

# DECLARATION OF COVENANTS

of

## SHERWOOD FOREST HOMEOWNERS ASSOCIATION

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At a meeting held on December 11, 2010, those Members of the SHERWOOD FOREST HOMEOWNERS ASSOCIATION, INC. (Association) present at the meeting adopted these Amended and Restated Covenants. A quorum was present at the meeting. These Covenants were approved and adopted by two-thirds (2/3) or more of the aggregate votes of the Members present in person or by proxy and entitled to vote at the meeting.

These Covenants shall supercede all other Amended and Restated Supplemental Declarations of Covenants of the Association except those referred to in this document.

**ARTICLE I - PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

The Members of the Association own the real property described in the following documents filed in the office of the Register of Deeds in the Transylvania County Courthouse, Brevard, North Carolina.

**Deed Book 243 Page 630 ex A**

- Deed Book 360 Page 147 amends ex A by releasing 15 lots
- Deed Book 435 Page 393 amends ex A by releasing 11 lots

**Deed Book 329 Page 442**

**Deed Book 276 Page 500**

The Association owns the real property described in the following documents filed in the office of the Register of Deeds in the Transylvania County Courthouse, Brevard, North Carolina.

**Deed Book 332 Page 428**

**Deed Book 845 Page 189 (B24)**

**Deed Book 330 Page 509**

**Deed Book 885 Page 75 (D30)**

**Deed Book 349 Page 348**

**Deed Book 885 Page 78 (EE7)**

**Deed Book 337 Page 391**

**Deed Book 885 Page 83 (WL0)**

**Deed Book 343 Page 342**

**Deed Book 348 Page 259**

**Deed Book 391 Page 721**

**Deed Book 383 Page 258**

**Deed Book 377 Page 712**

**Deed Book 377 Page 715**

**Document Book 181 Page 431**

**Document Book 75 Page 312**

**Document Book 76 Page 111**

**Document Book 213 Page 164**

**Document Book 348 Page 260**

**Document Book 750, Page 651**

**Document Book 768, Page 256**

**Deed Book 799 Page 306, formerly known as the “Lalor Tract,” excluding approximately 1.7 acres conveyed by deed.**

**And any other real property to which the Association holds title as shown by the deed records of Transylvania County, North Carolina.**

The above-described real property is subject to these Covenants as is all other real property made subject to these Covenants by agreement between the property owner and the Association or by any other action taken by the Association to add property.

### **Section 1. Existing Property.**

The real property that is the subject of these Covenants is that real property described above, and all real property subjected to these Covenants by subsequent agreement recorded in the Transylvania County Registry.

### **Section 2. Additions to Existing Property.**

Additional properties external to Sherwood Forest, if application has been made to the Association by the owner, may become subject to these Covenants pursuant to an affirmative vote of members voting in person or by proxy entitled to cast as least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose.

### **Section 3. Roads.**

The Association shall not be obligated to maintain any roads in properties under development until such roads have been completed to the standard of other similar roads in the Community and all lots on such roads have all utilities including sewer lines (where required), water, electricity, telephone, and television cable.

## **ARTICLE II – ASSOCIATION**

### **Section 1. Sherwood Forest Homeowners Association, Inc.**

The Association of Owners is the Sherwood Forest Homeowners Association, Inc.

### **Section 2. Definitions**

Terms used in these Covenants shall have the same meanings as set forth in Article III of the Bylaws.

### **Section 3. Members.**

Every person or entity who is a record owner of a fee or undivided fee interest in any lot or residential unit that is subject by covenants to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Owners of one or more real property units within Sherwood Forest that are not currently subject to these Covenants may become members by written agreement with the Association, which agreement shall be recorded in the Transylvania County Registry.

When ownership of a real property unit is transferred, membership in the Association is automatically transferred.

A "real property unit" is defined as follows: an improved lot on which a single family dwelling is situated; an unimproved lot on which no single family dwelling is situated but which is of sufficient size to accommodate a single family dwelling under the regulations of this Association; or one dwelling unit in a multifamily building. A "residence" shall be defined as a dwelling unit once the owner has received a "Certification of Occupancy" or one year (1) after the beginning of construction, unless a request for extension has been approved by the Architectural and Environmental Review Committee. All members shall be entitled to one (1) vote for each real property unit owned except that owners of unimproved lots shall be entitled to only one-third (1/3) vote for each such unimproved lot.

### **Section 4. Powers and Duties.**

Acting by and through its Board and/or its membership in accordance with the provisions of applicable laws and the Amended and Restated Articles of Incorporation, Amended and Restated Declaration of Covenants, and the Amended and Restated By-Laws, the Association shall have the powers and duties necessary for the administration of the affairs of the Community which shall include, but not be limited to, the following:

- a) adopt and amend By-Laws, Covenants, Regulations and Community Standards.
- b) adopt and amend budgets for revenues, expenditures, and reserves;
- c) collect from Unit owners assessments for common expenses;
- d) hire and terminate managing agents and other employees, agents, and independent contractors;
- e) institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Community;
- f) make contracts and incur liabilities;
- g) regulate the use, maintenance, repair, replacement and modification of Common Elements;
- h) cause additional improvements to be made as a part of the Common Elements;
- i) acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property;
- j) grant easements, leases, licenses and concessions through or over the Common Elements;
- k) impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements and for services provided to Unit Owners as set forth in Section 47F-3-102(10) of the North Carolina General Statutes;
- l) impose reasonable charges for late payment of assessments in accordance with NCGS 47F-3-102(11), and after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred dollars (\$100) per day for a continuing violation of these Covenants, By-Laws, and/or Regulations of the Association;
- m) provide for the indemnification of, and maintain liability insurance for, its officers, directors, employees, and agents;
- n) assign its future income, including its right to receive and collect common expense assessments, only by an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose;
- o) exercise all other powers that may be exercised in this State by nonprofit corporation and that are consistent with the Amended and Restated Articles of Incorporation, Amended and Restated Declaration of Covenants, and Amended and Restated By-Laws;
- p) exercise any other powers necessary and proper for the governance and operation of the Association;
- q) establish Advisory, Service and Ad hoc Committees which shall be made up of Association members and/or residents of Sherwood Forest. The chairperson and members of an Advisory Committee shall be selected by the Board. A chairperson of an Advisory Committee shall be appointed for a term of up to three (3) years, shall submit a written request to the Board to extend that term of office, and shall provide a plan for accession. The members and chairpersons of Service Committees shall be made up of volunteers. The Board shall determine the status of a committee, i.e. whether it is an Advisory Committee or a Service Committee;
- r) follow and adhere to the Framework of Principles;
- s) serve as Liaison to Advisory, Service or Ad hoc committees, as determined by the Board, attending the committee meetings and reporting back to the Board. Liaison assignments shall be agreed upon by the Board; and
- t) accept the fiduciary responsibilities associated with becoming a Board member.

### **ARTICLE III - ASSESSMENTS**

#### **Section 1. Personal Obligation for Assessments.**

Each real property Unit owner, by acceptance of the deed thereto, whether or not it is expressed in such deed, is deemed to covenant and agree to pay the Association regular assessments for the common expenses

described in Section 47F-3-115 of the North Carolina General Statutes, and as otherwise provided for in the Amended and Restated Articles of Incorporation, the Amended and Restated Declaration of Covenants, and the Amended and Restated By-Laws. Such assessments shall be used for the general purposes of promoting the recreation, common benefit, and enjoyment of the owners and occupants of Units in the community as may be more specifically authorized from time to time by the Board.

## **Section 2. Assessments.**

Assessments for common expenses, including but not limited to road maintenance, road improvements, common element maintenance, common element controls, road security, reserve funds, and administrative costs, shall be made as follows:

All real property units shall be assessed equally except that unimproved lots shall be assessed at one-third (1/3) the amount of a full assessment.

There shall be two categories of annual assessment and the receipts for each category shall be accounted for separately:

- a) One category shall be for road maintenance, road improvements, road safety, reserve funds, and administrative expenses. In addition to such annual assessment, there shall be a one-time administrative fee, and an environmental damage deposit, as set by the Board, payable by the owner of a real property unit who is beginning construction of a dwelling, which are due and payable upon submission of a construction application to the Architectural and Environmental Review Committee.
- b) The other category shall be for common element acquisitions, improvements and maintenance, reserve funds, and administrative expenses.

The maximum annual assessment for each category shall be no greater than the amount authorized from time to time by an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose. Prior to December 31st of each year, the Board shall fix the amount of the annual assessment in each category, not in excess of the maximum, for the following year.

Special assessments for any purpose may be authorized at any time by an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose.

## **Section 3. Forgiveness for a No-Development Deed Restriction.**

### **(a) Policy.**

It is the policy of the SFHA to grant assessment forgiveness to selected unimproved properties on which there is imposed on the lot a no-development deed restriction; the property meets one or more of the criteria approved by the membership for prioritizing future green areas acquisition; and on which the deed provides access to the property by SFHA members.

The SFHA Board of Directors has the authority to review assessment forgiveness requests, determine if eligibility criteria are met, and grant or deny assessment forgiveness requests. It will ensure that clear, recognized standards are applied so there is clarity and consistency in the future.

### **(b) Procedure.**

In the event that the SFHA Board of Directors considers requested forgiveness of assessments on an unimproved property unit, the following provisions shall be considered and/or met:

- i. The proposing party be asked to consider gifting the property to SFHA;
- ii. The financial impact of the loss of assessment revenue to the Association be noted in the application;
- iii. If the proposing party intends to rely on a conservation easement in support of his or her request, the conservation easement must be in place at the time of the request;

- iv. The “Criteria for Prioritizing Future Green Areas Acquisitions” dated March 21, 2003 and “Guideline Property Identification and Acquisition Procedures” must be applied to the request and the reasons for the decision made in this regard be stated in writing;
- v. Agreement reached as to specific language for the revised deed document ensuring no development in the future, and specific language permitting SFHA members access to the property;
- vi. After making a decision, communicate results to the proposing party; and
- vii. Should assessment forgiveness be granted, SFHA’s Legal Committee is tasked to monitor compliance, and SFHA general membership notified following closing.

#### **Section 4. Default.**

If a Unit owner is in default in payment of any assessment or charge, including, but not limited to, the regular installments of the annual assessment based on the budget, the Board may accelerate the remaining balance of the annual assessment, including regular installments based on the budget, special assessments, and specific assessments, upon fifteen (15) days written notice to such Unit owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

#### **Section 5. Late Charges.**

The Board shall set a late charge to be assessed against Unit owners for late payment of any regular expense assessment or installment thereof, special assessments, or any other charges.

In accordance with N.C.G.S. 47F-3-115(b), the Association hereby establishes that any past-due regular assessment or installment thereof, past- due special assessments, fines, or other past-due charges shall be subject to a maximum interest charge of 18% per annum.

#### **Section 6. Effect of Nonpayment of Assessments: Collection and Lien.**

Section 47F-3-116 of the North Carolina Planned Community Act shall apply as follows:

##### **Lien for sums due the association; enforcement.**

(a) Any assessment attributable to a lot which remains unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided in this section. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Unless the declaration provides otherwise, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the association under the declaration, the provisions of this Chapter, or as the result of an arbitration, mediation, or judicial decision.

(b) The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. If the lot owner is a corporation or limited liability company, the statement shall also be sent by first-class mail to the mailing address of the registered agent for the corporation or limited liability company. Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a statement to an address known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address.

(c) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. A claim of lien may also appoint a trustee to conduct a foreclosure, as provided in subsection (f) of this section. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document:

"THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS

NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW."

The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j), for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to both of the following: (i) G.S. 1A-1, Rule 4(j)(1)c, d, or e and (ii) by mailing a copy of the lien by regular, first-class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9). Notwithstanding anything to the contrary in this Chapter, the association is not required to mail a claim of lien to an address which is known to be a vacant lot on which no dwelling has been constructed or to a lot for which there is no United States postal address. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the filing of the claim of lien in the office of the clerk of superior court.

(d) A claim of lien filed under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the lot, recorded before the filing of the claim of lien in the office of the clerk of superior court and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(e) The association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with the collection of any sums due. A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by first-class mail to the physical address of the lot and the lot owner's address of record with the association and, if different, to the address for the lot owner shown on the county tax records for the lot. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Notwithstanding anything to the contrary in this Chapter, there shall be no requirement that notice under this subsection be mailed to an address which is known to be a vacant lot on which no dwelling has been constructed or a lot for which there is no United States postal address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance, as provided in subsection (i) of this section, and shall provide the name and telephone number of the representative.

(f) Except as provided in subsection (h) of this section, the association, acting through the executive board, may foreclose a claim of lien in like manner as a mortgage or deed of trust on real estate under power of sale, as provided in Article 2A of Chapter 45 of the General Statutes, if the assessment remains unpaid for 90 days or more. The association shall not foreclose the claim of lien unless the executive board votes to commence the proceeding against the specific lot.

The following provisions and procedures shall be applicable to and complied with in every nonjudicial power of sale foreclosure of a claim of lien, and these provisions and procedures shall control to the extent they are inconsistent or in conflict with the provisions of Article 2A of Chapter 45 of the General Statutes:

(1) The association shall be deemed to have a power of sale for purposes of enforcement of its claim

of lien.

(2) The terms "mortgagee" and "holder" as used in Article 2A of Chapter 45 of the General Statutes shall mean the association, except as provided otherwise in this Chapter.

(3) The term "security instrument" as used in Article 2A of Chapter 45 of the General Statutes shall mean the claim of lien.

(4) The term "trustee" as used in Article 2A of Chapter 45 of the General Statutes shall mean the person or entity appointed by the association under subdivision (6) of this subsection.

(5) After the association has filed a claim of lien and prior to the commencement of a nonjudicial foreclosure, the association shall give to the lot owner notice of the association's intention to commence a nonjudicial foreclosure to enforce its claim of lien. The notice shall contain the information required in G.S. 45-21.16(c)(5a).

(6) The association shall appoint a trustee to conduct the nonjudicial foreclosure proceeding and sale. The appointment of the trustee shall be included in the claim of lien or in a separate instrument filed with the clerk of court in the county in which the planned community is located as an exhibit to the notice of hearing. The association, at its option, may from time to time remove a trustee previously appointed and appoint a successor trustee by filing a Substitution of Trustee with the clerk of court in the foreclosure proceeding. Counsel for the association may be appointed by the association to serve as the trustee and may serve in that capacity as long as the lot owner does not contest the obligation to pay or the amount of any sums due the association, or the validity, enforcement, or foreclosure of the claim of lien, as provided in subdivision (12) of this subsection. Any trustee appointed pursuant to this subsection shall have the same fiduciary duties and obligations as a trustee in the foreclosure of a deed of trust.

(7) If a valid debt, default, and notice to those entitled to receive notice under G.S. 45-21.16(b) are found to exist, then the clerk of court shall authorize the sale of the property described in the claim of lien by the trustee.

(8) If, prior to the expiration of the upset bid period provided in G.S. 45-21.27, the lot owner satisfies the debt secured by the claim of lien and pays all expenses and costs incurred in filing and enforcing the association assessment lien, including, but not limited to, advertising costs, attorneys' fees, and the trustee's commission, then the trustee shall dismiss the foreclosure action and the association shall cancel the claim of lien of record in accordance with the provisions of G.S. 45-36.3. The lot owner shall have all rights granted under Article 4 of Chapter 45 of the General Statutes to ensure the association's satisfaction of the claim of lien.

(9) Any person, other than the trustee, may bid at the foreclosure sale. Unless prohibited in the declaration or bylaws, the association may bid on the lot at a foreclosure sale directly or through an agent. If the association or its agent is the high bidder at the sale, the trustee shall allow the association to pay the costs and expenses of the sale and apply a credit against the sums due by the lot owner to the association in lieu of paying the bid price in full.

(10) Upon the expiration of the upset bid period provided in G.S. 45-21.27, the trustee shall have full power and authority to execute a deed for the lot to the high bidder.

(11) The trustee shall be entitled to a commission for services rendered which shall include fees, costs, and expenses reasonably incurred by the trustee in connection with the foreclosure, whether or not a sale is held. Except as provided in subdivision (12) of this subsection, the trustee's commission shall be paid without regard to any limitations on compensation otherwise provided by law, including, without limitation, the provisions of G.S. 45-21.15.

(12) If the lot owner does not contest the obligation to pay the amount of any sums due the association or the validity, enforcement, or foreclosure of the claim of lien at any time after the expiration of the 15-day period following notice as required in subsection (b) of this section, then attorneys' fees and the trustee's commission collectively charged to the lot owner shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The obligation to pay and the amount of any sums due the association and the validity, enforcement, or foreclosure of



the claim of lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of any portion of the sums claimed due by the association or the validity, enforcement, or foreclosure of the claim of lien. Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(13) Lot owners shall be deemed to have the rights and remedies available to mortgagors under G.S. 45-21.34.

(g) The provisions of subsection (f) of this section do not prohibit or prevent an association from pursuing judicial foreclosure of a claim of lien, from taking other actions to recover the sums due the association, or from accepting a deed in lieu of foreclosure. Any judgment, decree, or order in any judicial foreclosure or civil action relating to the collection of assessments shall include an award of costs and reasonable attorneys' fees for the prevailing party, which shall not be subject to the limitation provided in subdivision (f)(12) of this section.

(h) A claim of lien securing a debt consisting solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes. In addition, an association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration, and any claim of lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article 29A of Chapter 1 of the General Statutes.

(i) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule after the lot owner has been given notice, as required in subsection (e) of this section. Attorneys' fees incurred in connection with any request that the association agrees to accept payment of all or any part of sums due in installments shall not be included or considered in the calculation of fees chargeable under subdivision (f)(12) of this section.

(j) Where the holder of a first mortgage or first deed of trust of record or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, the purchaser and its heirs, successors, and assigns shall not be liable for the assessments against the lot which became due prior to the acquisition of title to the lot by the purchaser. The unpaid assessments shall be deemed to be common expenses collectible from all the lot owners, including the purchaser, its heirs, successors, and assigns. For purposes of this subsection, the term "acquisition of title" means and refers to the recording of a deed conveying title or the time at which the rights of the parties are fixed following the foreclosure of a mortgage or deed of trust, whichever occurs first.

(1998-199, s. 1; 2005-422, s. 6; 2009-515, s. 1; 2011-362, s. 1; 2013-202, s. 3.)

## **ARTICLE IV - GENERAL PROVISIONS**

### **Section 1. Enforcement.**

The Association shall have the right to enforce all restrictions, conditions, covenants, and reservations now or hereafter imposed by the provisions of these Covenants by assessment of penalties and/or restriction of privileges. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

### **Section 2. Authorization for Amendment.**

Amendments to these Covenants shall require an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose.

These Covenants as of the date of the adoption thereof are the complete and restated Covenants of the Association.

## **ARTICLE V – ENFORCEMENT AUTHORITY**

### **Section 1. Regulations.**

The Community shall be used only for those purposes set out in the Amended and Restated Articles of Incorporation, the Amended and Restated Declaration of Covenants, and the Amended and Restated By-Laws. The Board shall have the authority to make, modify, repeal, and enforce reasonable regulations governing the conduct, use, and enjoyment of Units and the Common Elements. No regulation shall be in conflict with the Amended and Restated Articles of Incorporation, the Amended and Restated Declaration of Covenants and/or the Amended and Restated By-Laws.

### **Section 2. Fines and Other Penalties.**

After providing notice of an alleged violation and an opportunity to be heard, the Board shall have the powers set forth below. At the discretion of the Board, it may appoint an adjudicatory panel that will have the powers set forth below:

- a) Impose reasonable fines in an amount not to exceed One Hundred Dollars (\$100) per violation, such amount to be assessed per day for a continuing violation. Violation of any provision of the Covenants, By-Laws, or Regulations duly adopted by Members of the Association resulting in a fine against a Unit Owner shall constitute an assessment against the Unit in accordance with Article III hereof, and become a personal obligation of the Unit Owner, and a lien upon the property;
- b) Suspend an Owner's or occupant's right to use the Common Elements;
- c) Suspend an Owner's right to vote and;
- d) The fine may be imposed for the violation, and without further hearing, for each day more than five (5) days after notification from the Board that the violation occurred.

In the event that any occupant of a Unit violates the Covenants, By-Laws, or the Regulations and a fine is imposed, the fine shall be assessed against the Unit Owner who shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Covenants, By-Laws, or Regulations shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, owners waive and release any defense that enforcement is or may be selective. Charges for late payments of assessments under Article III of the Covenants are not to be regarded as fines that warrant a hearing under this section.

### **Section 3. Abatement and Enjoinment of Violations.**

The Association, through the Board, shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Covenants, By-Laws, or Regulations. All costs of any such legal action, including reasonable attorneys' fees actually incurred, shall be assessed against the violating Unit owner and shall be collected as provided for in the collection of assessments.

## **ARTICLE VI – ENFORCEMENT PROCEDURES**

The Board or its designated adjudicatory panel shall not impose a fine or charge for damages against a Unit owner unless and until the following procedure is followed:

### **Section 1. Demand.**

Written demand to cease and desist from an alleged violation of the Covenants, By-Laws, or Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation (if possible); and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanctions if such violation is a continuing one, or a statement that any further occurrence of the same violation may result in the imposition of sanctions if the violation is not continuing.

The Board or its designee may demand immediate abatement in circumstances that pose a danger or nuisance to personal safety or property. Charges for late payments under Article III of the Covenants are not to be regarded as fines that warrant a hearing under this section.

**Section 2. Notice.**

Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same regulation is subsequently violated, the Board may impose a fine by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine; (iii) that the alleged violator will have the opportunity to be heard by requesting, within ten (10) days from the date of receipt of such notice, a hearing before the Board or its designated committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the alleged violator at the hearing; and (v) that all rights to be heard or to have a fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the receipt of notice.

**Section 3. Hearing.**

If a hearing is requested, it shall be held before the Board or an adjudicatory panel designated by the Board and the alleged violator shall be given a reasonable opportunity to be heard. The Board or designated adjudicatory panel shall render its final decision regarding imposition of the fine no later than five (5) days after the hearing. The Board or its designated adjudicatory panel shall issue a written statement of the results of the hearing and provide it to the alleged violator.

**Section 4. Appeal.**

If a hearing is held before an adjudicatory panel designated by the Board and a fine is imposed, the violator may appeal the decision to the Board by giving the Board written notice of the appeal within fifteen (15) days of the panel's decision. The Board may affirm, vacate, or modify the prior decision of the adjudicatory panel.

**ARTICLE VII – USE RESTRICTIONS AND PURPOSE**

**Section 1. Residential.**

Each of the Units in the Community are restricted exclusively to residential use, except as set forth in Section 3.

**Section 2. Restrictions in General.**

The Units and Common Elements of the Community are subject to the restrictions contained in these Covenants and as may be set forth in the By-Laws, and Regulations and Community Standards of the Association. All owners and other persons are subject to these restrictions and to the enforcement sanctions as are set forth in these Covenants and in the By-Laws. Unit Owners hold primary responsibility for ensuring informed compliance by occupants of their Units with the Association's Covenants, Bylaws, and Regulations and Community Standards.

Manufactured homes, mobile homes, modular homes or structures, homes built off-site, or used buildings or structures intended for use as a dwelling may not be placed on any lot or lots in the Community, nor transported over SFHA roads.

**Section 3. Business Activities.**

No business activities shall be conducted in any residential portion of the Community without the Board's approval. The Board shall determine what constitutes a business activity. Private offices may be maintained in residences so long as such use is incidental to the primary residential use of the Unit.

No owner shall make use of a lot to store or keep on a lot anything that will increase the insurance rates for the Association or for other Unit owners.

**Section 4. Alterations, Attachments, and Construction by Unit Owner.**

No Unit owner shall construct on, or make structural alterations or modifications to, any of the Common Elements without the written approval of the Board. The Board shall not approve of any alterations, decorations, or modifications that would jeopardize or impair the soundness, safety, or overall appearance of the Community.

#### **Section 5. Vehicle Storage.**

No motor vehicle, boat, boat trailer, mobile home, motor home, trailer, or any similar items shall be stored in or upon the Common Elements, unless placed upon a portion of the Common Elements that is temporarily designated for such purpose, or that may be designated from time to time by the Board for the temporary storage of such items.

The Architectural and Environmental Review Committee shall establish regulations concerning storage of any vehicle on residential property.

#### **Section 6. Signs.**

No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted, or affixed by any owner on any portion of the Common Elements without permission from the Board.

The Board may have signs erected on the Common Elements for identification or for such other purposes as the Board deems appropriate.

#### **Section 7. Restrictions on Activities Affecting Use of Common Elements.**

Except when specifically approved by the Board, the Common Elements shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind, except in common trash receptacles placed at the discretion of the Board. Roadways shall not be obstructed in any way. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all owners in the Community, is necessary for the protection of the Unit owners, and is enforceable by the Board.

#### **Section 8. Combining and Subdividing.**

Subject to approval by the Board of Directors, two or more contiguous lots may be combined if the site plan for construction of a new residence and its septic system, once completed as proposed, crosses the boundary lines of each of the lots.

If a lot is deemed unbuildable because a residence cannot be built without violation of SFHA setback regulations, or if a lot is deemed unbuildable by Transylvania County authorities because building would violate state or local regulations, such as septic requirements, said lot may be combined with a commonly owned adjacent lot upon approval by the Board of Directors.

Following any such lot combination, the lot that has been absorbed into an adjacent lot would no longer exist as a real property unit and the resulting combined lots would be considered a single lot for both assessment and voting purposes.

A lot may be subdivided by two or more Members owning lots that have boundaries in common with said lot, such that portions of the lot are combined into the contiguous lots, upon approval by the Board of Directors.

No lot may be subdivided such that any portion of it is less than .8 acres, unless such lot portion has been conjoined with adjacent lots as set forth in the previous paragraph.

No lot may be subdivided into smaller lots, nor any portion of a lot sold or otherwise transferred, without approval by an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present at a meeting duly called for such purpose.

All new lot combinations and subdivisions must comply with any applicable ordinances, statutes and regulations and must be recorded in the Transylvania County deed records.

## **Section 9. Nuisances.**

Property shall not be used in any way or for any purpose that may endanger the health of or unreasonably disturb the owner of a Unit or any resident thereof. No nuisances shall be allowed in the Community, and no person shall engage in any use, practice, or activity upon such property that is noxious, offensive, or a source of annoyance to Unit owners, or which reasonably interferes with the peaceful possession and proper use of the property by any Unit owner. The Board shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the Community shall be kept in a clean and sanitary condition. No rubbish, refuse, or garbage shall be allowed to accumulate, and no fire hazard shall be allowed to exist. Any Unit owner (or his/her family, tenants, guests or agents) who dumps or places any trash or debris upon any portion of the Community shall be liable to the Association for the actual cost of removal thereof, and the same shall be added to and become a part of the assessment next coming due to which the Unit owner is subject. Alternatively, the Association may impose a fine against the Unit owner for violation of this section. In general, no activities shall be carried out nor condition maintained by any Unit owner either on his/her lot or upon the Common Elements, if such activities should despoil, or tend to despoil, the appearance of the Community.

## **Section 10. Lawful Use.**

All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

## **Section 11. Restriction on Transfer of Common Elements.**

Except in cases of foreclosure, no conveyance of real property nor of any interest therein from others to the Association shall be accepted by or be binding upon the Association unless and until said conveyance is accepted by an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose.

The Association shall not seek to abandon, partition, subdivide, sell, encumber, or transfer any portion of the Common Elements, including Green Areas, without the approval by an affirmative vote of members voting in person or by proxy entitled to cast at least four-fifths (4/5) of the votes present, at a meeting duly called for such purpose.

The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this section.

## **Section 11a. Restriction on Transfer of the 265 Acre Green Area Tract**

The Association shall not seek to abandon, partition, subdivide, sell, encumber or transfer any portion of the 265 acre Green Area tract (PIN 8592-63-1556) except by the affirmative vote of members entitled to cast at least four-fifths (4/5) of the total votes in the Association, voting in person or by proxy, at a meeting duly called for such purpose.

Notwithstanding any other provision in these Covenants or in the Association Bylaws, this Section may only be amended by the affirmative vote of members entitled to cast at least four-fifths (4/5) of the total votes in the Association, voting in person or by proxy, at a meeting duly called for such purpose.

## **Section 12. Use of Green Areas**

The Association will maintain the Green Areas with the intent of holding them as land in a natural ecological state. There shall be no constructing or placing of any building, mobile home, pavement, billboard, or signage on any Green Area. The exceptions are boundary markings, permitted signage, construction and maintenance of nature trails and access, or display of No Trespassing signs. Designation, construction, and maintenance of nature trails shall be the responsibility of a trails committee as authorized by the Board of Directors.

There shall be no activities on Common Elements or private property that would result in pollution or

alteration of water bodies or wetlands in Common and Green Areas. For example, there shall be no activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation, and/or flow in or over the community or into any surface waters or cause soil degradation or erosion, nor shall there be diking, dredging, alteration, draining, or filling without approval of the Association, except as provided in Architectural and Environmental Review Committee regulations.

Rights of Members to use the Green Areas shall be subject to and governed by the provisions of the Covenants, By-laws, and Regulations of the Association. Without limiting the generality of the foregoing, each Member shall have the right to use the Green Areas in a non-destructive way.

Altering or moving any living plant or animal in the Green Areas without permission of the Board is prohibited. There shall be no cutting or removal of trees or the disturbance of other natural features without the permission of the Association. Horses, unleashed pets (except as specifically approved by the Association), bicycles and other recreational vehicles are prohibited. Fires, smoking, camping, and hunting are prohibited.

Green Areas cannot be sold or encumbered without the affirmative vote of the members entitled to cast at least four-fifths (4/5) of the votes present, voting in person or by proxy, at a meeting called for such purpose.

### **Section 13. Prohibition of Time-Sharing.**

Time-sharing and time shares as defined the North Carolina Time Share Act (N.C. G.S. § 93A-39 et seq.) of any Unit in the Community is prohibited.

### **Section 14. General.**

All Members, owners, tenants, mortgagees, and occupants of Member-owned Units shall comply with the Covenants, By-Laws, Regulations and Community Standards. The acceptance of a deed or the exercise of any incident of ownership, or the entering into a lease, or the entering into occupancy of a Unit constitutes agreement that the provisions of the Covenants, By-Laws, Regulations and Community Standards are accepted by, ratified by, and are binding on all Members, owners, tenants, mortgagees, their guests and invitees.

## **ARTICLE VIII--LEASING RESTRICTIONS**

### **Section 1. Purpose.**

Sherwood Forest is a planned community of single-family residences and condominium units. The existing dwellings are predominantly owner-occupied, either full-time or part-time, with a small portion of these dwellings offered for rental. To preserve the character of the Community as a residential community of owner-occupied dwellings, and to prevent Sherwood Forest from becoming a transient or vacation rental community, Members deem it appropriate to adopt certain restrictions on the rental of dwellings in the Community. The moratorium established by this Article is not intended to and does not limit the rights of Members who currently own dwellings to rent those existing dwellings. This article applies prospectively to conveyances of lots with dwellings that occur after the Effective Date and to new dwellings whose Certificate of Occupancy is issued after the Effective Date.

### **Section 2. Leasing Restriction for New Members and New Dwellings.**

Following Membership approval at a meeting duly called for such purpose and upon the date of recording of this Article in the official records of Transylvania County, North Carolina (the "Effective Date"), any person or entity, including all Members of the Association as of the Effective Date, who acquires or purchases an existing dwelling within the Community thereafter shall be prohibited from leasing or otherwise renting for compensation or other tangible benefit all or any portion of the dwelling for a period of three (3) years from the date of closing. Also, any Member who constructs a dwelling on previously undeveloped property within the Community shall be prohibited from leasing or renting for compensation or other tangible benefit

all or any portion of such dwelling for a period of three (3) years from the date of issuance of the Certificate of occupancy for the dwelling.

**Section 3. Violations of this Article.**

For any violation of Section 2 of this Article, the Board may exercise any or all of the remedies, including enforcement procedures and penalties, as set forth in Articles V and VI of this Declaration of Covenants.

**Section 4. Exemption.**

A transfer of any developed or undeveloped property within the Community by a Member in good standing to an immediate family member or members or domestic partner, as defined in Article XI (Article X prior to the adoption of this Article) of these Covenants shall not apply to a transfer: (a) by testate or intestate succession provided the Association is given notice of such transfer; or (b) by deed provided the transferring Member owned such developed or undeveloped property prior to the Effective Date or if acquired after the Effective Date, until such time as the three (3) year rental restriction period has expired. If a Member is not in good standing at the time of transfer, the rental restrictions of Section 2 of this Article shall apply until good standing is reinstated. When good standing is reinstated, the exemption provided by this Section 4 shall thereafter be effective.

**Section 5. Numbering.**

Upon adoption of this new Article VIII to the Association's Declaration of Covenants, the subsequent Articles are hereby renumbered accordingly.

**ARTICLE IX – INSURANCE**

**Section 1. Coverage.**

To the extent reasonably available, the Board shall obtain and maintain insurance coverage as a common expense. If such insurance is not reasonably available, and the Board determines that any insurance described herein will not be maintained, the Board shall notify the Members by First Class mail sent to their last known addresses.

**Section 2. Property and Casualty Insurance.**

The Association shall procure and maintain property and casualty insurance on the Common Elements, insuring against all risks of direct physical loss, including fire and extended coverage, for and in an amount equal to not less than eighty percent (80%) of the replacement costs of all structures on the Common Elements.

**Section 3. Liability Insurance.**

The Association shall maintain liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the Common Elements and covering the Association, the Board, Officers, and all agents and employees of the Association, all Unit owners, and persons entitled to occupy any lot or other portion of the Community.

**Section 4. Policy Requirements.**

The insurance policies must provide that:

- a) each Unit owner is an insured person under the policy to the extent of the lot owner's insurable interest;
- b) the insurer waives its right of subrogation under the policy against any Unit owner or Members of the lot owner's household;
- c) no act or omission by any Unit owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy; and

- d) if, at the time of a loss under the policy, there is other insurance in the name of a Unit owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

### **Section 5. Association as Trustee.**

All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the owners, and mortgagees of owners, if any. The proceeds from property and casualty insurance claims shall be payable to the Association as trustee for all Unit owners and mortgagees of owners. It shall be the duty of the Board to assure at least annually an insurance review to determine that the policies in force are adequate to meet the risks of the Association. Such a responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify that the insurance policies in existence do meet the needs of the Association. All insurance shall run to the benefit of the Association, the respective Unit owners, and their respective mortgagees as their interests may appear. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage.

### **Section 6. Other Insurance.**

The Board shall obtain as a common expense:

- a) Workers Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;
- b) Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain cross liability endorsement; and
- c) such other insurance as the Board may determine to be necessary.

## **ARTICLE X – ARCHITECTURAL STANDARDS AND CONTROL**

The establishment and maintenance of architectural standards shall be as set forth in the Amended and Restated Bylaws Article VIII §2(c).

## **ARTICLE XI – AMENITIES FEES**

### **Section 1. Definitions and Purpose.**

Amenities Fees are set by the Board and approved by the Membership by an affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose.

Amenities Fees are charges collected by Sherwood Forest Homeowners Association, Inc. (the Association) from owners who construct a new residential unit in Sherwood Forest and from buyers of existing improved units in Sherwood Forest and/or unimproved units in Sherwood Forest.

A "unit," whether improved or unimproved, is defined as set forth in Article II of these Covenants.

The term "*immediate family member*" where used in this Article means: a spouse/domestic partner, parents, grandparents, brothers and sisters, children or grandchildren.

The term "*domestic partner*" means a person, other than a spouse, with whom one cohabits.

The purpose of the Amenities Fee is as follows: To provide funds for designated projects including, but not limited to (1) acquisition of green areas that meet Green Area acquisition criteria, and (2) significant improvements and repairs to Sherwood Forest amenities including but not limited to lakes, swimming pool and pool house, tennis courts, Robin Hood Barn, Robin Hood Centre, and golf course. Amenities Fee income is not to be applied to routine operational expenses.

Association members shall pay the full Amenities Fee for each improved or unimproved property that is purchased in Sherwood Forest.



## **Section 2. Distribution of Amenities Fees.**

Distribution of Amenities Fee income to various SFHA funds and for various purposes shall be determined from time to time by an affirmative vote of members, voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting duly called for such purpose.

## **Section 3. Purchase of Unimproved Units and Home Construction.**

The Amenities Fee due for the purchase of an unimproved property unit shall be paid to the Association by the purchaser at the time of the real estate closing. Should such property owner construct a home on the unimproved property unit within three (3) years of its purchase, said property owner shall receive a credit against the full Amenities Fee due on an improved property unit in an amount equal to the Amenities Fee paid by said owner when the unimproved property unit was purchased.

The amount of the Amenities Fee that is due on an improved property unit shall be paid by the property owner to the Association at the time that a construction application is made to the Architectural & Environmental Review Committee, less any credit that may be due to the owner as set forth above. Each unit of a duplex or multi-family structure is subject to this fee.

A project cancellation fee shall be charged for the cancellation of a new home construction project as follows: prior to lot clearing, 100% of the amount of the Amenities Fee that had been paid at the time the unimproved lot was purchased shall be refunded; after clearing and prior to initiation of construction, 50% of the Amenities Fee paid shall be refunded; and after the commencement of construction, no portion of the Amenities Fee shall be refunded.

## **Section 4. Purchase of Improved Units.**

The Amenities Fee due for the purchase of an improved unit shall be paid to the Association by the purchaser at the time of the real estate closing.

Each unit of a duplex or multi-family structure is subject to this fee. However, if the title transfer is to an immediate family member or a domestic partner of the owner, and if that owner at the time of transfer is a member in good standing of the Association, this fee shall not be assessed.

## **Section 5. Vote Required.**

In order to expend Amenities Fee income that has been deposited into the Green Area Acquisition Fund for the purchase of new land as green area, the purchase must be approved first by the Board and then by the affirmative vote of members entitled to cast at least two-thirds (2/3) of the votes present, voting in person or by proxy, at a meeting duly called for such purpose.

[Ratification and execution on the following page]

The foregoing restatements and amendments have been duly ratified by the affirmative vote of members voting in person or by proxy entitled to cast at least two-thirds (2/3) of the votes present, at a meeting held on the 11th day of December 2010.

**IN WITNESS WHEREOF**, these Restated and Amended Declaration of Covenants have been executed by the duly authorized officers of Sherwood Forest Homeowners Association, Inc., and the corporate seal has been hereunto affixed, this 11th day of December 2010.

**SHERWOOD FOREST HOMEOWNERS ASSOCIATION, INC.**

(Corporate Seal)

**By:** \_\_\_\_\_ President

**ATTEST:** By: \_\_\_\_\_ Secretary

**STATE OF NORTH CAROLINA**

**COUNTY OF TRANSYLVANIA**

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally came before me this day and acknowledged that he/she is President of Sherwood Forest Homeowners Association, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by \_\_\_\_\_, as its Secretary.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_