

(j) Activities Incidental to Construction. No rule or action by the Association shall impede the Declarant or Builders authorized by Declarant from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or Builders authorized by Declarant from maintaining temporary structures for use during construction of a Unit or from using any home as a sales office.

The limitations in this **Section 10.4** shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with **Section 16.2**.

## **Article XI** **EASEMENTS**

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on **Exhibits "A" or "B"** of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements, over, under and through such portions of the Properties (but not through a structure) as shown on the Map for the purpose of monitoring, replacing, repairing, maintaining, and operating cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways, and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties. Further, easements ten (10) feet in width for such purposes are reserved over, under and through and along the rear property lines of all Units depicted on a Map, and easements five (5) feet in width for such purposes are reserved over, under and through and along all side property lines of all Units shown on a Map, as well as temporary easements five (5) feet in width along the front property lines of all Units shown on a Map for construction, maintenance and repair purposes. Within such ten (10) foot and five (5) foot easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with

the installation and maintenance of the 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. The easement area of each Unit and all improvements in it shall be maintained continuously by the owner of the Unit, except for those improvements for which a public authority or utility company is responsible.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on **Exhibits "A" or "B"** of this Declaration, a non-exclusive easement for itself and its assignees over all of the Properties, subject to the limitations set forth in subsection (c) below, as necessary to provide for the orderly development of any property described on **Exhibits "A" or "B,"** along with the right and power to assign such specific easements for such purpose as may be necessary, in the sole discretion of Declarant. To the extent reasonably possible, such easements over Units shall be limited to the setback areas adjacent to the perimeter boundary of each Unit.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.3. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement over the Properties for access, ingress, and egress to creeks, streams, and wetlands located within the Area of Common Responsibility and for the purpose of (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining, and repairing any bulkhead, retaining wall, levee, or other structure retaining water; (c) taking action (which may include, without limitation, excavating and stabilizing) to address erosion and control flooding; and (d) removing trash and other debris therefrom. All Persons entitled to exercise these easements shall use reasonable care in, and ~~repair any damage resulting from, the intentional exercise of such easements.~~ Nothing herein shall be construed to require Declarant, the Association, or any other Person to take any action permitted by such easements nor to make Declarant, the Association, or any other Person liable for damage resulting from erosion or from flooding due to heavy rainfall or other natural occurrences.

11.4. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in **Exhibit "B,"** whether or not such property is made subject

to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing utilities and/or roadways on or through such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of the exercise of this easement.

11.5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to **Article V** hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, members of the New Construction Committee or Modifications Committee pursuant to **Article IX**, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.6. Landscaping and Signage Easements. The Declarant and the Association shall have perpetual, non-exclusive easements exercisable by their respective employees, agents, and contractors over those portions of Units designated as "Landscape Easement", "Sign and Landscape Easement", "20' Landscape and Maintenance Easement" or similar wording with a similar meaning on any Maps for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such areas without the Association's prior written approval, other than those initially installed by Declarant.

Nothing herein shall obligate the Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any such easements.

## **Article XII** **EXCLUSIVE COMMON AREAS**

12.1. Purpose. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of particular Units. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be a Specific Assessment levied on the Unit(s) to which the Exclusive Common Area is assigned.

12.2. Designation. Initially, any Exclusive Common Area shall be designated as such in the deed conveying such Exclusive Common Area to the Association or on the Map relating to such Exclusive Common Area.

Declarant shall initially assign such Exclusive common Area, or portions thereof, to a particular Unit or Units by unilateral amendment to this Declaration attaching an exhibit which identifies the Exclusive Common Area and the Unit(s) to which it is assigned. Thereafter, Exclusive Common Area or portions thereof may be reassigned by an amendment to this Declaration executed by the Owner of the Unit(s) to which it is assigned, the Owner of the Unit(s) to which it is being assigned, and on behalf of the Association acknowledging such reassignment. The costs of preparing and recording such amendment shall be borne by the assigning Owner.

### **Article XIII** **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties.

13.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

13.4. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development

or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described on **Exhibit "B"**; dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration.

#### **Article XIV** **DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area and Units which they own such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, construction offices, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

The Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the ~~Class "B" Control Period shall be effective without prior notice to and the written approval of~~ Declarant so long as the Declarant owns any portion of the property described on **Exhibit "A"** or **"B"** primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

The Declarant may, at Declarant's option, amend and modify this Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Home Mortgage Association or similar agency.

**Article XV**  
**DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

15.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each a "Bound Party" and collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 15.2** in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Properties;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 15.2**:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of **Article IX** (Architectural Standards) and **Article X** (Use Restrictions and Rules);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by **Section 15.2(a)**, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### 15.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

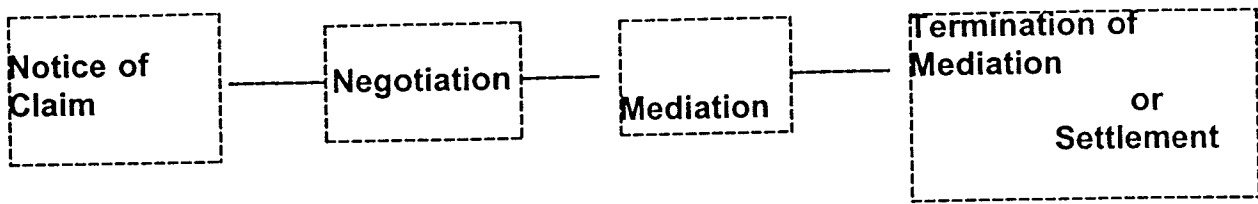
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in **Section 15.2(a)** (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Mecklenburg County or the metropolitan Charlotte, North Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

### Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

#### 15.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of at least 75% of the Members, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## **Article XVI** **GENERAL PROVISIONS**

### 16.1. Duration.

(a) Unless terminated as provided in **Section 16.1(b)**, this Declaration shall have perpetual duration. If North Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by North Carolina law, in which case such law shall control, this Declaration may not be terminated within the first 25 years after the date of recording without the consent of all Unit Owners. Thereafter, it may be terminated only pursuant to North Carolina General Statutes Section 47E-2-118 as may be amended from time-to-time, and by an instrument signed by Owners of at least 80% of the total Units within the Properties and by the Declarant, if the Declarant owns any portion of the Properties. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.2. Amendment. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Units within the Properties and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to **Section 7.1**; provided, however, Declarant may, at Declarant's option, amend or modify this Declaration without obtaining the consent or approval of any other Owner if such amendment or modification is correctional in nature only. In addition, the approval requirements set forth in **Section 13.4** shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within twelve months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

16.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

16.5. Use of the Name "Stephens Grove." No Person shall use the name "Stephens Grove" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Stephens Grove" in printed or promotional material or advertisements where such terms are used solely to specify that particular property or Builder's homes are located within Stephens Grove and the Association shall be entitled to use the name "Stephens Grove" in its name.

16.6. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, any applicable Supplemental Declaration, the By-Laws, and the Use Restrictions and Rules promulgated pursuant to ~~Article X~~. Subject to the terms of ~~Article XV~~, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in ~~Section 4.3~~.

16.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board or its designee at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and

such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board or its designee, notwithstanding the transfer of title.

16.8. Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of **Section 16.2**. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

20<sup>th</sup> IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this day of October, 1999.

SHEA HOMES L.L.C. [SEAL]  
By: [Signature] [SEAL]  
Its: Member Manager

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, Alexis D. Bucy, a Notary Public of the County and State aforesaid, do hereby certify that Edmund H. Shea III, Member Manager of SHEA HOMES L.L.C., a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official stamp or seal this 20 day of October, 1999.

[Signature]  
Notary Public

My Commission Expires: 11-1-99

[NOTARIAL SEAL]

