

FILED

DATE 2/4/2010TIME: 3:25 PMBOOK 2173PAGE 351ELAINE N. HARMON  
REGISTER OF DEEDS  
LINCOLN COUNTY, NC

## DECLARATION

OF

## COVENANTS, CONDITIONS AND RESTRICTIONS

OF

## 3 CHERRY WAY HOMEOWNERS ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF 3 CHERRY WAY HOMEOWNERS ASSOCIATION is made of this 3<sup>rd</sup> day of February, 2010, by CHERRY ENTERPRISES, INC., hereinafter referred to as the "Declarant", and any and all persons, firms, or corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to this Declaration.

## WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Lincoln County, North Carolina, known as 3 CHERRY WAY, as more particularly described on Exhibit A attached to which attachment reference is hereby made for more complete description, and

WHEREAS, Declarant desires to insure the attractiveness of the community; to prevent any future impairment thereof; to prevent nuisances; to preserve, protect and enhance the values and amenities of all properties within the community; and to provide for the operation, maintenance and upkeep of the Common Property, as hereinafter defined, and to this end desires to subject the Community to the covenants, restrictions, easements, agreements, charges, and liens hereinafter set forth, all of which are for the protection and benefit of said property and each and every owner of all or any part thereof, and each of which shall inure to the benefit of and run with said Property; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities of all Properties within the Community and to insure the residents full use and enjoyment of the specific rights, privileges and easements of the Common Property, hereinafter defined, to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Property and related recreational facilities, and administering and enforcing the Declaration and collecting and disbursing the dues and assessment charges hereinafter created; and

WHEREAS, Declarant has caused or will cause to be incorporated under North Carolina law a nonprofit corporation with the name of 3 Cherry Way Homeowners Association, Inc. for the purpose of exercising and performing the aforesaid function; and

✓ Virginia Bell-wyn  
8151 W. 16th St  
Denver NC 80237

**WHEREAS**, Declarant desires to establish a general plan of development as herein set out for the purposes set forth above and for the mutual protection, welfare and benefit of the present and the future owners of 3 CHERRY WAY and the lots shown on Exhibit A therein; and

**WHEREAS**, Declarant intends to subject to Declaration additional portions of 3 CHERRY WAY for the purpose of extending the general scheme of development to such additional Property and accordingly declares that 3 CHERRY WAY Community may be expanded to include additional Property; and

**WHEREAS**, Declarant desires to provide for the preservation of the values of 3 CHERRY WAY Community, as expanded, hereby and hereinafter made subject to this Declaration and for the preservation and maintenance of the Common Property established by the Declaration and by the supplements hereto; and

**WHEREAS**, Declarant intends to develop 3 CHERRY WAY as an Active Adult Community providing housing and other amenities predominantly for the use and enjoyment of persons 55 years and older.

**NOW, THEREFORE**, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the Property described on said recorded plats and all of the Property hereinafter made subject to this Declaration by recorded supplements hereto referencing subsequently recorded plats, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of 3 CHERRY WAY Community as it now exists and is hereinafter expanded and upon the express understanding and intent that such easements, restrictions, covenants and conditions shall burden and run with said real Property and be binding on all parties now or hereafter owning said real Property and their heirs, successors, and assigns, having any right, title or interest in the Properties now or hereafter subjected to this Declaration or any part thereof, and shall inure to the benefit of each owner thereof and burden each owner's real Property that is subjected to this Declaration.

## **HOUSING FOR OLDER PERSONS**

3 CHERRY WAY is a community designed for and intended to be occupied by older persons. Typically, such a community is referred to as an "Adult Community." Only with the approval of the Declarant or the Board of Directors of the Association shall a dwelling unit on any lot be sold to or occupied solely by a person under the age of 55 years. Dwelling units must be occupied by at least one person of the age of 55 or older. Although children, grandchildren and other visitors under the age of 18 years are welcome to visit from time to time, no such visitors under the age of 18 years shall be permitted to become permanent residents without prior approval of the Board of Directors of the Association. Once approval is granted by the Board of Directors for any particular minor, such approval shall not be revoked except for just cause.

## **ARTICLE 1**

### **DEFINITIONS**

**Section 1.01** "Association" shall mean and refer to 3 CHERRY WAY Homeowners Association, Inc., a not for profit North Carolina corporation, its successors and assigns.

**Section 1.02** "Board of Directors" means The Board of Directors of the Association.

**Section 1.03** "Committee" shall mean the Architectural Control Committee established by the Declarant for the purpose of administering architectural control as provided in Article V of this Declaration.

**Section 1.04** "Common Property" shall mean all property owned by or subject to conveyance to the Association for the common use and enjoyment of all owners. Common Property is all the property within 3 CHERRY WAY excluding the lots and the dwelling units on the lots. The terms "Common Property" and "Common Area" are synonymous.

**Section 1.05** "Community" shall mean the Property, including the Common Property and the lots. The terms "Community", "3 CHERRY WAY" and "subdivision" are interchangeable.

**Section 1.06** "Declarant" shall mean CHERRY ENTERPRISES, INC. and their heirs, personal representatives, successors and assigns, provided as to such successors and assigns only when they acquire one or more undeveloped units from the Declarant for the purpose of development and if the rights and obligations of the Declarant hereunder are expressly assigned to and assumed by such successors and assigns.

**Section 1.07** "Dwelling Unit" shall mean and refer to the completed townhouse located upon a lot. The terms "Dwelling Unit" and "Unit" are interchangeable.

**Section 1.08** "Improved Lot" shall mean a Lot upon which is located a Dwelling Unit, with a Certificate of Occupancy issued.

**Section 1.09** "Lot" shall mean a building lot shown upon any recorded subdivision plat of the Property. The terms "Lot" and "Building Lot" are interchangeable.

**Section 1.10** "Owner" shall mean and refer to any contract buyer and/or the record owner, whether one or more persons or entities, of a fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation provided, however, the Declarant shall not be deemed an Owner.

**Section 1.11** "Party Wall" shall mean and refer to each wall that is part of a Dwelling Unit and is placed on or is intended to be placed on the dividing lot line between two Lots and constitutes a common wall with the Dwelling Unit on an adjoining Lot. A Party Wall shall be for the benefit of and shall burden, reciprocally each Lot that such Party Wall divides.

**Section 1.12** "Property" shall mean and refer to that certain property shown on Exhibit A and shall also mean and refer to such revisions thereto and all or such part of the additional property described in Section 2.02 which Declarant subjects to this Declaration from time to time by one or more subsequently recorded Restrictive Covenants adopting this Declaration by reference which additional phase or phases shall become a part of the Subdivision at the time of recording of each such Restrictive Covenants. The terms "Property", "Subdivision" and "3 CHERRY WAY" are interchangeable.

**Section 1.13** "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association.

**Section 1.14** "Bylaws" shall mean the Bylaws for the Association.

**Section 1.15** "Initial Assessment" shall mean the one-time initial contribution from each purchaser of a lot, that will be used for initially funding 3 CHERRY WAY Homeowners Association.

## ARTICLE II

### PROPERTY SUBJECT TO THE DECLARATION AND WITHIN THE ASSOCIATION'S JURISDICTION

**Section 2.01** 3 CHERRY WAY Community. The real Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Lincoln County, North Carolina and is shown on Exhibit A.

**Section 2.02** Additions to 3 CHERRY WAY Community. The Declarant, at their election, may expand the community by bringing within the scheme of the Declaration and any related restrictions all or a portion of the Additional Property. The Additional Property may consist of portions of the lands described in deed record

Book 541, Page 438, which the Declarant may chose to add to 3 CHERRY WAY by a written supplement to this Declaration by recording such written supplement describing additional Property to be incorporated herein.

### ARTICLE III

#### THE ASSOCIATION AND VOTING RIGHTS

**Section 3.01 Membership.** Every Owner shall be a member of the Association, including all the associated rights and responsibilities. Membership is appurtenant to a member's lot and may not be assigned. If and when Declarant develops additional phases in the subdivision the owners of those lots shall be members of the Association. The Declarant shall also be a member so long as it owns property within the Community.

**Section 3.02 Voting Rights.** The Association shall have two classes of voting membership: Class A and Class B Members.

Class A members shall be all Owners (excepting however the Declarant), and each such Owner shall be entitled to one vote for each lot owned. When more than one (1) person owns an interest in a lot all such persons shall be members but the vote for such lot shall be exercised as they, among themselves, shall determine. Multiple owners of the same lot shall designate one of said owners to be the voting member, the voting member to be identified as such at time of meeting registration. All owners of a lot may decide how to vote but only the designated member may cast a vote for that lot. In no event shall more than one vote be cast with respect to any lot.

Class B members shall be the Declarant. The Class B member shall be entitled to vote fifty (50) votes for each lot owned. Class B membership shall cease and be converted to Class A membership at the earlier of four months after one hundred percent (100%) of the lots have been sold and conveyed by Declarant to unrelated third parties or ten years from the date of recording of this Declaration; provided however Declarant may at any earlier time elect to abolish Class B membership by delivery of written notice thereof to the Association.

**Section 3.03 Board of Directors.** There shall be five (5) members of the Board of Directors of the Association who shall serve until such time as their successors are duly elected and agree to serve. The directors shall have annual meetings and such other meetings as may be called pursuant to the Bylaws of 3 CHERRY WAY Homeowners Association. So long as the Declarant, or its successors or assigns is the Class B member, it shall select the Board, provided it must select at least one of the members from the Lot owners other than the Declarant after the first ten (10) Lots are sold.

**Section 3.04 Suspension of Voting Right.** The Association acting through its Board of Directors, shall have the right to:

- (a) Suspend the voting rights (if any) of an Owner for any period during which monthly dues or any assessment on his Lot remains unpaid and enforce collection of the same; or
- (b) Suspend the voting rights (if any) of each Owner who is a contract buyer for any period of time during which payments to the Declarant pursuant to terms of said contract are delinquent during which period of time the Declarant shall succeed to the voting rights of said contract buyer; or
- (c) Suspend voting rights for just cause pursuant to its rules and regulations and according to the provisions of this Declaration.

**Section 3.05 Availability of Documents.** The Association shall maintain current copies of the Declaration, Bylaws and other rules concerning the Development as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours.

**Section 3.06 Management Contracts.** The Association is authorized and empowered to engage the services of any person or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association provided.

however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon (90) days prior written notice to the manager without payment of a termination fee.

**Section 3.07** The Common Areas, together with all utilities, easements and amenities located within the Common Areas and not otherwise maintained by public entities or utilities, shall be maintained by the Association.

**Section 3.08 Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements located on all Common Areas which the Association is obligated to maintain and the necessary supplies to operate 3 CHERRY WAY Community Center and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the monthly association dues and any special assessments, as hereinafter defined, and as set forth in Section 5.02.

**Section 3.09 Rules and Regulations.** The Board of Directors, pursuant to the Bylaws of 3 CHERRY WAY Homeowners Association, shall adopt rules and regulations governing the use of Common Areas and the personal behavior and conduct of the members, their families, guests, invitees and tenants. Should members desire to amend such rules and regulations, then a meeting of the members may be called and held, in accordance with 3 CHERRY WAY Homeowners Association Bylaws, for the purpose of voting to amend such rules and regulations. If such a meeting is held, the Owners may direct the Board of Directors to make such amendments to the rules and regulations including additions to and deletions of portions of such rules and regulations, as are approved by vote of the members in accordance with the Bylaws.

## ARTICLE IV

### OWNERS EASEMENT TO USE AND ENJOY THE COMMON PROPERTY

**Section 4.01 Easement of Non-Exclusive Use and Enjoyment.** The Declarant and, to the extent provided by this Declaration, every Owner shall have a right and easement of ingress, egress, and regress over the Common Property, and over the roads within 3 CHERRY WAY, to be used in common with others, for the benefit of the Owner, his family, agents, licensees and invitees and for his and their non-exclusive use and enjoyment subject, however, to the limitations on such use and enjoyment of the Common Property as provided for in this Declaration. Every Owner, and the members of such Owner's family who reside with such Owner or are overnight guests of such Owner, shall have the right to use the recreational areas within the Common Property, subject however to such Owner paying when due the dues and assessments of the Association and abiding by all rules and regulations of the Association, including without limitation those governing the use of the recreational areas and the Common Property. Non-owners shall only be entitled to use the recreational areas as invited guests of Owners and on such terms and conditions as the Board of Directors may select.

**Section 4.02** Usage of the Common Areas shall be appurtenant to and shall pass with the title to the Lot, and shall be subject to the following:

- (a) The right of the Association to promulgate and enforce reasonable rules and regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas and the safety of all Owners on the Common Areas;
- (b) The right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the amenities by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations;

- (c) The right of the Declarant or the Association to grant utility, drainage and other easements across the Common Areas.

## ARTICLE V

### ASSESSMENTS

**Section 5.01 General Purposes of Assessments.** The assessments levied by the Association may be used to promote the beautification, improvement and enhancement of the Community and the repair, maintenance, operation, and restoration of the Common Property. The assessments may also be used for the recreation, health, safety and welfare of residents of the Community, the payment of the operating expenses of the Association, the enforcement of these covenants and restrictions and the rules of the Association, defraying the expenses of the Association (including professional fees, insurance and ad valorem taxes), for the exterior maintenance of each dwelling unit as provided in this Declaration and if deemed desirable by the Board of Directors, for the purpose of providing hazard insurance on all of the Dwelling Units within 3 CHERRY WAY as well as hazard insurance on the improvements placed upon the Common Property; provided however that nothing herein shall mean that assessments may not be used for the beautification of areas within the Community that are not part of the Common Property, such as entrance signs, access easements crossing private property, median strips in streets, or the interiors of cul-de-sacs.

**Section 5.02 Use of Assessments - Determination by Board of Directors of the Association.**

- (a) The Board of Directors of the Association shall be responsible for determining the proper use of the assessments that are collected. By way of example, and not as a limitation or as an express direction, the Board may determine to use the assessments to pay the following costs:
- (1) the operating and administrative expenses of the Association, including without limitation the costs and expenses related to meeting the general purposes of the Association as set forth in Section 5.01 above;
  - (2) the cost of maintenance, upkeep, repair and replacement of the following components of the Dwelling Units: roofs, exterior structural elements of Dwelling Units (including maintenance of roofs, exterior painting);
  - (3) the costs of maintaining all recreational areas and improvements located upon the Common Property and all streets, roads, road rights-of-way, ponds and pedestrian easements;
  - (4) the costs of operating, maintaining and repairing the Community Center and other Common Property;
  - (5) The salaries, administrative office and other expenses necessary or useful to maintain and operate the Association (including, without limitation, the payment of professional fees for accounting and legal services and the procuring, maintenance and paying the cost of insurance (i) related to Common Property and if deemed desirable by the Board of Directors, for the purpose of providing hazard insurance on all of the Dwelling Units within 3 CHERRY WAY as well as hazard insurance on the improvements placed upon the Common Property, (ii) against loss by fire, windstorm and hazards insured under extended coverage insurance, and (iii) by way of surety and other bonds related to the management of the Common Property and the Association;
  - (6) the seeding and reseeding and landscaping road rights-of-way and Common Property, erosion control, repairing road shoulders within 3 CHERRY WAY, surfacing, patching and resurfacing of parking lot and road pavement within 3 CHERRY WAY, placement of gravel;
  - (7) planting and maintenance of shrubs, trees and seasonal flowers, maintenance and repair of the ponds (including dam replacement, if required) and of the pedestrian easements.
  - (8) the costs of providing exterior maintenance to the Dwelling Units by way of painting or staining exterior boxing, and by way of maintaining the roofs; and the costs of all utility service to the Common Property.

- (9) provide for an annual termite inspection/treatment for all Common Areas and Owners' dwelling units, to be completed by a licensed and bonded exterminator.
- (b) Except as provided expressly in this Declaration or as may be agreed to by a majority vote of the Association, all other duties for the repair and replacement of any part of a Dwelling Unit shall be the Owner thereof.
- (c) The Association may also direct the Board of Directors to use the assessments for the purpose of adding to the recreational and common facilities by constructing additional buildings and other improvements, including, without limitation, the erection, equipping and furnishing of the Community Center, meeting rooms, dining rooms, kitchens, and bathrooms and for the purpose of erecting and constructing such recreational and athletic facilities upon the Membership of the Association, by a majority vote, electing to undertake such expenditures.
- (d) The Board of Directors of the Association shall have the right to borrow funds on behalf of the Association, to pay the costs incurred in adding to such recreational and common facilities authorized per section 5.02C and to secure the obligation to repay borrowed funds by encumbering the property of the Association with one or more deeds of trust. Such loans shall be at such interest rates and upon such repayment terms as the Board of Directors approves, provided however, unless the Association at a called meeting grants other authorization, each loan must require repayment in full of all principal and accrued interest within ten (10) years of the date of each borrowing, and provided further, the Association shall not be required to make any principal payment in any calendar year prior to the time the Board of Directors has set aside, as a sinking fund, an amount reasonably budgeted by the Board of Directors for payment of the operating costs of the Association for the calendar year in question.

**Section 5.03 Creation of Lien and Personal Obligation for Assessments.**

Declarant, for each Lot within the Community hereby covenants and each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments on Lots together with such interest thereon and costs of collection thereof, as hereinafter provided, including, without limitation, reasonable attorney's fees, shall be a charge and continuing lien on the Lot against which each such assessment is made and shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

**Section 5.04 Maximum Annual Assessments.**

The annual assessment [maintenance fee] may be paid in 12 equal payments, due the first of each month. The annual assessment beginning January 1, 2010 will be Eighteen Hundred and No/100 Dollars (\$1,800.00) or One Hundred Fifty and No/100 Dollars (\$150.00) per month.

- (a) Lots owned by the Declarant shall not be subject to annual assessments unless approved pursuant to subparagraph (d) of this Section 5.04.
- (b) Until The Homeowners Association deems appropriate, the monthly assessment for each improved Lot owned by an Owner other than Declarant shall be as set by the Board of Directors (prorated according to the number of days during the applicable month that the Lot is owned by such Owner. Each succeeding month shall be at the full monthly rate).
- (c) Beginning January 1, 2010, and each year thereafter, the maximum annual assessment for each improved Lot owned by an Owner other than Declarant may be increased by the Board of Directors of the Association without a vote of the Members, by a percentage of the maximum annual assessment for each Lot for the next preceding year which may not exceed ten (10%). If the annual assessment is not increased by the maximum amount permitted hereunder, the difference between

any actual increase which is made and the maximum increase permitted for that year shall be computed and the annual assessment may be increased by that amount in a future year by the Board of Directors of the Association without a vote of the Members, which increase may be in addition to the maximum increase otherwise permitted herein. Notwithstanding anything to the contrary, in the event additional Property is added pursuant to Section 2.02 hereof to the scheme of development set forth herein, Declarant may increase the maximum annual assessment described above to such amount as may be deemed appropriate by Declarant.

- (d) A majority vote of each class of voting Members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than ten (10%) percent.

**Section 5.05 Special Assessments.**

- (a) In addition to the annual assessment referred to above, a one-time special assessment of \$300.00 shall payable to the Association for every Lot purchased from the Declarant whether by deed or by land sales contract, such assessment to be due and payable upon the closing of such purchase. The special assessment shall be used to defray the costs of establishing 3 CHERRY WAY Homeowners Association and starting a sinking fund for the purpose of defraying the costs of described in Section 5.02(c) above and the costs of maintenance and repair of streets, drives, parking lots and the exteriors of the Units and the structures located in the Common Area. Any part of the special assessment that is not required for these purposes shall not be refunded but shall be made a part of the general funds of the Association. The Declarant reserves the right to increase this special assessment at any time and from time to time as may be needed to pay the actual costs of architectural review and administration. This one time special assessment shall be transferable in that: (1) upon the payment of the special assessment by the original Purchaser of a Lot from the Declarant, the Association shall deem the special assessment satisfied so that no subsequent Owner of that Lot shall be obligated to pay such special assessment again, and (2) the original Lot purchaser from the Declarant and every seller of that Lot thereafter shall have the right to seek from the purchaser from such seller the reimbursement of this special assessment. Neither the Declarant nor the Association shall have any duty to seek such reimbursement for the benefit of any person or party.
- (b) The Association may levy yearly special assessments in any calendar year for the purpose of supplementing the annual assessment if the same are inadequate to pay the reasonable maintenance expenses and operation costs of the Association as described in Section 5.02 hereof; provided that any such special assessments shall have the assent of a majority of each class of the voting Members of the Association at a duly called meeting. A special assessment may differ in amount as between Owners of Dwelling Units and Owners of unimproved Lots, provided that any difference is reasonable and equitably determined.

**Section 5.06 Special Assessments for Capital Improvements.** The Association may also 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 new construction, reconstruction or described capital improvements or unexpected repair or replacement or described capital improvements upon the Common Property, including the necessary fixtures and personal property related thereto; provided that any such assessments shall be adopted by a two-thirds (2/3) affirmative vote of each class of Member voting in person or by proxy at a meeting duly called for such purpose in accordance with Section 5.05.

**Section 5.07 Notice and Quorum for Any Action Authorized Under Section 5.05 and 5.06.**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.05 and 5.06 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the



meeting. At any such meeting called, the presence of Members or Proxies entitled to cast forty (40) percent of all votes of each class of Membership shall constitute a Quorum.

**Section 5.08 Uniform Rate of Assessment.** Except as otherwise provided herein, both annual and special assessments must be fixed at a uniform rate for all Improved Lots.

**Section 5.09 Special Individual Assessment.** In addition to the special assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Lot Owner ("Special Individual Assessment") (i) for the purpose of paying the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including the roadways, whether occasioned by any act or omission of such Lot Owner(s), members of such Lot Owner's family, or such Lot Owner's agent, guests, employees or invitees and not the result of ordinary wear and tear or (ii) payment of fines, penalties or other charges imposed against any particular Lot Owner relative to such Lot Owner's failure to comply with the terms and provisions of this Declaration or the Bylaws provided, however, that the Declarant shall not be obligated to pay any Special Individual Assessment except with the Declarant's prior written approval.

**Section 5.10 Date of Commencement and Payment of Annual Assessments; Due Date.**

The Annual Assessment shall be due and payable on February 1 of each year, commencing February 1, 2010, provided the Board of Directors may elect to collect the Annual Assessment on a monthly basis in advance. On a monthly basis, the dues (maintenance fees), shall be due on the first (1<sup>st</sup>) of each month, commencing on the first (1<sup>st</sup>) of the month following closing the improved Lot. The Board may also appoint a collection agent to whom Annual and/or Special Assessments shall be paid. Payment of the assessment shall be past due on the tenth (10<sup>th</sup>) day after the due date of each monthly installment. The Board of Directors of the Association shall fix the amount of the Annual Assessment for each Lot at least thirty (30) days prior to the beginning of the year for which the assessment is applicable. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due date of any special assessment shall be fixed in the resolution authorizing such assessment. The Association shall upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the status of payment of assessment(s) on a specified Lot.

**Section 5.11 Effect of Nonpayment of Assessment; Remedies of the Association.**

Any assessment (or installment) not paid within ten days after the due date shall be subject to a late charge of \$25.00 and if not paid within thirty (30) days of its due date shall bear interest thereafter at the rate per annum of the lesser of eighteen (18) percent or the highest rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien granted to it hereunder and charge the costs of collection, including attorney's fees, to the Owner. At its discretion the Board of Directors may order the water supply be turned off to the delinquent Owner's Unit per NC House Bill 1541 and this declaration. Water shall be turned on when the delinquent Owner satisfies by payment or arrangement the delinquent assessment. No Owner may waive or otherwise escape liability for the assessments provided herein by nonuse of the Common Property or abandonment of his Lot. For purposes of this Section, the amount of delinquent assessments plus accrued interest and collection costs shall be evidenced by this paragraph, and this Declaration shall be considered an evidence of indebtedness under the provisions of Section 6-21.2 of the North Carolina General Statutes, or similar statutes.

**Section 5.12 Subordination of Lien to Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage 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 sale or transfer shall release such Lot from liability for any assessments thereafter coming due or from the lien thereof.

## ARTICLE VI

## PARTY WALLS

**Section 6.01 General Rules of Law to Apply.** Each wall that is built as part of the original construction of the townhouses within the Community and placed on the dividing line between Improved Lots shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Article VI, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 6.02 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of the Party Wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 6.03 Destruction by Fire or Other Casualty.** Subject to the provisions of Section 7.06, if a Party Wall is destroyed or damaged by fire or other casualty, the Owner of either of the Improved Lots that have benefited by and burdened with the Party Wall may restore and reconstruct the Party Wall, and each of such Owners shall have the duty to contribute equally to the cost of repair and reconstruction of the Party Wall provided, however, if the damage or destruction is the sole result of the willful or negligent act or omission of one of the Owners, such Owner shall have the duty to pay for the cost of repair and reconstruction of the Party Wall. When a Party Wall is rebuilt after complete or partial destruction, it shall be reconstructed on the same site, shall be of the same size and dimensions and shall be of the same or similar materials of like quality as the Party Wall was constructed prior to such damage or destruction provided, however, changes in size, design and materials may be made with the approval of the Lot Owners using said wall and with the approval of the Architectural Control Committee, such approvals to be in writing.

**Section 6.04 Party Wall Conveyance; Easement of lateral support.**

- (a) If a Lot is improved with a Dwelling Unit that has a Party Wall dividing it from a Dwelling Unit on an adjoining Lot, then the conveyance of such Lot shall include a conveyance of an undivided interest in the Party Wall and the center of the Party Wall shall be, for all purposes, deemed the dividing line between the two Lots.
- (b) A grant of easement of lateral support is and shall be a part of each conveyance so that each improved Lot divided by a Party Wall is and shall be burdened with a duty to provide lateral support for the Party Wall to the benefit of the adjoining improved Lot. There is hereby reserved in each conveyance of each improved Lot that has a Party Wall an easement of lateral support for the benefit of the adjoining improved Lot that is separated there from by the Party Wall.

**Section 6.05 Insurance.** Unless the Association elects to carry hazard insurance on all the Dwelling Units, the Owner of each Lot that is benefited and burdened by a Party Wall shall insure his Dwelling Unit and the Party Wall with replacement cost insurance against fire, windstorm, lightning and the hazards customarily insured under extended coverage endorsements.

**Section 6.06 Covenants Run With the Land.** Each Party Wall shall be and remain a Party Wall for the use and benefit of the Owners of the Improved Lots that are benefited and burdened thereby. All benefits, rights and burdens of an Owner, including, without limitation, the rights and duties respecting contribution to the cost of repair and restoration of the Party Wall are and shall be appurtenant to each Improved Lot and shall pass with the title thereto.

## ARTICLE VII

## INSURANCE

**Section 7.01 Fire and Extended Coverage Insurance.**

- (a) By Owners: Unless the Association elects to carry hazard insurance on each Dwelling Unit, each Owner shall procure and maintain at such Owner's expense a physical hazard insurance policy insuring the Owner's Improved Lot (including any applicable Party Wall) on an "all risk" basis, including, without limitation, fire, vandalism, flood, hurricane and earthquake and other coverages customarily included in "extended coverage" endorsements in an amount equal to the full replacement cost of the improvements. The policy must provide for at least thirty (30) days written notice to the Association and to any holder of a first mortgage on an Improved Lot before the insurance is canceled or substantially modified. If permitted by law, such policy shall name the Association as one of the named insureds as its interests appear, and copies of said policies and renewals thereof shall be furnished to the Association. Upon failure by any Owner to promptly pay the premiums due on the policy insuring the Owner's Improved Lot, the Association may, but is not required to, pay the delinquent premium(s) and add the same to the annual assessment against the subject Improved Lot which shall be due and payable on or before the first day of the calendar month following payment of the same by the Association. The proceeds of the insurance policy procured by Owner pursuant to this Section are hereby assigned to the Association to be applied as provided in Section 7.06 and each Owner agrees to execute any other documentation necessary or desirable to effectuate this assignment.
- (b) By Association: The Board of Directors shall procure and maintain such insurance coverages as it deems necessary or useful in order to carry out the obligations of the Association as set forth in this Declaration. At a minimum, all improvements and personal property included in the Common Property should be insured in an amount equal to 100% of replacement cost of the insured Property at the time the insurance is purchased.

#### **Section 7.02 Public Liability Insurance.**

- (a) By Owners: Each Owner, at his own expense, shall keep in force comprehensive personal liability insurance for injury to persons or damage to property of others occurring on Owner's Lot in such amounts as the Board shall from time to time determine, with the minimum amount of \$1,000,000.00. The policy must provide for at least thirty (30) days written notice to the Association and to any holder of a first mortgage on an Improved Lot before the insurance is cancelled or substantially modified. The policy must list 3 Cherry Way Homeowners Association, Inc. as named insured. Additionally, the policy must list Cherry Enterprises, Inc. as additional named insured for so long as Cherry Enterprises, Inc. owns property in 3 Cherry Way. A copy of such policy and any renewal shall be furnished to the Association. In the event Owner fails or refuses to maintain such insurance coverage as herein required, the Association may, but shall not be obligated to, secure and maintain such insurance coverage for Owner's benefit, and add the cost or expense thereof to the annual assessment against the subject Improved Lot which shall be due and payable on or before the first day of the calendar month following payment of the same by the Association.
- (b) By Association: The Association shall obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may from time to time determine, which shall not be less than that required by private institutional mortgage investments for projects similar in construction, location and use, covering the Association, each member of the Board, the Managing Agent, if any, and each Owner, with respect to his liability arising out of the ownership, maintenance, repair or use of the Common Property and legal liability arising out of lawsuits relating to employment contracts of the Association. Such insurance shall include endorsements covering the cost of liability claims of one insured against another, including the liability of the Owners as a group to a single Owner.

**Section 7.03 Fidelity Bonds.** The Board of Directors shall have the right to obtain fidelity insurance for all officers, directors, employees, and/or the Managing Agent of the Association and all other persons handling or responsible for funds of or administered by the Association. Such fidelity bonds shall name the Association as an obligee and shall be in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association and for the Managing Agent at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to one and one-half

times estimated annual operating expenses and reserves. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

**Section 7.04 Officers' and Directors' Coverage.** The Board shall also be entitled to obtain and maintain insurance indemnifying each member of the Board and each officer of the Association against any and all loss, damage, liability or expense incurred by such officer or director at any time by reason of or arising out of any act performed by such Officer or Director on behalf of the Association or in furtherance of its interests, except for liability for gross negligence, willful malfeasance or fraud. The policy shall cover all individual officers and directors as well as the Association as named insureds and shall be in such amount as the Board of Directors determines from time to time to be desirable.

**Section 7.05 Other.** The Board shall obtain such other insurance coverages, including flood insurance, workmen's compensation, host liquor liability insurance, and comprehensive automobile liability insurance, as the Board shall determine from time to time to be desirable.

**Section 7.06 Duty to Repair Damage or Destruction by Fire or Other Casualty.**

- (a) Except as herein specifically stated, all casualty damages shall be promptly repaired and all insurance proceeds paid under both the Owner's and Association's policies shall be used for such purpose. In case of duplicate coverages by the Association and the Owner where proceeds are payable under both policies for the same damages, and the total amount of the proceeds exceed the cost of repair, the Association's policy shall be deemed "excess coverage" and used only to the extent proceeds payable under the Owner's policy are not sufficient for such repair and replacement.
- (b) The Association is hereby designated as an insurance trustee to receive such insurance proceeds as are paid and to hold the same in trust for the purposes stated in this Section 7.06. Except as specifically provided in subsection (c), the Board of Directors shall arrange for the prompt repair and restoration of any damaged Improved Lot and Common Property in accordance with the original plans and specifications for the damaged improvements, and the Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration and appropriate progress payments.
- (c) The provisions of this Section 7.06 shall apply to any portion of the Community for which insurance coverage is required unless the Owners decide not to rebuild by an eighty (80%) percent vote, including one hundred (100%) approval of Owners of Improved Lots not to be rebuilt. Upon the adoption of such resolution, any insurance proceeds received by reason of damage to such Improved Lot not required to pay the costs of demolition and site cleanup shall be delivered to the Owners of such Improved Lot, subject to the rights of any mortgagee. Any proceeds received by the Association under its policy shall be treated as a common surplus.

**Section 7.07 Owner's Personal Property.** Each Owner shall be responsible for obtaining insurance coverage for such Owner's furniture, furnishings, and personal property against loss by fire, windstorm and extended coverage perils and the Association shall have no liability for the loss thereof. All such policies shall contain a waiver of subrogation against the Association.

## ARTICLE VIII

### CONVEYANCE OF COMMON PROPERTY

**Section 8.01** Upon the sale of all Lots, Declarant by deed will convey its right, title and interest in and over the road rights-of-way and any other Common Property within the Subdivision to the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all common areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

## ARTICLE IX

## ARCHITECTURAL CONTROL

**Section 9.01 Architectural Control Committee.** In order to control modifications and alterations to the design and location of the Dwelling Units and other improvements (the "Improvements") after the same have been initially constructed upon the Lots in the Subdivision, the Declarant hereby creates an Architectural Control Committee for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for modifications and alterations to such improvements.

**Section 9.02 Control of the Committee.** The Committee shall be controlled by the Declarant until a certificate of occupancy is issued for the Dwelling Units on all the Lots in the Community, provided Declarant, by written notice to the Association, may elect to relinquish control of the Committee to the Association at an earlier date, and in either case the control of the Committee shall pass to the Association. During the period of control by Declarant, the Committee shall be comprised of such members, not to exceed three (3), as Declarant designates. The Committee shall be composed of three (3) members upon the Association taking control, who shall be elected by a majority vote of the members of the Association at a meeting of the members called for this purpose. At any time, the Committee may, but shall not have the duty to, retain one or more architects or other house designers and land planners as it deems advisable to assist the Committee in performing its review responsibilities. The Committee shall have the additional right of deciding whether or not Lot purchasers shall have the right to act as their own general contractors as to remodeling and improvements to the Dwelling Units.

**Section 9.03 Plans for Remodeling, Outbuildings and Fences.** After the certificate of occupancy is issued with respect to the original construction, no building, fence, wall, outbuilding or any other accessory feature to the Dwelling Unit or any other structure upon any building Lot shall be commenced, erected, placed, maintained or altered on any Lot or combination of contiguous Lots, until the Complete Construction Plans (the "Plans") for the remodeling or improvements are approved in writing, by Committee or its designated agents. These rules shall also apply in the event of reconstruction or repair after any damage or loss to the Dwelling Units or any part of the Common Property.

**Section 9.04 Approval of Plans.** The Committee or its designated agents shall have thirty (30) days after physical receipt of the Plans to accept or reject the same in whole or in part. If no response by the Committee has been made in writing within said 30 days, the Plans shall be deemed to be approved as submitted. After the Plans are approved and after the Committee gives written permission for construction, reconstruction or remodeling to begin, the actual construction, reconstruction or remodeling shall be commenced and completed in accordance with the approved Plans, together with the requirements of the Declaration and the Restrictive Covenants for 3 CHERRY WAY. The Committee shall have the right to waive minor setback violations, not to exceed a variance of 10% in any single instance, when the remedial costs of correcting such violation, in the Committee's opinion, would impose undue hardship upon the violator. The Plans that are developed by the Declarant for the construction of the townhomes on each Lot are automatically approved.

**Section 9.05 Submission of Plans.** Any Owner who wishes to submit remodeling, reconstruction, or improvement plans to the Architectural Control Committee shall do so by submitting to the Committee the following:

- (1) A completed "Request for Architectural Review" form. (Form to be created by the Architectural Control Committee.)
- (2) A complete set of drawings and any required attachments.
- (3) For extensive physical construction a check for \$200.00 to pay for professional review of the plans.

(It is not the intention of the Declarant or the Association to levy a charge for a simple plan and request of an Owner for planting flowers or plants in the established planting area in front of each Unit. However, such plans must still be submitted for review and approval by the Architectural Control Committee with no attached fee).

**Section 9.06 Liability.** Neither the Association, the Architectural Control Committee, the officers, agents, directors, or members thereof, nor the Declarant shall be liable for damages or otherwise to anyone submitting plans and specification and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, or nonfeasance arising out of services pursuant to this Declaration.

## ARTICLE X

### GENERAL USE RESTRICTIONS

**Section 10.01 Separately recorded Restrictive Covenants.** Declarant does hereby covenant and agree with all persons, firms or corporations hereinafter acquiring title to any portion of the Property, that the Property shown on the recorded plats herein referred to may be subjected to Restrictive Covenants as to the use thereof, which Restrictive Covenants shall be recorded separately and shall refer to this Declaration and incorporate it by reference. As to additional phases of 3 CHERRY WAY, the same shall become subject to this Declaration and become a part of the Subdivision upon the recording of Restrictive Covenants for such additional phases, which Restrictive Covenants refer to recorded plats for such additional phases and refer to and incorporate by reference this Declaration.

**Section 10.02 Nuisance.** No noxious or offensive activity shall be conducted upon any Unit or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

**Section 10.03 Maintenance.** All Owners shall keep their respective Unit, whether occupied or unoccupied, in a clean, neat, attractive condition and in a good state of repair. This includes insect/pest control to avoid health or nuisance problems for the Owner and/or neighbors. No Owner shall modify or alter the exterior design or appearance of his Unit without the express written consent of the Board of Directors of the Association.

**Section 10.04 No-Outside Appurtenances.** No outside clotheslines shall be permitted. No television antennas, buildings, sheds, carport add-ons, pet houses, or other structures shall be permitted. Satellite antennas twenty (20) inches or less in size shall be permitted only by written permission of the Architectural Control Committee.

**Section 10.05 Animals.** No animals of any kind shall be kept or maintained in any Unit, except small common household pets may be kept or maintained provided they are not kept for commercial purposes. In no event shall more than two (2) dogs or two (2) cats or a combination thereof be permitted to reside in any Unit. During the construction phase of 3 Cherry Way, a new home purchaser may have three (3) dogs or three (3) cats or a combination thereof will be permitted to reside in a Unit, however, upon the demise of one of the pets, the pet may not be replaced. No pet shall be permitted upon the Common Areas unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Common Areas outside or inside a dwelling unit. Pets shall not be permitted to defecate in the Common Areas, and each Owner shall clean up immediately after his pet. All applicable laws and regulations concerning licensing, control or restraint, and health, with respect to domestic animals, must be complied with. No pets, including dogs or cats, shall be kept outside on a continuous basis. Pens, dog lots, dog houses, etc., are not permitted. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Areas caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, the Board of Directors shall have the right to require the Owner to remove the pet permanently from the property upon not less than ten (10) days written notice.

**Section 10.06 Signs.** No signs, billboards, or other advertising devices shall be displayed upon any Unit or in the Common Areas, or in the facilities thereon, without written permission of the Association. "FOR SALE" signs on subsequent Unit resales shall be strictly controlled, and may be placed in the landscaped area in front of the unit, at the front of the carport, so long as there is no interference with lawn mowing, or in a window of the unit. No "FOR SALE" or real estate signs shall be placed along Unity Church Road. Any other locations

shall be approved by the Architectural Control Committee. Signs for security systems may be placed adjacent to the carport or in the landscaped area in front of the Unit. Safety related signs approved by the Board of Directors may be placed on Common Areas.

**Section 10.07 Leasing - Prohibition of Renting for Transient or Hotel Purposes.** No Unit may be leased except in accordance with rules and regulations promulgated by the Association, and without the express written approval of the Declarant or the Board of Directors. An Owner may rent or lease his home only under certain circumstances. A rental or lease must conform to the "Housing for Older Persons" section of this Declaration, specifically, the rental or lease must be for at least one occupant to be of the age of fifty-five (55) years or older, with no permanent residents under the age of eighteen (18) years, unless approved by the Board of Directors. No Unit Owner shall rent his Unit for transient or hotel purposes, which for the purposes of this Declaration, shall be defined as either a rental for less than twelve (12) months or any rental if the lessee of the Unit is provided customary hotel services. Each permitted lease shall be in writing and shall be subject to this Declaration, the Bylaws, and the rules and regulations adopted hereunder and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing restrictions, each Unit Owner shall have the full right to lease all or any portion his Unit.

**Section 10.08 Vehicles and Parking.** No truck or commercial vehicle in excess of one-ton load capacity or any vehicle under repair, or any trailer, wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot. Trailers, campers, boats, motor homes, and recreational vehicles must be parked in the storage area specifically designated by the Declarant or Association for the storage of such vehicles. Commercial trucks may not use this storage area. All other vehicles must have a current license plate affixed and must be parked on the concrete driveway associated with the Unit. It is the intent of the Declarant and the Association to maintain an attractive community. Dilapidated vehicles shall not be maintained in public view on any Lot. Parking of Owners' vehicles on the private streets of 3 CHERRY WAY is strictly prohibited, excepting for occasional overflow parking. No vehicles shall be parked on the grass of the Common Property.

**Section 10.09 Hazardous Activities.** Nothing shall be done or kept in or on any Unit or in the Common Areas which will increase the rate of insurance on the Common Areas or any other Unit without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in his Unit or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

**Section 10.10 Rules and Regulations.** Reasonable rules and regulations governing the use of the Common Areas and personal behavior may be published and may be amended from time to time. All such rules and regulations and amendments thereto, subsequent to the initial set of rules and regulations established by Declarant, shall be approved by the Board of Directors before same shall become effective, except that prior to relinquishment of control, the Declarant shall have sole discretion to change or amend the rules and regulations. Copies of such regulations and amendments thereto shall be furnished to each Member by the Declarant or the Association upon request.

**Section 10.11 Trash Disposal.** No trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection agencies or companies.

**Section 10.12 Access to Units.** The Association or its agent shall have access to each Unit to make emergency repairs to prevent damage to the Common Areas or another Unit at all times and will make attempts to contact owner prior entry. However, should owner be unavailable the Association or its agent shall have access without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Unit.

**Section 10.13 Fines.** Should any fine(s) be levied for an Owner's violation of this Declaration, the Association Bylaws or the published rules and regulations of the Association the procedure prescribed in G.S. 47F-3-107 shall be followed. The amount of any fine shall be determined by the Board of Directors and be based on the specific violation, the severity of the violation and past history of violations by said Owner.

## ARTICLE XI

## EASEMENTS

**Section 11.01 Recorded Plat.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded map of the Community or any map to be recorded. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements.

**Section 11.02 Support.** Every portion of a single family attached townhouse contributing to the support of an abutting building shall be burdened with an easement of support for the benefit of such abutting townhouse. Further, all attachments to the exterior walls of a townhouse which are a part thereof, but which protrude beyond said boundaries and were constructed in conformity with the plans and specifications shall be deemed to be included within said boundaries and there is hereby reserved an easement to permit the construction of the continued existence of any such protruding attachment.

**Section 11.03 Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines Located Inside Townhome.** Each Owner shall have an easement in common with all other Owners to use all pipes, wires, ducts, cables, conduits, public utility lines located in any of the other townhouses and serving his townhome. Each townhouse shall be subject to an easement in favor of the Owners of all other townhouses to use the pipes, wires, ducts, cables, conduits, public utility lines serving such other townhouses and located in such townhouse. The Board of Directors shall have the right to access each townhouse to maintain, repair and replace any pipes, wires, ducts, cables, conduits, public utility lines serving other townhouses contained therein. Except in case of emergency such access shall be with reasonable notice and during normal business hours.

**Section 11.04 Common Property.** The Association and Declarant are hereby granted perpetual easements for the purposes of establishing, maintaining, repairing, replacing and landscaping the Common Property and any Recreational Amenities. The amount, manner and maintenance of landscaping shall be at the absolute discretion of the Declarant or the Association, as the case may be. Declarant, for itself and its successors and assigns (including the Association), reserves the right to file revisions of the recorded subdivision maps depicting the Common Property and Common Area easements to which filings the Owners of Lots shall be deemed to have consented without right of further approval by their acceptance of a deed to their respective Lots. There shall be no obligation to file any revisions of the recorded subdivision maps.

**Section 11.05 Reservation by Declarant.** The Declarant expressly reserves to itself and its successors and assigns, every reasonable use and enjoyment of the Common Property which is not inconsistent with the provisions of this Declaration. Declarant hereby reserves easements and other rights for the benefit of the land of Declarant which is (a) adjacent to or in proximity of the Community, (b) now or hereafter owned by Declarant, and (c) to be developed as a planned unit development or otherwise. These reserved easements and other rights shall be for the purposes of providing such benefits as shared recreational facilities and amenities over the Common Property and Recreational Amenities, reasonable access for pedestrian and vehicular traffic, open areas, green spaces, park lands and other suitable shared uses in, along and over any portion of the Common Property and any Recreational Amenities; provided, however, that the rights herein reserved by Declarant in, along or over the Common Property and Recreational Amenities for the benefit of adjacent or other land now or hereafter owned or acquired by Declarant or such third parties shall not be available to Declarant or said third parties unless Declarant (or said third party) for themselves, their respective heirs, successors and assigns agrees to be bound (as evidenced by an instrument in writing in recordable form) to share with the Owners and the Association in the expense of operation, maintenance, repair and replacement of the Common Property and Recreational Amenities made available to Declarant (or such third parties) based upon the total number of dwelling units which are or will be entitled to the use and benefit of such Common Property and Recreational Amenities, provided further, that the obligations to be incurred in connection therewith shall not accrue or be incurred or due until the date Declarant or such third parties are entitled to



actual usage of the portions of the Common Property and Recreational Amenities made available. Each Owner and the Association grant to Declarant an irrevocable "durable" power of attorney (which shall survive incompetency) pursuant to Chapter 32-A of the North Carolina General Statutes, to execute, acknowledge and record for and in the name of each Owner and the Association such instruments as may be necessary to effectuate the foregoing. No such third parties shall be entitled to the benefits and rights reserved hereunder without the express written consent of Declarant.

## ARTICLE XII

### GENERAL PROVISIONS

**Section 12.01 Enforcement.** Declarant, the Association and any Owner shall have the right to enforce, by any 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 Declarant, the Association or 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. Enforcement shall be by proceedings at law or in equity against any person or persons, firm or firms, or entity or entities violating or attempting to violate any covenant and to restrain violation or to recover damages or both. In the event a proceeding is commenced by any party entitled to enforce these covenants is concluded in favor of such party, that party shall be entitled to recover from the defendant or defendants in such proceeding the reasonable attorney's fees incurred by the prevailing party in prosecuting such proceeding. (i) At its discretion the Board of Directors may elect to appoint an "Adjudicatory Panel" to hear the defense an Owner may present when said Owner has been issued notice of violation and possible fine for violating any part of this Declaration, Association Bylaws or published Rules and Regulation. The amount of any fine shall be determined by the Board of Directors on a case by case basis. When a fine is prescribed for a particular violation any future similar violation by any Owner shall carry the same fine. The Association shall use the procedures for fines and suspension of planned community privileges or services published in Section 47F-3-107.1 of the North Carolina Planned Community Act.

**Section 12.02 Severability.** Invalidity 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 12.03 Term.** The Covenants and Restrictions of this Declaration shall run with the land and shall be binding on all parties and shall inure to the benefit of Declarant, the Association and the Owner of any Lot subject to this Declaration, their legal representatives, heirs, successors and assigns, and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are filed for registration, after which time they shall be automatically extended for successive periods of ten (10) years unless they are amended or terminated in accordance with the provisions of Section 12.04.

**Section 12.04 Amendment.** (a) The covenants, conditions and restrictions of this Declaration may be amended or terminated during the initial twenty-five (25) year term by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots subject to this Declaration at the time of such amendment, and after such twenty-five (25) year term by an instrument signed by Owners of not less than sixty-seven percent (67%) of such Lots; provided, however, that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Lincoln County Public Registry. (b) For the purposes of Article XII, adding additional property to 3 CHERRY WAY and encumbering the same with this Declaration shall not be deemed an amendment to this Declaration.

**Section 12.05 Procedure for Certification and Recording of Amendment.** Any instrument amending these covenants, conditions and restrictions other than amendment by the Board of Directors of the Association to correct an error or inconsistency in drafting, typing or reproduction shall be delivered following execution by Owners to the Board of Directors of the Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

- (a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 12.04. (For this purpose, the Board of Directors may rely on its roster of members and shall not be required to cause title to any Lot to be examined);
- (b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner deeds are executed;
- (c) Immediately and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Lincoln County Public Registry.

All amendments shall be effective from the date of recordation in the Lincoln County Public Registry; provided however that no such instrument shall be valid until it is indexed in the name of the Association. When any instrument purporting to amend these covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this Section, it shall be conclusively presumed that such instrument constituted a valid amendment as to the Owners of all Lots subject to this Declaration.

### ARTICLE XIII CAPTIONS

**Section 13.01 Number.** Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural and vice versa, and the masculine gender shall include the feminine and neuter, and the neuter shall include the masculine and feminine.

**Section 13.02 Captions.** The captions herein are inserted only for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions herein.

IN WITNESS WHEREOF, the Declarant has caused this Supplemental and Amended Declaration to be duly executed this 3<sup>rd</sup> day of February, 2010.

CHERRY ENTERPRISE, INC., a North Carolina Corporation

By *[Signature]* (SEAL)  
Gary G. Dellinger, President

NORTH CAROLINA

LINCOLN COUNTY

I, Karen P. Bell, a Notary Public for said County and State do hereby certify that Gary G. Dellinger, President of Cherry Enterprises, Inc., a North Carolina Corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial seal, this the 4<sup>th</sup> day of February, 2010.

My Commission Expires:



*Karen P. Bell*  
Notary Public

Attached to the Declaration of Covenants, Conditions and Restrictions of 3 CHERRY WAY Community and Homeowners Association.

**Tract I:**

Being all of Lots 49 through 72 and Lots 89 through 96 of 3 CHERRY WAY as so shown on a map thereof prepared by Dedmon Surveys recorded in Book 15, at page 99 in the Office of the Register of Deeds of Lincoln County, North Carolina.

**Tract II:**

Being all of Lots 97 through 128 of 3 CHERRY WAY as so shown on a map thereof prepared by Dedmon Surveys recorded in Book 15, at page 100 and revised plat recorded in Book 15, at page 229 in the Office of the Register of Deeds of Lincoln County, North Carolina.

**Tract III:**

Being all of Lots 133 through 148 and Lots 177 through 198 of 3 CHERRY WAY as so shown on a map thereof prepared by Dedmon Surveys recorded in Book 15, at page 101 in the Office of the Register of Deeds of Lincoln County, North Carolina.

**Tract IV:**

Being all of Lots 33 through 48; Lots 73 through 88; Lots 129 through 132 and Lots 149 through 152 of 3 CHERRY WAY as so shown on a map thereof prepared by Dedmon Surveys recorded in Book 15, at page 102 in the Office of the Register of Deeds of Lincoln County, North Carolina.

**Tract V:**

Being all of Lots 17 through 32 and Lots 153 through 176 of 3 CHERRY WAY as so shown on a map thereof prepared by Dedmon Surveys recorded in Book 15, at page 103 in the Office of the Register of Deeds of Lincoln County, North Carolina.

**Tract VI:**

Being all of Lots 1 through 16 and Lots 199 through 202 of 3 CHERRY WAY as so shown on a map thereof prepared by Dedmon Surveys recorded in Book 15, at page 104 in the Office of the Register of Deeds of Lincoln County, North Carolina.