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DONNA HICKS SPENCER
REGISTER OF DEEDS

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Prepared by and Return to: ✓ Terry M. Taylor, Esquire, PO Box 2428, Hickory, NC 28603

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SHOPS AT VIEWMONT SQUARE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this the 14 day of April, 2008, between **Viewmont Place, LLC**, hereinafter called "Declarant" and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the County of Catawba, State of North Carolina, known as Shops At Viewmont Square "The Shops", or "Viewmont Square"; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, lines and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in Viewmont Square; and for the continued maintenance and operation of common areas.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

**ARTICLE I
PROPERTIES SUBJECT TO THIS DECLARATION**

Section One. The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Catawba County, North Carolina, as more particularly described on a Plat recorded in Plat Book 67, Page 52, which Plat is referred to for a more particular description. The Declarant hereby subjects the property, more particularly described in Plat Book 67, Page 52, Catawba County Registry, to this Declaration and the jurisdiction of the Association.

Section Two. The Declarant hereby reserves the right to subject other real property (specifically including Future Development Parcel as shown on Plat referred to above), to the restrictions in order to extend the scheme of this Declaration to other property to be developed and thereby to bring such additional properties within the jurisdiction of the Association in its sole discretion. Each additional parcel or tract of land, with the improvements to be placed thereon, which is subjected to this Declaration, shall be designated consecutively as "Viewmont Square"; and such similar designation for each phase.

Section Three. The Declarant hereby reserves the right in its sole discretion to subdivide the Lots or alter the dividing line between the Lot so long as the subdivision or alteration is in conformance with local codes and ordinances. In the event of a change in Lot lines, the Declarant will record an Amendment with a new Exhibit "A" to revise the allocation for assessments to the proper percentages for the new or altered Units or Lots.

ARTICLE II **DEFINITIONS**

Section One. "Association" shall mean and refer to Shops At Viewmont Square Owners' Association, its successors and assigns.

Section Two. "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 those having any interest merely as security for the performance of an obligation.

Section Three. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section Four. "Common Area(s)" shall mean all property owned by the Association, or such other property which the Association may hold subject to the provisions of the Declaration. Common Areas shall be defined and described in the Plat of Viewmont Square, recorded in Plat Book 67, Page 52, Catawba County Registry, and amendments thereof and designated thereon as "Common Areas" or "Common Open Space". Common Areas in each phase shall be conveyed to the Association free and clear of encumbrances.

Section Five. "Lot" or "Building" shall mean and refer to any plot, building or unit of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and shall include all improvements thereon.

Section Six. "Declarant" shall mean and refer to Viewmont Place, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purposes of development.

ARTICLE III **PROPERTY RIGHTS**

Section One. Owners' 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 suspend the voting rights 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;
- b. the right of the Association 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 by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded;
- c. the right of the Association to limit the number of patrons of Members;
- d. 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 and in aid thereof to mortgage said property, and the rights of such mortgage in said Properties shall be subordinate to the rights of the Office owners hereunder;
- e. the right of the Association to adopt, publish and enforce rules and regulations as provided in Article X;
- f. the right of the Association to enter any Lot in order to perform any maintenance, alteration or repair required herein to be performed by the Association and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice;
- g. the right of the Association or its representative to enter any Lot in the case of an emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

Section Two. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his organization, employees, his tenants, or contract purchasers who work on the property.

Section Three. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, prior to the conveyance of the first Lot, reserving therefrom any utility and storm drainage easements, an easement for access to other lot owners in Viewmont Square, and an easement for ingress, egress, regress and utilities reserved to the Declarant.

Section Four. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of the automobile parking spaces together with the right of ingress and egress in and upon said parking areas. All parking shall be shared in common on a first come, first serve basis or according to rules and regulations adopted by the Owners' Association. The Association may regulate the parking of oversize vehicles, trailers and other such items on the Common Area. No RV's, trailers or recreational vehicles, owned or leased by any Owner, tenant, or employee of Owner shall be parked within the right of way of any public or private street in Viewmont Square or upon the common area owned by the Owner's Association unless specifically approved in writing by the Association. Parking shall be only in designated parking areas.

Section Five. Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision and the cost of these may be included in annual or special assessments. The Declarant hereby prohibits the erection of exterior antennas or satellite dishes exceeding eighteen inches (18") in diameter on

individual Lots without the approval of the Declarant.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section One. Every Owner of a Lot which is subject to assessment 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.

Section Two. The Association shall be two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant, and voting shall be as follows: One vote per lot. 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 than the appropriate vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each Lot or Unit 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. Four months after when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- b. Five years following the conveyance of the first unit.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section One. Creation of the Lien and Personal Obligation. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, 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 as further described and set forth in this document, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest (as set by the Board, not in excess of the rate as set forth in N.C.G.S. 47F. 3-115(b)), 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. Each such assessment, together with interest, cost 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 fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Lot Owners shall be obligated to pay the assessments in the same ratios as is set forth on Exhibit A, that being of any total assessment each Lot will pay based upon a ratio of the square footage of building space on said Lot to the total building square footage in Viewmont Square (see Exhibit A).

Section Two. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the employees, vendors or patrons of the Properties and in particular for the acquisition, improvement and maintenance of Common Areas, including the maintenance, repair and reconstruction or private street, driveways, walks, parking areas, signage and mail boxes situated on the Common Area, such maintenance to

include the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance and for the exterior maintenance of the buildings situated upon the Properties as hereinafter provided or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the cost of water and sewer services, the cost of any other utilities, the payment of taxes and public assessments assessed against the Common Area, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provisions of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, structural components, paving, and any other major expense for which the Association is responsible, and such other needs as may arise.

Specifically excluded are maintenance and repair or items outside each unit or office that are attendant or collateral to things inside the office or unit, such as the maintenance and repair of the windows or locks, heat pump, air conditioning compressor, water or sewer lines or other utilities on Common Area or within the Owners' lot that serve on that Owners' unit. These expenses should be born by the unit Owner. All repairs or replacement of all exterior glass, locks, doors and lights of any individual unit shall be the financial responsibility of the unit Owner.

Section Three. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common areas and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section Four. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum assessment shall be as set forth on "Exhibit A."

a. From and after January of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to twenty percent (20%) of the previous years total annual assessment upon a two-thirds (2/3) vote of the Board of Directors of the Owner's Association.

b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 4 above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section Five. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including any fixtures and personal property

related thereto, provided that any assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section Six. Notice and Quorum for any Action Authorized Under Section Four and Five. Written notice of any meeting called for the purpose of taking any action authorized under Section Four or Five shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section Seven. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all recorded Lots as set forth on Exhibit A and shall be collected on a quarterly basis.

Section Eight. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots within six months following the conveyance of the Common Areas to the Owner's Association. Such annual assessments shall be paid on a quarterly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section Nine. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate permitted by law on the date the assessment became due. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. The priority of lien for assessment shall be as set forth in N.C.G.S. 47F-3-116. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section Ten. Subordination the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments 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.

Section Eleven. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section Twelve. Working Capital Fund. At the time of closing of the sale of each unit, a sum equal to at least two months assessment for each unit shall be collected and transferred to the

Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI **EXTERIOR MAINTENANCE**

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: brick repair, paint and/or stain the exterior of the units, repair, replace and care for gutters, downspouts, exterior building surfaces, roofs, trees, shrubs, grass, walks, mailboxes, parking lot, lighting, fences installed by Declarant or the Association, exterior post lights, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, doors, door hardware and locking devices. Further, the Owner of any Lot may, at his election, maintain portions or all of his rear yard, provided that such maintenance and planting by the Owner does not hinder the Association in performing its maintenance of the exterior of the units and the remaining yard spaces. No such maintenance by a Lot owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain any portion of his yard and/or roof, doors or glass surfaces in a neat and orderly manner, the Association may undertake any required maintenance and add the cost thereof to the assessment against such Owner's Lot. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information of future Members of the Association, the developers wish to make it known that due to differing amounts of exposure to the elements and other factors, some offices may require more maintenance than others and that it is in the best interest of the entire Association that all units be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform rate of charge without regard to the actual cost of maintenance of each office.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, vehicles and aircrafts or smoke as the foregoing are defined and explained in N.C. standard fire and extended coverage insurance policies, and extended the cost of such maintenance replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association's hereunder.

Note: Lot owners are responsible for disconnecting hoses from outside faucets to prevent freezing and further agrees to bear the cost of repairs and replacement if he or she should neglect to do so.

ARTICLE VII **PARTY WALLS (If Any)**

Section One. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the offices upon the Properties and may be placed on the dividing line between the Lots and all reconstruction or extensions of such walls (if any) shall constitute party walls, and, to that extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section Two. Sharing of Repair and Maintenance. The cost of reasonable repair and

maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section Three. Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts, or omissions.

Section Four. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of another Owner to the extent necessary to perform repair, maintenance or reconstruction of a party wall, utilities serving their Unit, or their respective roof areas. Such repair, maintenance or reconstruction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section Five. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section Six. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section Seven. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VII, request of the adjoining property Owner or property Owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon requests without charge; provided, however, that where the adjoining property owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section Eight. Arbitration. In the event of any dispute arising concerning party wall, roof maintenance, or under the provisions of this document, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing. In no event may the demand for Arbitration be made after the date when the institution of legal or equitable proceedings based upon the claims would have been barred by the applicable Statute of Limitations or repose.

ARTICLE VIII **ARCHITECTURAL CONTROL**

No building, fence, signs, wall or other structure shall be commenced, erected or maintained upon the Properties, no boats, RV's or camping trailers shall be permanently parked upon the Properties, no automobile repairs shall take place upon the Properties, nor shall any exterior addition to or change or alteration of the structures (including placement of a satellite dish) be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. There shall be no conversion of space into living quarters. In the event said Board, or its

designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE IX INSURANCE

Section One. Insurance coverage on the Property shall be governed by the following provisions:

a. **Ownership of Policies.** All insurance policies upon the Common Areas shall be purchased by the Association for the benefit of all the Association and Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgage endorsements to the mortgagees of owners. Owners shall obtain coverage on their own individual buildings and improvements thereon at their own expense, and Owners may, at their option, obtain coverage upon their own personal property and for their personal liability and living expense such other coverage as they may desire. Proof of such insurance shall be provided upon the closing of the sale of each unit to the Association and proof of each renewal thereto shall be forwarded with the next monthly assessment payment as is appropriate.

b. **Coverage.** All buildings and improvements and all personal property included in the Common Areas shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- i. loss or damage by fire and other hazards covered by a standard extended coverage endorsement,
- ii. such other risks as from time to time shall be customarily covered with respect to building of the land,
- iii. such policies shall contain clauses providing for waiver of subrogation.

c. **Liability.** Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

d. **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by Association and charged to the owners as an assessment according to the provisions of Article V above.

e. **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the By-Laws and for the benefit of

the Owners and their mortgagees in the following shares:

- i. Proceeds on account of damage to Common Areas and facilities held for the Association.
- ii. In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and Owner as their interests may appear.

Section Two. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- a. **Expense of the Trust.** All expenses of the insurance trustees shall be first paid or provisions made therefore.
- b. **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section Three. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

ARTICLE X **USE RESTRICTIONS**

Section One. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section Two. Use of Properties. No portion of the Properties shall be used except for such uses as allowed by the City of Hickory Zoning Ordinance and for purposes incidental or accessory thereto.

Section Three. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood such as loud music, barking dogs or loud mufflers.

Section Four. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any office.

ARTICLE XI **EASEMENTS**

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and

across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress and regress and utilities across all Common Areas, now or hereafter owned by the Association, for the purposes of construction of improvements including utilities within or adjoining the Properties.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and down spouts and walls.

Every lot owner shall afford to the Association, the Declarant (and when necessary to another lot owner), such access through the lot owners' lot which is reasonably necessary for the maintenance, repair or replacement of office buildings, roofs, HVAC equipment, yards and landscaped areas, the common elements and an adjoining lot owners' lot.

Anything contained herein to the contrary notwithstanding, it shall be permissible for the Declarant to maintain, during the period of construction and sale of said lots, and adjoining lots, upon such portion of the property as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the development of said lots, including, but without limitation, a business office, storage area, signs, model units and sales office.

ARTICLE XII

GENERAL PROVISIONS

Section One. Enforcement. The Association, or any Owner, shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. 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.

Section Two. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section Three. Amendment. The covenants and restrictions of this Declarant shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy percent (70%) of the Lot Owners.

Section Four. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract for a period of thirty (30) days without justification or penalty after transfer of management by Declarant to the Association.

Section Five. Rights of Note Holders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety

(90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

**ARTICLE XIII
ELECTRICAL SERVICE**

Declarant reserves the right to subject the above described Property to a contract with a Power Company of its choice for installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such Power Company by the Owner of each Lot within said Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal, the day and year first above written.

VIEWMONT PLACE, LLC

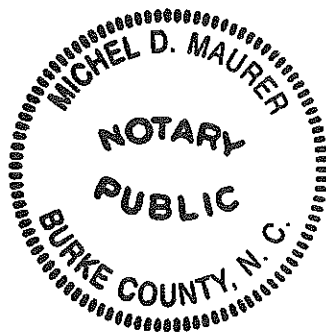
By: W. Andrew Wells Jr. (Seal)
W. Andrew Wells Jr., Manager

By: Suzanne D. Wells (Seal)
Suzanne D. Wells, Manager

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, Michel D. Maurer, a notary public in Burke County, State of North Carolina, certify that W. Andrew Wells, Jr., being a Manager of Viewmont Place, LLC personally came before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 14 day of April, 2008.

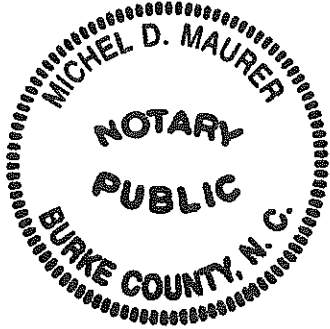


Michel D. Maurer
Notary Public
Print Name: Michel D. Maurer
My commission expires: 1-15-2013

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

I, Michel D. Maurer, a notary public in and for ~~Catawba~~ ^{Burke} County, State of North Carolina, certify that **Suzanne D. Wells**, being a Manager of Viewmont Place, LLC personally came before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 14 day of April, 2008.



Michel D. Maurer
Notary Public
Print Name: Michel D. Maurer
My commission expires: 1-15-2013

**CONSENT OF MORTGAGEE
ATTACHED TO DECLARATION**

Peoples Bank, being the Beneficiary under that certain Deed of Trust from Declarant to , Trustee, recorded in Book 2794 at Page 1332 in the Catawba County, North Carolina Public Registry, conveying the property described on Exhibit A attached to this Declaration, do hereby consent to the recordation of this Declaration and the imposition of the provisions hereof to the real property described in Exhibit A. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

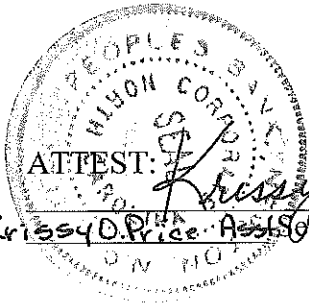
TRUSTEE:

[Signature] (Seal)
Lance A. Sellers

BENEFICIARY:

Peoples Bank

By: [Signature]
President

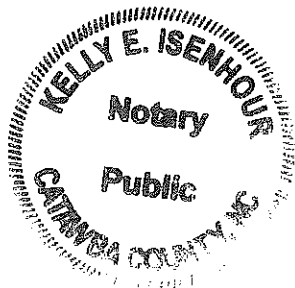


ATTEST: Krissy O. Price
Krissy O. Price, Assistant Secretary

**STATE OF NORTH CAROLINA
COUNTY OF CATAWBA**

I, Kelly E. Isenhour, a Notary Public in and for Catawba County and State of North Carolina, do hereby certify that **Lance A. Sellers**, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this 18th day of April, 2008.



Kelly E. Isenhour
Notary Public
Print Name: Kelly E. Isenhour
My commission expires: 6-23-11

STATE OF NORTH CAROLINA
COUNTY OF CATAWBA

BK 2907 PG 1090

I, a Notary Public of the county and state aforesaid, hereby certify that Krissy O. Price personally appeared before me this day and acknowledged that she is Asst. Secretary of **Peoples Bank**, a banking corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its 1st V. President, sealed with its corporate seal and attested by her self as its Asst. Secretary.

WITNESS my hand and notarial seal this 18th day of April, 2008.



Kelly E. Isenhour
Notary Public
Print Name: Kelly E. Isenhour
My commission expires: 6-25-11

Lot / Building	Building Square Footage	% Of Assessment	Max. 2008 Assesment
Lot 1	3,635	34%	\$400.00
Lot 2	2,800	26%	\$306.00
Lot 3	4,200	40%	\$470.00
Total	10,635	100%	\$1,176.00

When and if the Future Development Parcel is added to the Development as is set forth in Article I, the above ratios will be automatically adjusted based upon the then total Building Square Footage constructed on the Future Development Parcel and the Declarant shall record an Amended Declaration with a corrected Exhibit "A". The Unit Owners agree to then pay their percentage of assessment as set forth on the Amended Schedule. No further consent of Unit Owners shall be required for Declarant to amend the above Schedule.