

DRAWN BY: DOUGLAS P. MACMILLAN, ATTY

MAIL TO: THE MATHISEN CO.

P.O. BOX 578

INDIAN TRAIL, N-C 28079

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CREEKVIEW AT FAIRES FARM

THIS DECLARATION, made as of the date hereinafter set forth by THE MATHISEN COMPANY, a North Carolina corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Mecklenburg, State of North Carolina, which is more particularly described as follows:

All of that certain parcel of land as shown on that plat entitled CREEKVIEW AT FAIRES FARM, PHASE 1, MAP 1, which appears of record in the Office of the Register of Deeds for Mecklenburg County, North Carolina, in Map Book 27, Page 58.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above 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, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

SECTION 1. "ASSOCIATION" shall mean and refer to CREEKVIEW AT FAIRES FARM HOMEOWNERS' ASSOCIATION, INC., a non-profit North Carolina corporation, its successors and assigns.

SECTION 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the ASSOCIATION.

JULIAN A. JARSON REG. OF DEEDS MECK. NC  
FILED FOR REGISTRATION 10/10/95 10:18  
BK: 08323 PG: 0001/0016 #: 0102 38.00

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**SECTION 4.** "Common Area" shall mean and is more particularly described as any area designated as Common Area on any recorded plat or map of real property which may become subject to the terms and conditions of this Declaration, or which is not a "Lot" as defined in Section 5, below, or which is not a publicly dedicated street or right of way.

**SECTION 5.** "Lot" shall mean and refer to any numbered plot of land to be used for single-family residential purposes as shown upon any recorded subdivision map of the Properties with the exception of the Common Area and dedicated streets.

**SECTION 6.** "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence.

**SECTION 7.** "Member" shall mean and refer to every person or entity who holds membership with voting rights in the ASSOCIATION.

**SECTION 8.** "Declarant" shall mean and refer to The Mathisen Company, a North Carolina corporation, its successors and assigns.

## **ARTICLE II PROPERTY RIGHTS**

**SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT.** Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the ASSOCIATION to permit the use of and to charge reasonable admission and other fees for the use of any facility situated upon the Common Area;

(b) The right of the ASSOCIATION to suspend the voting rights and right to use of the recreational facilities 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 any infraction of its published rules and regulations.

(c) The right of the ASSOCIATION to dedicate, convey or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to conditions as may be agreed to by the Members. No such dedication, conveyance or transfer shall be effective unless an instrument is signed by at least two-thirds (2/3) of each class of Members, agreeing to such dedication or transfer, has been recorded. Provided, however, if ingress or egress to any Living Unit is through any portion of the Common Area, any

dedication, conveyance or transfer of such portion of the Common Area shall be subject to the easement in favor of the Owner of such Living Unit.

**SECTION 2. DELEGATION OF USE.** Any Owner may delegate, in accordance with the ByLaws, his rights of enjoyment of the Common Area and Facilities to the members of his family, his tenants, guests, or contract purchasers who reside on the property.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1.** Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**SECTION 2.** The ASSOCIATION shall have two (2) classes of voting membership:

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

**CLASS B:** The Class B Member(s) shall be the Declarant, and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When seventy-five percent (75%) of the Lots are deeded to Owners other than the Declarant, or
- (b) On December 31, 2005.

### **ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the ASSOCIATION: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be the

personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**SECTION 2. PURPOSE OF ASSESSMENTS.** The assessments levied by the ASSOCIATION shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose for the use and enjoyment of the Common Area, including, but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the ByLaws, the employment of attorneys to represent the ASSOCIATION when necessary, the maintenance and beautification of the areas within maintenance easement(s) to be conveyed by Declarant to the Association along lots fronting street(s) providing access to the Properties, and such other needs as may arise.

**SECTION 3. MAXIMUM ANNUAL ASSESSMENT.** Until December 31, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$150.00 per year per Lot.

(a) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors for any calendar year without prior approval by the membership by an amount not to exceed ten (10%) per cent of the maximum annual assessment for the previous year.

(b) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

**SECTION 4. PAYABLE ANNUAL ASSESSMENT.** The Board of Directors shall fix the payable annual assessment at an amount not in excess of the maximum annual assessment subject to the provisions of Sections 7 and 8 of this Article.

**SECTION 5. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized above, the ASSOCIATION may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who

are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**SECTION 6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5, shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast at least twenty-five (25%) per cent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 7. RATE OF ANNUAL ASSESSMENTS.**

(a) With the exception set forth in subsection (b) of this Section 7, annual assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis. The books and records of the ASSOCIATION shall be kept in such a manner that it is possible to determine and ascertain such sums as are expended by the ASSOCIATION for development, improvement, maintenance and upkeep of the Common Area and all recreational facilities of the ASSOCIATION.

(b) The annual assessment for each Lot owned by Declarant and unoccupied as a residence shall be twenty-five (25%) per cent of the regular assessment for all other Lots.

**SECTION 8. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES.** The annual assessments provided for herein with respect to any Phase and/or Section of the Properties subject to this Declaration shall begin as of the first day of the month following conveyance of the first Lot in such Phase or Section to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment to every Owner subject thereto. The due dates shall be established by the Board of Directors. The ASSOCIATION shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the ASSOCIATION setting forth whether the assessments on a specified Lot have been paid.

**SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum, or the highest rate allowed by law, whichever is less. The ASSOCIATION may bring an action at law against

the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner and according to the same procedures as deeds of trust are foreclosed pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes, as amended, and interest, costs, and reasonable attorney's fees of such action or foreclosures shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot.

**SECTION 10. SUBORDINATION OF THE LIEN TO MORTGAGES.** The liens provided for herein shall be subordinate to the lien of any first Deed of Trust, Deeds of Trust, first mortgage or first mortgages. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any first Deed of Trust or mortgage, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No mortgagee or lender secured by a Deed of Trust encumbering all or any portion of the Properties shall be required to collect assessments. Failure by any Owner to pay assessments shall not constitute an event of default under any mortgage or Deed of Trust encumbering all or any portion of the Properties.

**SECTION 11. EXEMPT PROPERTY.** The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall it apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans' Affairs or any other State or Federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan. However, upon the conveyance of such property by the first mortgagee or governmental agency the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot. All Common Area property dedicated to and accepted by a local public authority, property granted to or used by a utility company; and property owned by a non-profit organization exempt from the assessments and charges herein.

**ARTICLE V  
USE RESTRICTIONS  
AND  
ARCHITECTURAL CONTROL**

**SECTION 1. LAND USE AND BUILDING TYPE.** No Lot and Living Unit located thereon shall be used except for single family residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling, not to exceed three (3) stories in height, and a private garage for not more than three (3) cars and other out buildings incidental to the use of such Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever; nor shall any substance, thing

or material be kept upon any Lot which will emit foul or noxious odors, or which will cause any noise that might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure except for pickup by garbage and trash removal service units. In the event any Owner fails to keep such property free from any unsightly items, weeds or underbrush, the ASSOCIATION may, at its option, ten (10) days after notice to said Owner requesting said Owner to comply with the requirements of this paragraph, enter and remove all such unsightly items and growth at said Owner's expense, and said Owner shall be personally liable to the ASSOCIATION for such costs which shall be a permanent charge and lien upon such Lot enforceable to the same extent and collectable as provided for in Article IV. By acquiring property subject to these Restrictions, each Owner agrees to pay such costs promptly upon demand by the ASSOCIATION. No such entry as provided herein shall be deemed a trespass.

**SECTION 2. NUISANCE.** No noxious, offensive or illegal activity shall be conducted on any Lot; nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Each owner shall refrain from any act or use of his or her Lot which could reasonably be expected to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood.

**SECTION 3. EXCAVATION AND ELEVATION.** No Owner shall excavate or extract earth from any of the Lots for any commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

**SECTION 4. TEMPORARY RESIDENCE.** No residence of a temporary character shall be erected or allowed to remain on said property; and no trailer, basement, tent, shack, garage, barn or other outbuilding erected on said property shall be used as a residence either permanently or temporarily.

**SECTION 5. COMMERCIAL AND RECREATIONAL VEHICLES.** No trucks, buses, vans, boats and/or trailers, campers or other commercial or recreational vehicles shall be parked or stored on any Lot or street fronting thereon, unless stored in an enclosed garage, other than on a purely temporary basis (not longer than one day), except where it can be shown that said vehicle is the only means of transportation or is required for an Owner's employment. Said vehicle shall be limited to a light utility vehicle or small van of no more than two axles, no more than 10,000 pounds gross weight, no more than 21 feet in length and 7 feet in width and height. Said vehicle shall not be equipped with external storage racks or other attachments or cargo that exceed these dimensions. Only one exception per residence shall be permitted.

**SECTION 6. ANIMALS.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Living Unit except that dogs, cats or other household pets

in reasonable numbers may be kept or maintained provided that they are not kept or maintained for commercial purposes.

**SECTION 7. CLOTHESLINES.** One piece, square or round outdoor clothesline poles with arms may be located only behind the rear wall of a Living Unit. All other clothes lines and/or poles are prohibited. No clothes may be left on clotheslines after 5:00 p.m.

**SECTION 8. SIGNS.** No sign of any kind shall be erected upon or displayed or otherwise exposed to view on any Lot without the prior written consent of the Board of Directors or its designated Architectural Committee, if any, except for a "FOR RENT" or "FOR SALE" sign advertising an Owner's Lot and Living Unit for rent or sale. The Declarant reserves the right to erect an entrance sign on the Common Area, designating the name of the subdivision, which sign shall be maintained by the Association.

**SECTION 9. DANGEROUS HOBBIES AND ACTIVITIES.** The pursuit of hobbies or other inherently dangerous activities including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkept conditions; the shooting of firearms, fireworks or pyrotechnic devices of any type or size; and other such activities shall not be pursued or undertaken on any part of any Lot or the Common Area.

**SECTION 10. OUT-BUILDINGS.** Only garages, storage sheds or out-buildings may be constructed on Lots provided said structures comply with all applicable zoning ordinances and are constructed with the same or similar materials and colors as the residence located thereon and are of a similar architectural design.

**SECTION 11. SWIMMING POOLS.** Swimming pools shall be located to the rear of the main dwelling and may not be nearer than six (6) feet to any lot line. No swimming pool coping shall project more than two (2) feet above the established lot grade, unless it is fully screened on all sides by the use of either a brick or wood fence, or non-deciduous plantings.

**SECTION 12. DRIVEWAYS.** No driveway shall be modified or added to any Lot unless it is installed with the same material used on the existing driveway and is parallel to the existing driveway. No driveway is to exceed twenty (20') feet in width.

**SECTION 13. OUTSIDE ANTENNAS.** Outside radio or television antennas, satellite dishes or other elevated communication towers may be erected on the main dwelling or in the rear yard of any Lot as long as it is not visible from any adjoining street. The maximum dimension of any element of an antenna system shall not exceed thirty-six inches (36").

**SECTION 14. FENCES.** No fence erected on any Lot closer to any street than the front wall of the Living Unit or, in the case of corner Lots, the side building restriction or setback line closest to the street, shall exceed forty-two inches (42") in height, and any such fence



must be of either white vinyl or black ornamental metal. No other fence shall exceed seventy-two inches (72") in height. Except for rear yard fences located six feet (6') or more from adjoining property lines, all fences shall have a minimum of 20 percent (20%) open space. Unless the structural portion of any fence is exposed equally on both sides, the better side shall be on the side exposed to adjoining neighbors and street view. Sagging, damaged or poorly constructed fences shall be repaired or removed. No chain link fence, wire fence or dog pen may be erected on any Lot unless fully screened from street view by brick, wood or non-deciduous plantings and shall be limited to rear yard locations.

**SECTION 15. COMMON AREA STRUCTURES.** No structures other than entrance signs are to be erected or located on those portions of the Common Area which have frontage on Faires Farm Road.

**SECTION 16. APPLICABLE REGULATIONS.** Each Owner shall observe all governmental codes, health regulations, zoning restrictions and other regulations applicable to such Owner's Lot. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

**SECTION 17. ARCHITECTURAL CONTROL.** No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE VI EASEMENTS**

**SECTION 1. UTILITIES.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. In addition, easements are hereby reserved for the drainage and installation, maintenance and repair of sewer and water lines and other utilities, as necessary, to provide service to each Lot. Without limiting the foregoing, easements for drainage and utilities are reserved ten (10) feet along each rear line of each Lot and five (5) feet along each side line of each Lot. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

**SECTION 2. DEVELOPMENT.** Declarant shall have a temporary easement for itself, its agents and its employees to enter upon any and all portions of the Common Area for the purpose of completing the development of the properties and constructing Living Units on the properties.

**ARTICLE VII  
ANNEXATION**

**SECTION 1. ANNEXATION WITH CONSENT OF MEMBERS.** Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of all Members.

**SECTION 2. ANNEXATION BY DECLARANT.** Additional land within the area described in Exhibit "A" attached hereto and incorporated by reference may be annexed in whole or in part by the Declarant without the consent of Members at any time, from time to time, within ten (10) years of the date this instrument is recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, provided the FHA and VA determine any such annexation is in accord with the general plan heretofore approved by them. The procedure for making any such annexation shall be for the Declarant to file of record a Supplementary Declaration with respect to the land to be made thereby subject to this Declaration, which such Supplementary Declaration shall extend the jurisdiction of the Association to the land therein described and thereby subject such additional land to assessment for its share of the Association's expenses. Such Supplementary Declaration may contain such complementary additions and modifications of the Restrictions as may be necessary to reflect the different character of the added properties; but any Supplementary Declaration shall not revoke or amend this Declaration as it pertains to the properties previously subjected thereto.

**ARTICLE VIII  
INSURANCE**

**SECTION 1. AUTHORITY TO PURCHASE INSURANCE.** Insurance policies upon any improvements located on the Common Areas may be purchased by the ASSOCIATION in the name of the Board of Directors of the ASSOCIATION, as Trustees for the Owners, for the benefits of the Owners and their respective mortgagees as their interests may appear.

**SECTION 2. INSURANCE COVERAGE TO BE MAINTAINED; USE AND DISTRIBUTION OF INSURANCE PROCEEDS.**

(a) The following insurance coverage shall be maintained in full force and effect by the ASSOCIATION covering the operation and management of the Lots and Common Area:

(1) Casualty Insurance covering the buildings and all improvements, if any, upon the Common Area and all personal property located thereon, if any, except such personal property as may be owned by others, shall be procured in an amount equal to one hundred (100%) per cent of the insurance replacement value thereof (exclusive of excavation, foundations, streets and parking facilities) with a replacement cost endorsement as determined annually. If coverage is provided by an insurance policy in which there is a co-insurance clause applying, every effort will be made to obtain an agreed amount endorsement or its equivalent. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to building similar in construction location and use including vandalism and malicious mischief.

(2) Bodily Injury Liability and property damage liability insurance in such amounts and in such forms as shall be required by the ASSOCIATION, covering all premises and all operations necessary or incidental to the conduct of the business of the ASSOCIATION including hired automobile and non-owned automobile bodily injury and property damage liability coverages.

(3) All liability policies shall contain a severability of interest (cross-liability) endorsement. The insurance afforded under the liability section of the policy applied separately to each insured against whom claims is made or suit is brought except with respect to this company's limit of liability.

(4) Fidelity Coverage protecting against dishonest acts by ASSOCIATION officers, directors, trustees, and employees and all others who are responsible for handling funds of the ASSOCIATION in the amount of one year's operating budget, plus projected reserve balance during the budget year. If professional management is obtained by the ASSOCIATION and it has this coverage and it handles the funds, then this requirement will be satisfied.

(b) Premiums upon insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as common expenses to be assessed and collected from all of the Owners.

(c) All insurance policies purchased by the ASSOCIATION shall be for the benefit of the ASSOCIATION and the Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the ASSOCIATION as Trustees for the Owners. The ASSOCIATION shall hold such proceeds in trust for the benefit of the ASSOCIATION, the Owners and their respective mortgagees in the following shares: Proceeds on account of damage to Common Area shall be held

by the ASSOCIATION to repair or rebuild the Common Area. If the property is not rebuilt, then the funds shall be held by the ASSOCIATION and applied to its general expenses:

(d) Proceeds of insurance policies received by the ASSOCIATION shall be paid to defray the costs of repairing and reconstructing improvements. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, all remittances to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by him or it.

(e) Immediately after the casualty causing damage to property, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems appropriate.

(f) Each Owner delegates to the Board of Directors of the ASSOCIATION his right to adjust with insurance companies all losses under policies purchased by the ASSOCIATION.

## ARTICLE IX GENERAL PROVISIONS

**SECTION 1. ENFORCEMENT.** The ASSOCIATION, or 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 the Declaration. Failure by the ASSOCIATION or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

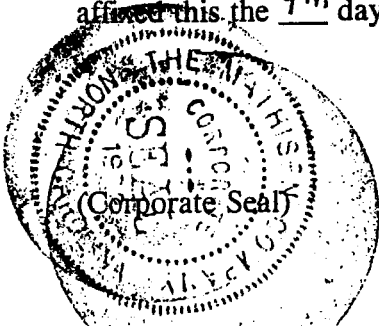
**SECTION 2. SEVERABILITY.** Invalidation of any one of the covenants or restrictions by judgment or Court Order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 3. AMENDMENT.** the covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two-thirds (2/3) of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

**SECTION 4. FHA/VA APPROVAL.** As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

**SECTION 5. MORTGAGE OF COMMON AREA.** No portion of the Common Area may be subjected to the lien of any mortgage or deed of trust without the written consent of at least two-thirds (2/3) of each class of Members. Provided, further, if ingress or egress to any Living Unit is through any portion of the Common Area, any mortgage or deed of trust encumbering such portion of the Common Area shall be subject to the easement in favor of the Owner of such Living Unit.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed this the 9<sup>TH</sup> day of OCTOBER, 1995.



**THE MATHISEN COMPANY**

By: [Signature]  
VICE President

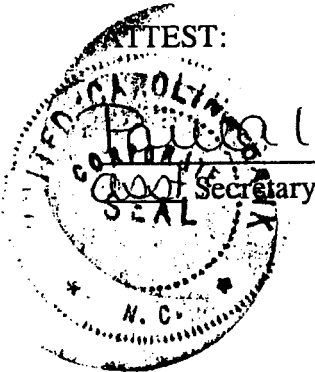
ATTEST: [Signature]  
Secretary

UNITED CAROLINA BANK, as holder of a Promissory note secured by a Deed of Trust recorded in Book 8171, at Page 576, of the Mecklenburg Public Registry, and DUANE K. FOURNIER, as Trustee under said Deed of Trust, join in the execution hereof for the purpose of making said Deed of Trust subject to the terms and conditions of this Declaration.

UNITED CAROLINA BANK

(Corporate Seal)

By: Duane K Fournier  
VICE President

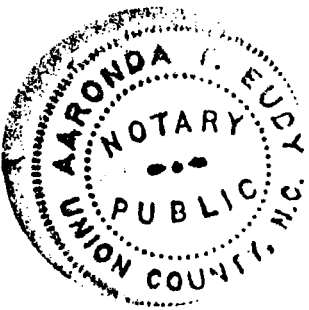


Duane K Fournier (SEAL)  
DUANE K. FOURNIER, Trustee

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, AARONDA T. EUDY, a Notary Public of the County and State aforesaid, certify that PHILLIP G. HELMS personally came before me this day and acknowledged that he is the \_\_\_ Secretary of THE MATHISEN COMPANY, a North Carolina corporation, and that by authority duly given and as the act of the corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by her/him as its \_\_\_ Secretary.

WITNESS my hand and notarial seal, this the 9<sup>TH</sup> day of OCTOBER, 1995.

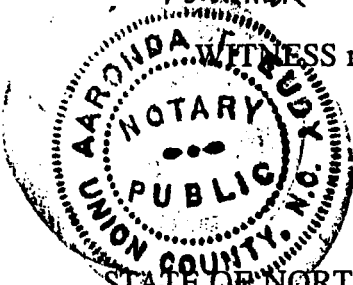


Aaronda T. Eudy  
Notary Public  
My commission expires: 4.20.97

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, AARONDA T. EUDY, a Notary for said County and State, certify that DUANE K. FOURNIER personally came before me this day, and being by me duly sworn, says that     is VICE President of UNITED CAROLINA BANK and that the seal affixed to the foregoing instrument in writing is the corporate seal of said Corporation, and that said writing was signed and sealed by HIM in behalf of said Corporation by its authority duly given. And the said DUANE K. FOURNIER acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 9<sup>TH</sup> day of OCTOBER, 1995.

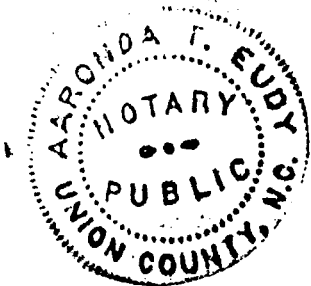


Aaronnda T. Eudy  
Notary Public  
My commission expires: 4.20.97

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, AARONDA T. EUDY, a Notary Public for said County and State, do hereby certify that DUANE K. FOURNIER, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 9<sup>TH</sup> day of OCTOBER, 1995.



Aaronnda T. Eudy  
Notary Public  
My commission expires: 4.20.97

EXHIBIT A  
LEGAL DESCRIPTION

BEGINNING at a set iron in the southeasterly margin of the right-of-way of Faires Farm Road at the northeast corner of the property shown on Map Two of Lakeview at Faires Farm recorded in Map Book 24, Page 273 of the Mecklenburg Public Registry and runs thence with the rear of the property shown on the aforesaid Map Two of Lakeview at Faires Farm and the rear line of the property shown on Map Six of Lakeview at Faires Farm, recorded in Map Book 25 at Page 362 of the Mecklenburg Public Registry, N. 54-30-12 W. 1421.97 feet to a set iron in the center line of the Southern Railroad right-of-way; thence with the center line of the Southern Railroad right-of-way N. 21-15-04 E. 425.00 feet to a set iron; thence with the center line of the Southern Railroad right-of-way N. 21-20-26 E. 270.55 feet to a set iron; thence N. 48-50-30 W. 98.81 feet to a set nail in the center line of the right-of-way of Old Concord Road (a 60-foot right-of-way); thence with the center line of Old concord Road (a 60-foot right-of-way) N. 21-10-29 E. 444.50 feet to a set nail; thence N. 53-50-38 E. 489.51 feet to a set iron; thence with the line of the property conveyed to Meryhue Farms, Inc., as described in Deed recorded in Book 3044 at Page 491 of the Mecklenburg Public Registry, two courses and distances as follows: (1) N. 82-28-46 E. 752.00 feet to a set iron in an old stump; (2) S. 54-49-13 E. 361.58 feet to an iron; thence continuing with and beyond the line of Meryhue Farms, Inc. (now or formerly) S. 28-14-32 E. 1388.23 feet to a point; thence S. 29-37-53 W. 184.61 feet to a point; thence S. 47-25-03 W. 181.89 feet to a point in the center line of a 25-foot sanitary sewer easement; thence S. 84-39-49 W. 183.49 feet to a point; thence N. 65-46-39 W. 90.07 feet to a point; thence N. 55-20-21 W. 70.09 feet to a point; thence N. 46-08-44 W. 185.14 feet to a point; thence with the curve of a circle to the left having a radius of 970.01 feet (chord bearing S. 39-40-32 W., chord distance 141.37 feet) an arc distance of 141.49 feet to a point; thence S. 35-29-48 W. 247.11 feet to a point; thence S. 54-30-12 E. 95 feet to a point; thence S. 64-56-00 E. 61.01 feet to a point; thence S. 35-54-40 E. 127.67 feet to a point; thence S. 09-38-29 W. 137.08 feet to a point; thence S. 52-43-33 W. 137.80 feet to a point; thence N. 76-58-43 W. 148.77 feet to a point; thence N. 44-04-24 W. 63.55 feet to a point; thence N. 54-30-12 W. 95 feet to a point in the southeasterly margin of a temporary 60-foot roadway easement; thence with the southeasterly margin of a temporary 60-foot roadway easement S. 35-29-48 W. 288.70 feet to the point and place of beginning. Containing 81.724 acres according to boundary and division survey entitled "*The Property of Mattie Caldwell Webber to be deeded to The Mathisen Company*", dated April 24, 1995, prepared by Carroll L. Rushing, N.C.R.L.S., reference to which is hereby made for a more particular description.

mathisen\webber.des

State of North Carolina, County of Mecklenburg  
The foregoing certificate(s) of \_\_\_\_\_

*Aaron J. Eudy*

Notary(ies) Public is/are certified to be correct. This 10<sup>th</sup> day of October 1995

JUDITH A. GIBSON, REGISTER OF DEEDS By: Valerie J. White Deputy Register of Deeds



**LEGAL CERTIFICATION  
FOR  
CREEKVIEW AT FAIRES FARM  
PLANNED UNIT DEVELOPMENT**

I am an attorney licensed to practice in the State of North Carolina. I am not an employee, principal or officer of **THE MATHISEN COMPANY**. I hereby certify that the legal documents for the above Planned Unit Development are in compliance with all of the following HUD legal requirements:

**I. ARTICLES OF INCORPORATION**

1. Every person or entity who is a record owner of any lot is entitled to membership in the association. Membership is appurtenant to, and inseparable from, ownership of the lot.
2. If the association is dissolved, the assets shall be dedicated to a public body, or conveyed to non-profit organization with similar purposes.
3. Amendment of the Articles of Incorporation requires the approval of at least 2/3 vote of the lot owners.
4. Annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dissolution and amendment of the Articles, requires prior approval of HUD/VA as long as there is a Class B membership.

**II. DECLARATION OF COVENANTS.**

1. A legal description of the Planned Unit Development is contained.
2. All lots in the Planned Unit Development are subject to the covenants.
3. Every owner has a right and easement of enjoyment to the common area, which is appurtenant to the title to the lot.
4. The lien of an assessment is subordinate to the lien of any first mortgage.
5. Mortgagees are not required to collect assessments.
6. Annexation of additional properties, dedication of Common Area, and amendment of the Declaration of Covenants, Conditions and Restrictions, requires HUD/VA prior approval as long as there is a Class B. membership.

7. Failure to pay assessments does not constitute a default under an insured mortgage.
8. The covenants assure lot owners of automatic membership and voting rights in the association.
9. Each lot owner is empowered to enforce the covenants.
10. The approval of at least 2/3 of the lot owners is required to amend the covenants.
11. The common area cannot be mortgaged or conveyed without the consent of least 2/3 of the lot owners (excluding the developer).
12. If ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area is subject to the lot owner's easement.
13. There is no provision in the covenants which conflict with the HUD requirement that the common area shall be conveyed to the association free and clear of all encumbrances before HUD insures the first mortgage in the Planned Unit Development.
14. Absolute liability is not imposed on lot owners for damage to common area or lots in the Planned Unit Development.
15. The Class B. membership (Declarant's weighted vote) ceases and converts to Class A membership upon the earlier of the following:
  - a. 75% of the units are deeded to homeowners.
  - b. On December 31, 2005.

### III. BY-LAWS.

1. The By-Laws are consistent with the Articles of Incorporation and Declaration of Covenants.
2. HUD/VA has the right to veto amendments while there is a Class B membership.

  
\_\_\_\_\_  
DOUGLAS P. MacMILLAN, Attorney

11/10/05  
Date

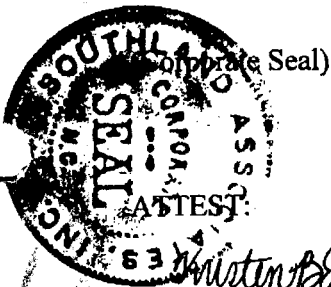
CENTRAL CAROLINA BANK, as holder of Promissory Note secured by Deed of Trust recorded in Book 9299, page 305, of the Mecklenburg County Register of Deeds, and SOUTHLAND ASSOCIATES, INC., as Trustee under said Deed of Trust, join in the execution hereof for the purpose of making said Deed of Trust subject to the terms and conditions of this Declaration.



Standa S. Yung  
Asst. Secretary

CENTRAL CAROLINA BANK

By: [Signature]  
Vice President



Christine Evans  
Asst. Secretary

SOUTHLAND ASSOCIATES, INC., TRUSTEE

By: [Signature]  
VICE President

STATE OF NORTH CAROLINA

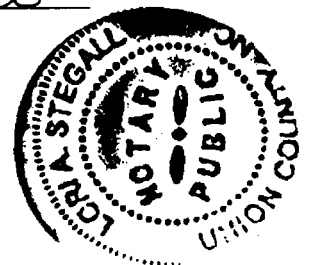
COUNTY OF UNION

This 8 day of February, 2000, personally came before me Jill Polk who, being by me duly sworn, says that she is the Assistant Secretary of The Mathisen Company, 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 her as its Assistant Secretary.

WITNESS my hand and notarial seal this the 8 day of February, 2000.

Lori A. Stegall  
Notary Public

My Commission Expires: My Commission Expires December 22, 2004

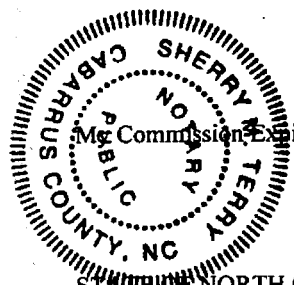


STATE OF NORTH CAROLINA

COUNTY OF Cabarrus

This 9th day of February, 2000, personally came before me Freonda J. Wagoner, who, being by me duly sworn, says that she is the Asst Secretary of Central Carolina Bank, 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 him/her as its Asst Secretary.

WITNESS my hand and notarial seal this the 9th day of February, 2000.



My Commission Expires: 11-1-04

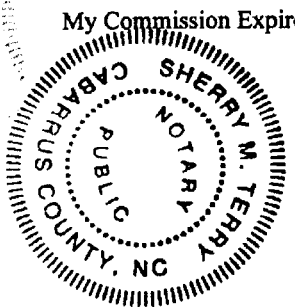
Sherry M. Terry  
Notary Public

STATE OF NORTH CAROLINA

COUNTY OF Cabarrus

This \_\_\_ day of February, 2000 came before me Kristen B. Evans, who, being by me duly sworn, says that she is the Asst Secretary of Southland Associates, 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 him/her as its Asst Secretary.

WITNESS my hand and notarial seal this the 9th day of February, 2000.



My Commission Expires: 11-1-04

Sherry M. Terry  
Notary Public