waive any minor variance from, violation of, or compliance with any of the covenants, restrictions, and conditions contained herein as to any Lot. Declarant shall incur no liability for the granting of such waiver.

6. **ASSIGNMENT.** Declarant fully reserves the right, by recordation of an assignment in the office of the Forsyth County Register of Deeds, to assign all of its rights, duties, and obligations contained herein, including specifically, but not as a limitation, its approval rights as established hereinbefore, to a third party. If such assignment is made, the assignee shall have full rights, duties, and responsibilities as though named Declarant herein. Following the date of such assignment, Declarant shall have no further duties, rights, or obligations hereunder.
  
7. **DURATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.** This Declaration shall remain and continue in full force and effect, as the same may be amended and supplemented, until terminated by written consent of eighty percent (80%) of the voting authority of the Members of the Association or such lesser percentage as may be required or permitted by the Act.

IN WITNESS WHEREOF, the Declarant has hereunto set its hands and seals this the 5th day of August, 2003.

Declarant:

Calmit Properties,  
a North Carolina General Partnership

By: Leslie R. Mitchell (Seal)  
Leslie R. Mitchell, General Partner

By: Larry L. Callahan (Seal)  
Larry L. Callahan, General Partner

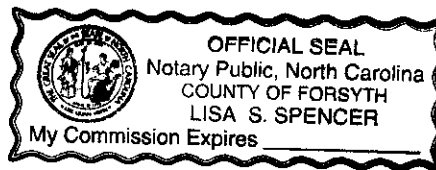
North Carolina, Forsyth Carolina

I, a Notary Public of Forsyth County and the State of North Carolina hereby certify that Leslie R. Mitchell and Larry L. Callahan, General Partners of Calmit Properties, a North Carolina General Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 5th day of August, 2003.

Lisa S. Spencer  
Notary Public

My commission expires: 11-30-2003



STATE OF NC - FORSYTH CO The foregoing certificate(s) of:  
Lisa S. Spencer NP(s)  
is certified to be correct at the date of registration shown on the first page thereof.  
Dickie C. Wood, Register of Deeds by: Dickie C. Wood Deputy/Asst.

**EXHIBIT A**

**Re: Calmit Properties  
4 tracts along Joyner Cross Road and Fulp Farm Road  
Oakmont East**

**Tract 1**

BEGINNING at an existing iron pin marking the southeast corner of the Gary D. Hobson property (Deed Book 1367, Page 979, Forsyth County Registry; Tax Lot 30R, Block 5345) and also marking the northeast corner of the James E. Welch, Sr. property (Deed Book 1285, Page 1154, Forsyth County Registry; formerly Tax Lot 30T, Block 5345); thence from said beginning point along Hobson's east line North 06° 48' 11" East 173.35 feet to an iron pin; thence North 54° 48' 42" East 13.10 feet to an iron pin; thence South 69° 58' 26" East 178.78 feet to an iron pin; thence South 20° 01' 34" West 176.31 feet to an iron pin; thence North 83° 01' 23" West 143.45 feet to an iron pin; thence North 06° 48' 11" East 29.98 feet to an iron pin marking the point and place of BEGINNING and containing 0.73379 acres more or less. This description is in accordance with a survey prepared by Thomas A. Riccio for Anita Atkins Bennett and Michael Nelson Bennett, dated September 3, 1998 and being further known and designated as Drawing Number 98374.

The above described property is the same as that described in Deed Book 2190, Page 985, Forsyth County Registry and is further known and designated as Tax Lot 30U in Block 5345 on the Forsyth County Tax Maps.

**Tract 2**

BEGINNING at an iron stake along the southern right of way line of Joyner Cross Road, said iron stake marking the northwest corner of the Charles R. Stanley property (Deed Book 619, Page 214, Forsyth County Registry) and the northeast corner of the James Edmond Welch, Sr. property (Deed Book 1285, Page 1154, Forsyth County Registry); thence along the southern right of way line of Joyner Cross Road South 71° 58' 39" East 86.85 feet to an iron stake; thence South 71° 58' 39" East 660.23 feet to a new iron stake along the western line of Lot 13 of Weslo Forest (Plat Book 22, page 117, Forsyth County Registry); thence along the western line of Lots 13, 14, 15, 16, 17, 18 and part of Lot 19 of Weslo Forest (Plat Book 22, Page 117, Forsyth County Registry); South 04° 48' 25" West 648.55 feet to an iron stake marking the southeast corner of the within described property and also marking the northeast corner of the Donald R. Thornton, Sr. property (Deed Book 1964, Page 1804, Forsyth County Registry); thence along the Thornton property North 73° 22' 16" West 324.39 feet to an iron stake marking the northeast corner of Lot 1 of Oakmont - Phase Five (Plat Book 43, page 130, Forsyth County Registry); thence along the northern line of Lots 1, 2 and 4 of Oakmont - Phase Five North 73° 17' 37" West 420.75 feet to an existing axle marking the northwest corner of Lot 4 of Oakmont - Phase Five and the southeast corner of the James Edmond Welch, Sr. property (Deed Book 1285, Page 1154, Forsyth County Registry) and the southwest corner of the within described property; thence along the Welch property North 04° 58' 09" East 666.15 feet to an iron stake along the southern right of way line of Joyner Cross Road marking the point and place of BEGINNING and containing 10.995 acres, more or less. This description is in accordance with a survey prepared by Triad Land Surveying, P.C. (Thomas A. Hughes, PLS) entitled "Map For Calmit Properties" dated August 14, 2001 and being further designated as Job No. 11350-4.

The above described property is the same property described in Deed Book 2243, Page 1214, Forsyth County Registry and is further known and designated as Tax Lot 30M in Block 5345 on the Forsyth County Tax Maps.

### Tract 3

BEGINNING at an existing iron stake along the southern right of way line of Joyner Cross Road, said iron stake marking the northeast corner of the Calmit Properties property (Deed Book 2190, Page 985, Forsyth County Registry); thence from said Beginning point along the southern right of way line of Joyner Cross Road South 71° 58' 39" East 89.79 feet to an iron stake; thence South 18° 01' 21" West 155.57 feet to an iron stake; thence North 85° 01' 13" West 101.78 feet to an iron stake; thence South 07° 58' 47" West 211.61 feet to an iron stake; thence South 85° 01' 51" East 96.22 feet to an iron stake; thence on a curve to the right (delta = 12° 37' 13"; radius = 300.00 feet; length = 66.08 feet) a chord bearing and distance of South 78° 43' 15" East 65.95 feet to an iron stake; thence North 17° 35' 21" East 82.36 feet to an iron stake; thence North 14° 04' 27" East 68.82 feet to an iron stake; thence North 08° 36' 32" West 75.56 feet to an iron stake; thence North 18° 01' 21" East 138.87 feet to an iron stake; thence South 71° 58' 39" East 27.11 feet to an iron stake; thence South 04° 58' 09" West 666.15 feet to an existing axle marking the northwest corner of Lot 4 of Oakmont - Phase Five (Plat Book 43, Page 130, Forsyth County Registry); thence North 73° 23' 41" West 295.94 feet to an existing stone marking the northwest corner of Lot 5 of Oakmont - Phase Five (Plat Book 43, Page 130, Forsyth County Registry) and also marking the northeast corner of the Susan Petty Sullivan property; thence along the Sullivan property North 73° 24' 21" West 306.89 feet to an iron stake; thence along the Donald J. Stanley and Donald W. Stanley, Trustees property, the Nick Rizos property and the Bonnie S. McIntosh property North 05° 01' 47" East 497.16 feet to an iron stake marking the southwest corner of the Gary D. Hobson property (Deed Book 1367, Page 979, Forsyth County Registry); thence along the Hobson property South 71° 56' 32" East 242.50 feet to an iron stake marking the southeast corner of the Hobson property and also being along the west line of the Calmit Properties property; thence along the Calmit Properties property the following three (3) courses and distances: (1) South 04° 56' 52" West 29.97 feet to an iron stake; (2) thence South 85° 01' 13" East 143.45 feet to an iron stake; (3) thence North 18° 07' 15" East 176.44 feet to an iron stake marking the point and place of BEGINNING and containing 6.349 acres more or less. This description is in accordance with a survey prepared by Triad Land Surveying, P.C. (Thomas A. Hughes, PLS) entitled "Map For Calmit Properties" dated August 14, 2001 and being further designated as Job No. 11350-4.

The above described property is the same as property described in Deed Book 2246, Page 609, Forsyth County Registry and is further known and designated as Tax Lots 227 and 229 in Block 5345 on the Forsyth County Tax Maps.

### Tract 4

BEGINNING at an iron stake marking the intersection of the southern right of way of Joyner Cross Road with the eastern right of way of Fulp Farm Road and also lying South 71° 58' 39" East 86.85 feet from the northeast corner of the Charles R. Stanley property (Deed Book 619, page 214, Forsyth County Registry); thence from said Beginning point along the eastern right of way line of Fulp Farm Road North 15° 49' 42" West 410.17 feet to a new iron stake; thence South 80° 14' 24" East 395.70 feet to a new iron stake; thence North 04° 37' 49" East 300.22 feet to a new iron stake; thence North 06° 29' 18" East 300.24 feet to a new iron stake; thence North 74° 08' 17" East 50.99 feet to an existing iron stake; thence North 78° 45' 09" East 320.07 feet to an existing iron stake; thence North 89° 21' 08" East 48.35 feet to

an iron stake marking the northwest corner of Lot 3 of Weslo Forest (Plat Book 22, Page 117, Forsyth County Registry); thence along the west line of Weslo Forest (Plat Book 22, Page 117, Forsyth County Registry) the following two (2) courses and distances: (1) South 06° 29' 18" West 621.49 feet to an iron stake; (2) South 04° 48' 25" West 590.85 feet to a new iron stake marking the southeast corner of the within described property and the northeast corner of the Charles R. Stanley property (Deed Book 619, Page 214, Forsyth County Registry); thence along the north line of the Charles R. Stanley property North 71° 58' 39" West 660.23 feet to an iron stake marking the point and place of BEGINNING and containing 13.001 acres, more or less. This description is in accordance with a survey prepared by Triad Land Surveying, P.C. (Thomas A. Hughes, PLS) entitled "Map For Calmit Properties" dated August 14, 2001 and being further designated as Job No. 11350-4.

The above described property is the same as that property described in Deed Book 2251, Page 4260 and is further known and designated as part of Tax Lot 207 in Block 5346 on the Forsyth County Tax Maps.