

2007014383

RESTRICTION  
RECORDING FEES

\$30.00

PRESENTED & RECORDED:

09-13-2007 10:41 AM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

**BK:DEED 422**

**PG:111-134**

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ALMOND GLEN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ALMOND GLEN is made this 12th day of September, 2007 by AUMOND GLEN, LLC, a North Carolina limited liability company ("Almond Glen").

STATEMENT OF PURPOSE

Almond Glen is the owner of certain property in Lancaster County, South Carolina, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. Almond Glen desires to create on the property described on Exhibit "A" an exclusive residential community of single-family detached and townhome residences to be named ALMOND GLEN (the "Development").

ALMOND GLEN desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the Development, and to provide for the maintenance and upkeep of all common areas in the Development.

Drawn by and mail to: LandCraft  
1435 West Morehead Street, Suite 135  
Charlotte, NC 28208

To this end, Almond Glen desires to subject the real property described herein, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Almond Glen further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common area in the Development, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the values and amenities in the Development, to insure the residents' enjoyment of the specific rights, privileges and easements in the common area and to provide for the maintenance and upkeep of the common area.

To that end Almond Glen has or will cause to be incorporated under South Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit "B", ALMOND GLEN OWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws attached hereto as Exhibit "C".

NOW, THEREFORE, Almond Glen, by this Declaration of Covenants, Conditions and Restrictions (the "Declaration"), does declare that all of the property described herein, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title or interest in said real property 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 ALMOND GLEN OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean all real property (including the improvements thereto) and all personal property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association includes all of the area labeled as "Common Area" or similar terms on the Maps, including mailbox clusters, pool, cabana, tot-lot, landscaped areas, walkways, guest parking, driveways, benches and trash compactors.

Section 3. "Declarant" or "Declarants" shall mean and refer to AUMOND GLEN, LLC and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Declarant" by AUMOND GLEN, LLC hereafter when such designee becomes vested with title to two or more undeveloped Lots for the purpose of causing dwellings to be constructed thereon, and any such successor in title to AUMOND GLEN, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer; provided, however, such designee's classification as a Declarant shall automatically terminate upon such designee becoming in default under its agreement with Almond Glen to purchase Lots.

Section 4. "Development" shall mean and refer to ALMOND GLEN, a single family residential development, some attached and some detached, proposed to be developed on the Properties by the Declarant.

Section 5. "Detached Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on the Maps, which are to be developed by the construction of single-family detached residences thereon.

Section 6. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on the Maps with the exception of the Common Area and public roads and streets. A "Lot" may be either a Townhome Lot or a Detached Lot as defined herein.

Section 7. "Maps" shall mean and refer to the maps recorded in the Lancaster County, South Carolina, Public Registry and any map of the Properties constituting additional phases (if they are annexed pursuant to Article II hereof) which may be recorded by Declarant in the Lancaster County, South Carolina, Public Registry hereafter.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 9. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

**Section 10.** "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

**Section 11.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot including the Declarant if it owns any Lot and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 12.** "Properties" shall mean and refer to the "Phase I Property" and additional real estate dedicated in additional phases as described in Section 1 and Section 2 in Article II hereof and such other property as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

**Section 13.** "Townhome Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on the Maps which are to be developed as a townhome style residence with adjoining residential units and party walls.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF  
THE ALMOND GLEN OWNERS ASSOCIATION, INC.

Section 1. Map I Property. 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 Lancaster County, South Carolina, is more particularly shown on the Map recorded in Map Book <sup>2007</sup> at Pages <sup>1075</sup> in the Lancaster County Public Registry.

See also: Map Bk. 2007 Pg. 1076  
Section 2. Additional Properties.

(a) The Map I Property is a portion of the real property described on Exhibit "A" which is attached hereto (the "Base Tract"). The remaining portion of the Base Tract, exclusive of the Phase I Property, or any property adjoining the Base Tract, or any property adjoining such additional property within a one (1) mile radius thereof, or any part thereof, (the "Additional Properties"), may be brought within the scheme of this Declaration in one or more additional phases and within the jurisdiction of the Association in future stages of development, without the consent of the Association or its members, provided that such annexations occur within seven (7) years after the date of the filing of this instrument.

(b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Properties in the Lancaster County, South Carolina, Public Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. At the time of the filing of each such Supplementary Declaration, there shall be recorded in the Lancaster County, South Carolina, Public Registry a Map or Maps which show the boundary line of each Lot annexed pursuant to such Supplementary Declaration and which delineates all Common Area annexed pursuant to such Supplementary Declaration.

(c) The obligation for Owners of Lots in any portion of the Additional Properties to pay the assessments described in Article V hereof shall commence upon the filing of the Supplementary Declaration in the Lancaster County, South Carolina, Public Registry annexing such portion. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Phase I Property, and such voting rights shall commence as of the date of the filing of the Supplementary Declaration.

ARTICLE III  
PROPERTY RIGHTS

**Section 1. Ownership of Common Areas.** Declarant shall convey the Common Area shown on such map 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. The Association shall not thereafter convey or mortgage any part of the Common Areas without the prior consent of those Owners owning at least eighty percent (80%) of the Class A Lots.

**Section 2. Owners' Rights to Use and Enjoy Common Areas.** Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his or her Lot, 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 safety and rights of all Owners,

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;

(c) the right of the Association to suspend the voting rights in the Association and the right of the Association to suspend the right to use the Common Areas by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) the right of the Declarant or the Association to grant utility, drainage and other easements of the type and for the purposes set forth in Article VII across the Common Areas; and

(e) the right of the Declarant or the Association to restrict the use of certain of the Common Areas to Owners of Detached Lots and Townhome Lots, including, but not limited to, parking areas within the Common Areas designated solely for the use of the Owners of Townhome Lots, and their respective family members, lessees and invitees.

**Section 3. Owners' Easements for Ingress and Egress.** Every Lot shall be conveyed with a perpetual, non-exclusive right to use any cul-de-sac or roadway, if any, which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot.

**Section 4. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association (a copy of which is attached as Exhibit "C"), his or her right of enjoyment to the Common Area and facilities to the members of his or her family, his or her guests, tenants, or contract purchasers who reside on his or her Lot.

ARTICLE IV  
THE ASSOCIATION

**Section 1. Membership.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

**Section 2. Voting Rights and Classes of Lots.** The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) **Class A Lots.** Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) **Class B Lots.** Class B Lots shall be all Lots owned by the Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to three (3) votes for each Class B Lot owned by it. The Class B Lots shall be converted to Class A Lots on the happening of either of the following events, whichever occurs earlier: (i) when the total votes outstanding in the Class A Lots equals or exceeds the total votes outstanding in the Class B Lots, or (ii) on December 31, 2014 or (iii) when the Declarant voluntarily relinquishes majority control of the Association by a duly recorded instrument.

**Section 3. Availability of Documents.** The Association shall maintain current copies of the Declaration, the 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. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

**Section 4. Management Contracts.** The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Development at a compensation 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 two (2) years 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 ninety (90) days' prior written notice to the manager without payment of a termination fee.

**Section 5. Maintenance.**

(a) Certain features that are deemed common amenities, being of benefit to all Lots, shall be maintained exclusively by the Association. Said common amenities, shall include, without limitation, entrance walls or signs and landscaping, parking areas, private roads, common walks, signs, landscaping, and landscape furniture. Except as set forth below in Section 5(b), the Association shall also maintain all utilities and all storm and drainage easements located within the Common Areas, together with common amenities not maintained by public entities or utilities. Except as set forth in Section 5(b) below, the Association shall not be responsible for the maintenance of any Lots or the improvements within the boundaries thereof. The Owner shall be responsible for same.

(b) In addition to maintenance of the Common Areas and common amenities within the Development as set forth in Section 5(a) above, the Association shall provide exterior maintenance upon each Townhome Lot which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, building exteriors, trees, shrubs, grass, and walks provided such exterior maintenance shall not include the replacement or repair of window glass, hardware, exterior lighting on the Lots nor the cleaning of patios, walkways or stoops on the Lots. The determination of the need, quality, extent and cost of such maintenance and repair shall be made by the Board of Directors of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board. If the need for maintenance or repair arises which is caused by insurable damages from fire or other casualties or caused by the willful or negligent act of a Townhome Owner, his tenant or their families, guests, invitees or employees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Townhome Lot owned by such Owner is subject. The Association may, in its discretion, delay commencement of the maintenance and repairs required by such casualty, or willful or negligent acts, until the cost thereof is paid by the applicable Owner to the Association.

(c) The Association shall further provide maintenance of the private alleys fronting on the rear of certain Detached Lots in the Development. The determination of the need, quality, extent and cost of such maintenance and repair shall be made by the Board of Directors of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principals adopted by the Board. If the need for such maintenance or repairs arises from the willful or negligent acts of a Detached Lot Owner, his tenant or their families, guests, invitees or employees, the cost of such maintenance or repair shall be added to and become a part of the assessment to which such Detached Lot owned by such Owner is subject. The Association may delay commencement of the maintenance and repairs required by such willful or negligent acts, until the cost thereof is paid by the applicable Owner to the Association.

**Section 6. Initial Contribution.** The Association will collect an initial contribution at closing and deposit into the Associations account and will be used to pay expenses of the association.

**Section 7. Reserve Fund.** The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all Common Areas, and all improvements thereon, which the Association is obligated to maintain. Such reserve fund shall be maintained out of the annual assessments described in Article V hereof.



ARTICLE V  
COVENANT FOR ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation for 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 annual assessments or charges and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

**Section 2. Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used as follows:

(a) to maintain in a good and attractive condition the landscaping, including, without limitation, the mowing of lawns, planting and maintenance of shrubs, flowers and other plants, and watering on and within the boundaries of the Common Area;

(b) to maintain the parks in the Common Areas and sidewalks or other common walks, common signs and development statement pieces or entrance ways (including any walls erected at said entrance ways);

(c) to maintain any and all drainage pipes, inlets, basins, ditches, swales and other facilities installed upon the Common Areas;

(d) to maintain all trails or paths, if any, in the Common Areas as a common amenity in a reasonably passable condition, free from falling trees, undergrowth and other obstructions; and to keep all dead, diseased or decaying trees, shrubs and bushes removed from such areas and to replace such items with new trees, shrubs and bushes;

(e) to maintain all recreational and related facilities, if any, located within the Common Areas as a common amenity; provided, that, the reference to said facilities herein shall not be construed to require said facilities to be constructed or installed in the Common Areas or elsewhere on the Properties;

(f) to keep all Common Elements clean and free from debris and to maintain same in a clean and orderly condition, and to maintain the landscaping therein, including any necessary removal and replacement of landscaping;

(g) to maintain the exterior portion of the improvements on each Townhome Lot as set forth in Section 5(b) of Article IV hereof;

(h) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas, and any recreational and related facilities, if any, located within the Common Areas, from theft, vandalism, fire and damage from animals;

(i) to pay all ad valorem taxes levied against the Common Areas and any property owned by the Association;

(j) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

(k) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(l) to maintain a contingency reserve equal to 10% of the sum of the amounts described in the above subsections of this Section 2 in order to fund unanticipated expenses of the Association.

Section 3. Maximum Annual Assessment. Until January 1 of the calendar year following the conveyance of the first Lot by a Declarant to another Owner, the maximum annual assessment shall be (i) Fifteen Hundred Dollars (\$1500.00) for each Townhome (attached) Lot, (ii) Five Hundred Dollars (\$500.00) for each of the Detached Lots.

(a) The maximum annual assessments shall automatically increase by 6% each year regardless of what is charged.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum annual assessments may be increased without limitation if such increase is approved by Members entitled to no less than sixty-seven percent (67%) of all of the votes (appurtenant to each class of Lots) to which all Members are entitled. Such voting may be represented in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessments at amounts not in excess of the maximum. If the Board of Directors shall levy less than the Maximum Regular Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser Assessment, the Board may, by majority vote, levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that year exceed the applicable Maximum Regular Annual Assessment.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto provided that any such assessment requires the same assent of the Members as provided in Section 3(b) of this Article. Notwithstanding the foregoing, if the need for any special assessment relates solely to Common Areas serving the Owners of Townhome Lots and those Detached Lots with rear frontage on the alleyways as shown on the Maps, then such special assessment shall be assessed solely against the Townhome Lot Owners and such Detached Lot Owners, as applicable, and the required assent for such assessment shall only require the approval of the Owners of Townhome Lots and the affected Detached Lots entitled to no less than sixty-seven percent (67%) of all of the Townhome Lots.

**Section 5. Assessment Rate.** Both annual and special assessments must be fixed at a uniform rate for all detached lots and a uniform rate for all attached lots. Notwithstanding the foregoing, a Declarant owning any Lots shall pay twenty-five percent (25%) of the otherwise applicable annual or special assessment plus ownership interests for any such Lots until the occupancy of a dwelling constructed on such Lot. Thereafter, the Owner shall pay one hundred percent (100%) of such annual or special assessment on the applicable Lot.

**Section 6. Notice and Quorum for Any action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to each Lot upon the filing of this Declaration (or the filing of a Supplementary Declaration if relating to the Additional Properties) in the Lancaster County Public Registry. The first annual assessment shall be adjusted and prorated according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall have late fees assessed per S.C. Law. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot, and late fees, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or abandoning his Lot.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot or any mortgage or deed of trust to the Declarant. 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; provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as provided. No mortgagees shall be required to collect assessments hereunder and a failure to pay assessments hereunder shall not constitute a default under any applicable mortgage on a Lot.

ARTICLE VI  
ARCHITECTURAL CONTROL

**Section 1. Plan of Design Approval.** No improvements shall be undertaken upon any Lot, except by a Declarant, unless the plans and specifications and location of the proposed improvements shall have been submitted to the Architectural Committee established in Section 2 and expressly approved by same in writing. The terms of this Article VI shall not apply to the initial construction of improvements on a Lot by a Declarant. The plans should also indicate the location of all existing trees on the Lot in excess of 6 inches in diameter, such measurement to be taken four and one-half feet above grade. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain on any of the Lots without the review and express written approval of the Architectural Committee, subject to Section 5 below.

**Section 2. Architectural Committee.** The Board shall designate the number of and appoint the members of the Architectural Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Committee, the remaining members of the Architectural Committee, shall have full authority to designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time with or without cause, and without prior notice, by the Board.

**Section 3. Procedures.** No Improvement shall be erected, remodeled or placed on any Lot, except by a Declarant, until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Committee, as to:

(a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;

(b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;

(c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any improvements situated thereon and drainage arrangement; and

(d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Committee, or matters in which the Architectural Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications (including a site plan showing the location of the contemplated improvements on the Lot) for all improvements proposed to be constructed on a Lot shall be submitted to the Architectural Committee for approval or disapproval. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the Architectural Committee-approved set of plans and specifications (specifically including, but without limitation, the above-described site plan) must again be submitted to the Architectural Committee for its inspection and approval. The Architectural Committee's approval or disapproval as required herein shall be in writing. Once the Architectural Committee has approved the plans and specifications for the proposed improvements, the construction of such improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within the time set therefor by the Architectural Committee in the written approval (but in no event later than two (2) years after such approval), such approval shall be deemed rescinded and before construction of improvements can thereafter be commenced on the lot in question, the plans and specifications therefor must again be approved by the Architectural Committee pursuant to this Article.

e) the Board of Directors may from time to time adopt, publish and enforce additional rules and regulations governing the use of and activities on the lots. Any such rules and regulations shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions.

**Section 4. Enforcement.** The Board shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein.

**Section 5. Right of Inspection.** The Architectural Committee shall have the right, at its election, to enter upon any of the Lots during preparation, construction, erection, or installation of

any improvements thereon to determine that such work is being performed in conformity with the approved plans and specifications.

**Section 6. Limitation of Liability.** Neither the Architectural Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this Declaration.

**Section 7. Compensation.** No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article. The Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

## ARTICLE VII SPECIAL RESTRICTIONS AFFECTING COMMON AREA

**Section 1. Purpose.** It shall be the intent and purpose of these restrictions and covenants to maintain and enhance the Common Area, to afford and enhance recreation opportunities, and to implement generally the ALMOND GLEN master plan for development.

**Section 2. Buildings.** No building, tent, trailer or other structure, either temporary or permanent, except as noted elsewhere herein, shall be erected or caused to be placed on the Common Area except a "Sales Center" for the purpose of selling all Lots in the Development.

**Section 3. Declarant's Right of Entry.** The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in the Common Area. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonable necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance.

**Section 4. Prohibition Against Dumping.** No dumping of trash, garbage, sewage, sawdust or other debris shall occur and no unsightly or offensive material shall be placed upon the Common Area, except as it is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classifications as Common Area.

**Section 5. No Public Rights.** The establishment of the Common Area does in no way grant to the public or to the owners of any surrounding or adjacent land, the right to enter such Common Area without the express permission of the Association.

**Section 6. Rights Reserved By Declarant.** The Declarant expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of the Common Area, in a manner not inconsistent with the provisions of this Declaration.

Section 7. Declarant's Actions Permissive. Where the Declarant is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on any portion of the Properties, entering the property and taking such action shall not be deemed a breach of these covenants.

## ARTICLE VIII EASEMENTS

Section 1. Easements Reserved by Declarant. Declarant reserves for itself, its successors and assigns, a permanent easement in and the right at any time in the future to grant a permanent right-of-way over, under and along an area uniformly ten (10) feet in width along the front and rear and three (3) feet in width along the sidelines of each Detached Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, telephone service and other utilities, as well as within those areas shown as easements on the Map. In the event that any Lot is subdivided in accordance with the requirements of Section 1 in Article IX hereof, an easement uniformly ten (10) feet in width shall exist both along the front and rear and three (3) feet in width along the sidelines of the Lot, both as shown on the Map and along the rear and sidelines as exist upon the Lot as subdivided; provided, however, that upon request by the Owner of the subdivided Lot, the Declarant may release the easement reserved along the rear or sideline of the Lot if so doing so would not interfere with the installation or maintenance of any utilities or the drainage within the development. In the event two or more Lots are combined into one building Lot with the residence to be constructed over the common interior Lot lines, the easements reserved along the sidelines shall be released, provided that the easements have not previously been used for the installation of utilities and their release shall not interfere with the drainage within the development. Each Owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Area, acknowledges such reservation and the right of Declarant to transfer such easements to the Association or to such utility companies as Declarant may choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development. Certain easements reserved by the Declarant and the Association for the benefit of themselves and others are shown on the Maps.

Declarant reserves the right and easement to erect permanent walls on the Common Area and Lots (other than areas of the Lots upon which buildings are constructed) for the purposes of providing screening, privacy, decoration, retainage and topographical stability in connection with the overall plan and development of the Properties and the various Lots located thereon.

Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or use 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, or which may otherwise interfere with the enjoyment of the easements for their intended purposes. In addition, the Declarant and the Association shall have the continuing right and easement to maintain all sewer and water lines located on the Lots, including the right to go into dwellings and disturb the structure and floors thereof in order to maintain those lines located within or under said dwelling.

In addition, Declarant hereby reserves for itself, its employees, agents and successors and assigns such easements over the Common Area for purposes of temporarily storing construction materials or parking vehicles and equipment in connection with the construction of improvements on adjacent or contiguous property owned by Declarant.

**Section 2. Easements Reserved for the Association.** The Association is hereby granted an exclusive easement for the purpose of maintenance of landscaping over the Common Area. The amount, manner and maintenance of said landscaping shall be in the Association's absolute discretion.

The Association is hereby granted an easement for the installation and maintenance of utilities (including transformers) and other commonly beneficial amenities including, without limitation, mailboxes, trash containers and area lighting over the Properties and Common Areas.

**Section 3. Encroachments.** Each Owner of a Lot with an exterior wall, roof or eave, including overhangs, a fence, concrete walk or concrete patio which encroaches on the Common Area owned by the Association and/or the unimproved portion of a Lot of another Lot Owner shall have an easement over that portion of the Common Area or adjacent Lot affected by the encroaching wall, roof, eave, fence, walk or patio for the purpose of using said portion of the Common Area or adjacent Lot for his own benefit and for the purpose of maintaining the encroaching structure in good condition and repair. In the event of a wall, roof, eave and/or fence encroachment, it shall be the responsibility of the Owner thereof to maintain the encroaching wall, roof, eave and/or fence in good condition and repair unless said responsibility is that of the Association as provided in this Declaration. Notwithstanding anything above to the contrary, this provision does not authorize any encroachments except those which exist by virtue of original construction by the Declarant or with Declarant's express approval.

**Section 4. Party Walls.** With respect to the Townhome Lots, each wall built as a part of the original construction of the Townhome thereon and placed on the dividing line between the Townhome Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section 4, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repairs and maintenance of a party wall shall be shared by the Owners of the Townhome Lots who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, the adjoining Townhome Lot Owners who use the wall shall restore it and they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the other Townhome Lot Owners under any rule or law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 4, any Townhome Lot Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Townhome Lot Owner to contribution from any other Townhome Lot Owner under this Section 4 shall be appurtenant to the land and shall pass to such Townhome Lot Owner's successors in title.

**Section 5. Subdivision Entrances.** Declarant, for itself, its successors and assigns, reserves an easement along Almond Glen Ln, Caprington Dr and property connecting to Harrisburg Rd for constructing, maintaining and reconstructing subdivision entrance signs, features, monuments and



fences; for the installation and maintenance of an irrigation system and lighting system for such entrances and for landscaping the area around such improvements. The property easement is reserved over the property designated on the recorded map as "sign or entrance easement" or "landscape buffer" on said Lots. The Owners of said Lots shall maintain the area around the signs not maintained or landscaped pursuant to this easement. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, to continue to maintain the landscaping and entrance improvements.

## ARTICLE IX RESTRICTIONS

**Section 1. Subdivision of Lots.** No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the Map, except by and with the written consent of the Declarant and provided same is also permitted under applicable governmental regulations and private restrictions affecting said Lot.

**Section 2. Residential Use of Property.** All Lots shall be used for residential purposes only and no structures shall be erected, placed or permitted to remain on any Lot other than one single-family dwelling, and any necessary structure customarily incidental to such residential use. No garage constructed on any Lot shall be used for living quarters of any kind either for guests, members of the family or domestic employees. The construction and maintenance of "garage apartments" on any Lot is expressly prohibited. Notwithstanding the foregoing, a Lot may be used by a professional home builder as a "model home" and for sales or marketing purposes so long as such professional home builder owns at least one other Lot in the Development or within another portion of ALMOND GLEN upon which is built, is being built, or is planned to be built, a home for sale to third parties.

**Section 3. Minimum Size of Dwelling.** Single family Townhome dwellings shall contain not less than a minimum of 1200 square feet of finished floor area. Single family dwellings shall contain not less than a minimum of 2000 square feet of finished floor area. The minimum finished floor area herein referred to shall not include basements, attached or detached garages, unheated areas, carports or open porches of any type. No dwelling shall be greater than two (2) stories in height.

**Section 4. Builder Restrictions.** No building on a Lot shall be located nearer to either sideline of each such Lot not nearer to the rear line thereof than as shown on the building setback lines and sidelines shown on the Map. For the purposes of this covenant, eaves and stoops shall not be considered as a part of a building; provided, however, this shall not be construed to be deemed to permit the encroachment of any improvement onto another Lot.

**Section 5. Building Line Requirements.** The minimum setback lines described hereinabove and as shown on the Maps are not intended to create uniformity to setback. They are meant to create a sense of spaciousness and to avoid monotony. For such purposes, it is the Declarant's intent that setback lines may be staggered where appropriate.

**Section 6. Outbuildings and Similar Structures.** No trailer, camper or other structure of a temporary nature shall be erected or allowed to remain upon any Lot and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence either temporarily or permanently upon any Lot; provided, however, that this Section shall not be construed to prevent the Declarant from permitting any party building a structure upon any Lot to erect or maintain temporary structures during construction. No wells shall be installed, used or maintained on any Lot for human domestic consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling which furnish domestic water from sources beyond the boundaries of the Lots.

**Section 7. Nuisances and Unsightly Materials.** No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No person may keep any animal upon any part of the Lot except customary household pets upon such Lot, provided that such pets are not kept, bred or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the Development.

**Section 8. Maintenance of Lots.** Except as may be maintained by the Association for Townhome Lots pursuant to Section 5(b) of Article IV hereof, each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other causality. No clothesline may be erected or maintained on any Lot. Each Owner shall further maintain the yard and landscaping on his Lot in a clean and neat condition and shall keep his yard mowed and landscaping trimmed so as not to be unsightly. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing which will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles, vehicles unlicensed for more than thirty (30) days, or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, or other debris for collection by governmental or other similar garage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot or by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot (s) subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant. No such entry as provided herein shall be deemed a trespass.

**Section 9. Signboards.** No signboard, billboard, or advertising sign of any description shall be displayed upon or above any Lot with the exception of:

(a) Signs displaying or marketing a Lot as a "Model Home" and listing applicable sales information regarding the construction and sale of the homes on such Lot and other Lots, which signs shall not exceed four feet by eight feet in dimension, shall refer only to the Lot on which displayed and shall be limited to one sign per Lot;

(b) Signs stating "For Sale" which signs shall not exceed two feet by three feet in dimension, shall refer to only the Lot on which displayed and shall be limited to one sign per Lot; and

**Section 10. Antennas, Satellite Dishes or Discs.** No satellite dishes or discs, radio or television aerial, antennas, towers or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot or elsewhere upon any Lot or within the Property without the prior written approval of Declarant, which approval Declarant may withhold in its sole and absolute discretion; provided, however, that satellite dishes which are eighteen (18) inches or less in size, ground mounted and screened from view from the street, may be installed without approval and should avoid visibility from the street.

**Section 11. Fences.** No fence or wall will be erected on any Lot unless approved in writing by the Architectural Control Committee prior to the commencement of construction.

(a) Townhome Lot - No fence or wall shall be erected on any Lot closer to the street than the back of the building facade except for temporary decorative fencing installed by the builder on a model home. Fences may be like style to one another, white vinyl privacy style 6 feet high. No rear/side yard fence of any kind shall be permitted to Townhome lots 1T-10T inclusive.

(b) Detached Lot - Fences may be Shadow Box with a height not to exceed six (6) feet, or Split Rail with a height not to exceed four (4) feet, and of natural color wood. No metal fences, except for a 2 x 4 wire mesh inside of an approved wooden split rail fence to contain pets, are allowed on a Lot. All perimeter fences on a Lot must have at least 30% open. These fences will not be permitted to be erected beyond the rear corner of the house pad. All fences are restricted to the rear yard only.

**Section 12. Metal Garages, Carports, Buildings, and Accessory Structures.** No metal carport, garage, building or accessory structure shall be erected on any Lot or attached to any residence located on the Lot. No building or accessory structure of any kind shall be placed on any Lot, except a detached garage as permitted herein, one (1) utility building or noncommercial greenhouse, similar in materials and color scheme of the house, may be located in the rear one quarter (1/4) of any Lot so that it is directly behind the residence as viewed from a point on a line of sight perpendicular to the street. No chain link or metal fabricated animal enclosures shall be permitted.

**Section 13. Above Ground Pools.** No above ground pools shall be erected on a Lot.

**Section 14. Basketball Goal Supports.** No basketball goal supports shall be erected or placed within any street right of way in the Development. Roll out basketball goals must be stored near the house when not in use.

**Section 15. Parking of Vehicles.** No commercial truck over one ton capacity, school bus, camper trailer, boat or boat trailer, recreational vehicle, or any other vehicle deemed to be unsightly shall be parked in the street, driveway, front yard, side yard or back yard of any Lot except in a screened area between a residence constructed on a Lot which cannot be seen from a line of sight perpendicular to the front line of such Lot.

**Section 16. Construction Materials and Completion Dates.** All structures constructed or placed on any Lot shall be built of substantially new materials and no used structure shall be relocated or placed on any such Lot. No structure shall be constructed or moved onto any Lot unless it shall conform to and be in harmony with existing structures in the Development and comply with the provisions of Article VI hereof. All structures constructed on any Lot shall be completed within twelve (12) months from the commencement of such construction (commencement being defined as the date a building permit for such construction is issued).

**Section 17. Driveways.** All driveways for Detached lots will be concrete.

**ARTICLE X  
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 this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Each Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2027, after which time they shall be automatically extended for successive periods of ten (10) years.

**Section 4. Amendment.** This Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots.

IN WITNESS WHEREOF, Almond Glen has caused this instrument to be executed by its duly authorized Manager and its seal to be hereunto affixed, all the day and year first above written.

AUMOND GLEN, LLC, a North Carolina  
limited liability company

By: LandCraft Management, LLC, a North Carolina  
limited liability company, Manager

By:   
Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Sarah Kathryn Hart, a Notary Public, certify that Matthew A. McDonald, personally came before me this day and acknowledged that he (or she) is Manager of LANDCRAFT MANAGEMENT, LLC, a North Carolina limited liability company and Manager of AUMOND GLEN, LLC, a North Carolina limited liability company, and that he (or she) as Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 12<sup>th</sup> day of Sept, 2007.

Sarah Kathryn Hart  
Notary Public

My commission expires: 06-19-2010

**EXHIBIT B  
ARTICLES OF INCORPORATION**

**EXHIBIT C  
BYLAWS**