

THIS DECLARATION AND AGREEMENT made this 22 day of August, 1995, by HARRY GRIMMER & ASSOC., L.L.C., a North Carolina Limited Liability Company, with its registered office and principal place of business in Mecklenburg County, North Carolina, (hereinafter referred to as "Declarant"), and any and all persons, firms or corporations hereafter acquiring any of the lots shown on the map hereinafter referred to.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain subdivision known as Tara at Providence Plantation, Phase I, Map 1, the Lots of land consisting of said subdivision being more fully described on the maps recorded in the Mecklenburg County Public Registry in Map Book 26, at pages 871.

WHEREAS, Declarant has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of that property for the protection of the Lots shown on said map and the future owners thereof; and

WHEREAS, Declarant desires now, for the use and benefit of itself, its successors and assigns and its future grantees, to place and impose the covenants, conditions and restrictions on each of the Lots of land shown on said map or plat.

NOW, THEREFORE, in consideration of the premises, Declarant hereby declares that the Lots shown on the map referred to above shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which are for the purpose of protecting the value and desirability of, and which shall run with, such Lots and be binding on all parties having the right, title or interest in such Lots, their heirs, successors and assigns, and shall inure to the benefit of each other thereof.

ARTICLE I

DEFINITIONS

Section 1. The term "Architectural Review Board" herein referred to as "Board" shall mean that group of persons selected pursuant to Article II, Section 6, with the powers described therein.

Section 2. The term "Declarant" shall mean and refer to HARRY GRIMMER & ASSOCIATES, L.L.C., and its successors and assigns.

Section 3. The term "Lot" shall mean and refer to each parcel of land shown and identified as a lot on the Map; provided, however, that if any Owner should subdivide any Lot pursuant to and in accordance with Article II, Section 1, hereof, then the term "Lot" shall thereafter mean and refer to each resulting parcel of land intended to be used for the construction of one residential dwelling.

Section 4. The term "Map" shall mean and refer to that certain map(s) recorded in Map Book 26 at Page 871 in the Mecklenburg County Public Registry.

Section 5. The term "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 subdivision, but excluding those persons or entities having such interest merely as security for the performance of an obligation.

L.L.C. and any Declarant approved successor or assign to whom Shea Homes, L.L.C. assigns its interest as builders hereunder in whole or part by instrument recorded in the Mecklenburg County Public Registry.

## ARTICLE II

### COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

Section 1. Not Used

Section 2. Not Used

Section 3. Reserved Easements. The Declarant reserves for itself, its successors and assigns, an easement in and the right at any time in the future, to grant a 10-foot right-of-way over, under and along the front and rear lines of each Lot, and a 5 foot right-of-way under, over and along each side Lot line, for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electric power, gas, water, sewer, telephone service, cable television, and other utilities to the Lot. Within such areas, no structures, planting, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or cable installations, or which may change the direction or flow or drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. In the event that any Lot is subdivided pursuant to Section 1 hereof, an easement shall exist both along the rear and side Lot lines of the Lot as shown on the Map and the Lot as so subdivided; provided, however, that upon request by the Owner of any such subdivided Lot, the Declarant may release the easement reserved along the rear or side line of the Lot as now shown on the Map, if doing so would not interfere with the installation or maintenance of any utilities or the drainage within the property.

Section 4. Residential Use of Property. All Lots shall be used for residential purposes only, and no structure shall be erected, placed or permitted to remain on any Lot other than one single-family dwelling and any necessary structure customarily incident to such residential use. No garage constructed on any Lot shall be used for living quarters of any kind (excluding any "bonus" room above the garage), either for guests, members of the family or domestic employees and the construction or maintenance of "garage apartments" on any Lot is expressly prohibited.

Section 4(a). Provided however, that a NC Licensed General Contractor may build, furnish and maintain a model home, i.e. sales center, in subject subdivision for the purpose of sales and merchandising of Lots and/or homes in subject subdivision. The provisions of Section 6 herein shall apply to this section.

Section 5. Minimum Size of Dwelling. Single family dwellings shall contain not less than 1,450 square feet of enclosed heated living area for one-story dwellings with an attached carport or garage, not less than 1,950 square feet of enclosed heated living area exclusive of garage, carport, unheated storage areas and non-living space for split-level dwellings, not less than 930 square feet of enclosed heated first floor living area for one and one-half, two or two and one-half story dwellings with an attached garage. First floor area as used herein shall not include basements, attached or detached garages, unheated storage areas, carports or open porches of any type.

(a) Extent of Control. No building, fence, wall, sidewalk, hedge, obstruction, statutory, driveway or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition, change or alteration therein (including change of color) be made without the prior written approval of the Architectural Review Board (the "Board"). The areas over which the Board shall have control shall include, but shall not be limited to, the swimming pool, utility building, patio or other exterior improvements, the composition and color of all materials used on the exterior of any structure.

(b) Membership of Architectural Review Board. The Board shall consist of those persons mutually appointed by Declarant and Builder, its successors and assigns. The Declarant and Builder may, at its sole option, surrender such right of appointment at any time by a duly recorded written instrument provided that so long as Builder owns any lot, Builder must approve such surrender, and at such time, then the Owners of a majority of all Lots shall have the power through an additional duly written instrument to change the membership of the Board or to withdraw from the Board or restore to it any of its powers and duties; provided, however, that the Board shall continue to function as provided herein until such instrument is duly recorded.

(c) Procedure. Any party desiring Board approval of any proposed improvement to any Lot shall submit to the Board plans and specifications showing in such detail and manner as the Board shall require the nature, shape, height, materials and location of any such improvement. The Board may, in its sole discretion, require in particular instances that such plans and specifications be accompanied by a plat prepared by a registered surveyor showing the location of the proposed improvements on the Lot. All decisions of the Board shall be by a majority vote of the members thereof and shall be based on the Board's discretionary determination as to whether any particular improvement is suitable and harmonious with the development of the subdivision. The Board's approval or disapproval of any proposed improvement shall be in writing. In the event that the Board fails to approve or disapprove any such proposed improvement within thirty (30) days after plans and specifications in such detail as the Board may require have been submitted to it, no approval will then be required and this Section shall be deemed to have been complied with. Subsequent to the approval of any plans and specifications, the Owner shall have the responsibility for making such improvements in accordance with the plans and specifications as approved. Approval by the Board of any proposed improvements shall not constitute or be construed as approval of the structural stability, design or quality of any improvements, or the compliance of any such improvements with applicable laws and codes. Each party desiring Board approval shall submit to the Board not less than two complete copies of the plans and specifications for the requested Board approval, and shall furthermore submit to the Board such modified or amended plans and specifications as the Board may require, again in duplicate, and the final plans and specifications, if and as approved by the Board shall be duly marked with the appropriate statement indicating approval by the Board, with one copy returned to the parties and one copy retained and maintained in the files of the Board.

(d) Builder Exemption. Notwithstanding any provisions to the contrary in this Section 6, the Board shall have no authority or power of jurisdiction over Lots owned by Builder, and the provisions of this Section 6 and Article III, Section 1, shall not apply to lots owned by Builder until such time as Builder conveys title to a lot to a purchaser thereof. This Section 6 shall not be amended without Builder's written consent set forth on the amendment.

(a) No building shall be located on any Lot nearer than 35 feet from the front or 15 feet from any side street line, or such greater front or side street setbacks as may be required by the Board under the provisions of Section 6 hereof. No building or structure of any kind shall be located on any Lot nearer than 6 feet from any side yard Lot line or 45 feet from any rear Lot line. In computing such building line requirements, the measurements shall be from the base or ground level of the building or structure, and neither the overhang of eaves not in excess of three feet nor the establishment of uncovered stoops or steps within a setback area shall be considered a violation of this covenant.

(b) In the event of any unintentional violation of any of the building line restrictions herein set forth, Declarant reserves the right by and with the mutual consent of the Owner at such time of the Lot or Lots directly affected thereby, to change such restrictions accordingly; provided, however, that such change shall not exceed ten percent (10%) of the marginal requirements of such building line restriction.

Section 8. Use of Outbuildings and Similar Structures. 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 temporary structures during construction.

Section 9. Nuisances and Unsightly Materials. No noxious, offensive or illegal activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No person may keep an animal or poultry of any kind upon any part of the Lot, except that any Owner then occupying a residence upon a Lot may keep customary house pets upon such Lot, provided such pets are not kept, bred or maintained for any commercial purposes, and provided further that such pets are not kept in such numbers or of such nature or in such manner as to become a nuisance to the other Owners or residents of the subdivision, and providing further that the maintenance of such household pets shall be at all times in accordance with all applicable governmental regulations regarding the keeping of such household pets. Household pets as used herein shall specifically exclude exotic or dangerous pets.

Section 10. Completion of Construction. Construction of new residential buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building or portion thereof onto a Lot and remodeling or converting the same into a dwelling unit in this subdivision. No structure placed on any tract shall have a finished exterior of either block or cement block. Any dwelling constructed upon a tract must be completed within one year subsequent to commencement of construction, except for the written consent of the Declarant, which written consent of the Declarant agrees to give if the delay in construction is due to circumstances reasonably beyond the control of the Owner of said Lot. Completed date shall be defined as date of receipt of "Occupancy Permit".

Section 11. Sewage and Water Systems. Declarant has made available to each Lot within the subdivision water and sewer facilities which each Owner shall use in the occupancy of each Lot. The installation of a well by any Owner shall be solely in accordance with the then applicable governmental regulations and shall, so long as sanitary water supplies are provided by the governmental authorities, be used solely for nonconsumption purposes.

improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty, and shall keep said Lot free of all rubbish and other refuse. 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 that will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots and no trash, rubbish or stored materials, wrecked or inoperable vehicles 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 and other debris for collection by governmental or other similar garbage and trash removal units. All such trash, garbage or other waste shall, however, at all times be kept in sanitary containers and in compliance with the applicable governmental regulations regarding disposal thereof. In the event that the Owner fails or refuses to comply with any of the foregoing, either the Declarant or the Architectural Review Board may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at the address specified in his contract to purchase such Lot, and 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 the Owner's expense. Owners, by acquiring property subject to these restrictions, agree to pay such cost promptly upon demand by Declarant. No such entry as provided herein shall be deemed a trespass. Any sums expended in the enforcement hereof shall constitute a lien upon the Lot or Lots upon which the violation occurred, and which the Declarant and/or the Board incurred costs or expenses in correcting the same. The provisions of this Section 12 shall not apply to lots owned by Builder on which construction of a dwelling has commenced and has not been abandoned for a period of at least ninety (90) days.

**Section 13. Signboards.** No signboard, billboard or advertising sign of any description shall be displayed upon or above any Lot with the exception of:

(a) Signs stating "For Rent" or "For Sale", which signs shall not exceed 2' x 3' in dimensions, shall refer only to the Lot on which displayed, and shall be limited to one sign per Lot; and

(b) The name of the resident of any Lot and the street address, the design of which shall be furnished to the Board upon request, and shall be subject to approval by the Board; and

(c) Signs stating "Built By" and including the name of the builder or contractor constructing the principal residence thereon, said sign not to exceed 2' x 3' in dimensions, and to refer only to the Lot on which it is displayed, and furthermore being limited to one sign per Lot (financial institution and subcontractor signs are not allowed, including without limitation financed by, termite, plumbing, electrical and roofing). Provided however, that the Declarant or designee shall be allowed to install project identification and directional signs as allowed under applicable sign zoning ordinances.

**Section 14. Fences and Walls.** No fence or wall of any nature shall be maintained or permitted on any Lot from the front and side street setback lines on each Lot to the street line. No fences shall be allowed in front of the rear lines of the house constructed on each Lot. Walls or fences constructed from the rear line of the house constructed upon the property to the rear Lot line shall be constructed solely of wood or brick or other material approved by the Board, and shall not exceed such height restrictions and limitations, if any, as imposed by the governmental authorities.

be allowed within the subdivision; providing however, that a wire fence may be used behind and in conjunction with an approved fence, if approved by the Board.

Retaining walls required because of topography, grading or landscaping requirements shall be permitted in the front and side street setback lines provided they meet the requirements outlined in Section 6 herein.

Section 15. Garages, Carports, Buildings, Accessory Structures  
Pools.

(a) All garages must have a fully completed exterior, harmonious to the principal structure constructed on the said Lot, and all attached garages shall be accessible from the side, rear, or front of the principal residence.

(b) No metal garage or carport shall be erected on any Lot or attached to any residence building located on the Lot. No metal building, metal accessory structure or above-ground pool of any kind shall be placed on any Lot.

Section 16. Sidewalks and Driveways. Each sidewalk and driveway constructed on any Lot within the subdivision, including the flooring surfaces of garages as required herein, shall be constructed solely of concrete unless approved in accordance with Section 6 herein. (Gravel, asphalt or other similar paving materials are not allowed in the subdivision, unless approved by the Board.)

Declarant may consider waiving this section if Lot Owner furnishes to Declarant a properly executed right of way encroachment agreement from the North Carolina Department of Transportation.

ARTICLE III

ARCHITECTURAL REVIEW GUIDES

Section 1. Architectural Review Procedures. The provisions hereof are designed to outline for any Owner the relevant guidelines under which the Board shall determine the acceptability of the plans and specifications for the construction of any residence within the subdivision. Each Owner shall submit the plans and specifications in accordance with the terms and conditions of Article I, Section 6 (c) hereof, and upon approval of said plans and specifications, the Owner shall thereafter construct the residence and incidental structures and outbuildings associated therewith in full and complete accordance with the plans and specifications as so approved. Deviation by the Owner from the plans and specifications as approved without the prior consent of the Board, shall be deemed a violation hereof, and accordingly reserving to the Declarant or the Board the right to enforce the terms and conditions hereof.

Section 2. Owner Responsibilities. Each Owner shall be responsible ( and also responsible for the actions or inactions of the builder or contractor retained by Owner) for any damages to streets, utility and drainage improvements, including but not limited to, catch basin covers, curbing, water mains, sewer lines, drainage pipes and headwalls, paving, street markets, gas mains, sewer and telephone lines resulting from work done by himself, his subcontractors or his suppliers. Owner shall further comply with all applicable Mecklenburg County ordinances relating to erosion and siltation control, and will be required to take preventive measure necessary to control runoff on said Lots to adjacent Lots or street rights-of-way during construction or any modifications or improvements upon any Lot or Lots. Each Owner shall, as soon as possible, cover the driveway entrances to the Lot with a crushed stone base, preliminary to the paving thereof in accordance with the terms and conditions hereof, in order to minimize mud on the subdivision streets. Owner shall confine any and all construction materials and debris solely to the parameters of Owners lot

branches and construction materials are to be removed as often as necessary in order to keep the residential structure and Lot accessible and in salable condition.

No such debris shall be dumped on any adjacent Lot or any other area within the subdivision not owned by owner, and Owner shall maintain the Lot and residential structure in a neat and attractive manner at all times. Owner shall not, at any time, store or maintain (even on a temporary basis) upon the streets and rights-of-way within the subdivision any debris or building materials. Declarant reserves the right to require the Owner, in conjunction with the Owners of other Lots within the subdivision, to contribute, from time to time, such prorated portion as may be necessary to pay for the costs of cleaning mud and debris from the streets within the subdivision caused by the construction of a residence upon the Lot of Owner.

**Section 3. Architectural Intent.** It is the intent of these guidelines to encourage residential structures which harmonize with their surroundings and with each other. Colors, materials and design features will not be approved which would tend to make an individual house call attention to itself in the overall design and structure of the subdivision.

**Section 4. Guidelines.** Listed hereinafter are guidelines which are not intended to be absolute and complete guidelines, but address certain critical areas which will be carefully considered by the Board in the approval or disapproval of an Owner's plans and specifications:

(a) Exterior Materials:

- (1) Exterior materials shall be brick, stone or siding as approved by the Board.
- (2) Brick, Stone & Mortar Type: A sample must be submitted for approval to the Board prior to the ordering of exterior material for the construction of any residence.
- (3) Chimneys: All chimneys must be brick, stone or other acceptable masonry material, unless otherwise approved by the Board.
- (5) Roofs: Roof pitches to be no less than 6:12, unless otherwise approved in writing by the Board. All flashings as well as roof stacks and plumbing vents, must be painted flat black; providing, however, that flashings constructed solely of copper may be left unpainted.
- (6) Mail Boxes and Supports: All mail-boxes and supports shall be of a single type and color, fabricated to a design approved by the Board.

(b) Exterior Colors: All exterior colors (brick, roof, paint, stain, etc.) must be submitted to the Board prior to application.

(c) Interior Features: First floor ceiling height must be no less than 8 foot.

surfaces must be paved concrete finished. Curved driveways are encouraged. (See Article II, Section 16 herein).

(e) Garage Doors: Garage doors should be constructed in a manner and in a color to harmonize with the remaining construction of the residence.

(f) Landscaping: Landscaping must be completed no later than thirty (30) days after final inspection by building inspector or prior to occupancy, whichever is sooner, unless an extension has been granted by the Board.

#### ARTICLE IV

##### POST CONSTRUCTION RESTRICTIONS

Section 1. Landscaping Maintenance. Each Owner shall at all times maintain the landscaping of each Lot in a neat and orderly manner, including without limitation, the mowing of grass, the removal of trash and debris, including without limitation, leaves and other natural debris (save and excepting in natural areas as may be designed by the Owner and which are harmonious to the subdivision).

Section 2. Exterior Improvements. The construction, attachment or addition of a swimming pool, tennis court, TV or radio antenna, or outbuilding constructed subsequent to completion of a principal residence, or repair, remodel or refinish of existing structures, must be submitted to the Board in the same manner and subject to the same control as the preliminary plans and specifications regarding the construction of the principal residence.

Section 3. On-Street Parking. Each Owner of a Lot shall provide upon the Lot adequate parking for each vehicle owned or maintained by a resident of a Lot, and no such vehicle shall be parked overnight upon the dedicated streets of the subdivision.

Section 4. Boats, Recreational Vehicles and Commercial Vehicles. All boats, trailers, recreational vehicles, campers and commercial vehicles (commercial vehicles as used herein shall mean vehicles owned and/or principally used by the Owner or other residents of the principal residence located upon the Lot, and shall not refer to commercial vehicles located within the subdivision from time to time solely for the purpose of providing services to the residents of the subdivision) shall be parked upon a space prepared for such use by the Owner in the rear yard of each such residence, and in no circumstances shall any such boat, recreational vehicle, trailer, camper or commercial vehicle be parked on the dedicated streets of the subdivision or in the driveways servicing any Lot. For purposes hereof, the term "rear yard" shall mean that portion of a Lot to the rear of the structure erected on any such Lot and shall not include front or side yard areas.

Section 5. Satellite Dishes or Discs. No radio or television transmission or reception towers, antennas or satellite dishes or discs shall be erected on a Lot. Providing, however, that to the extent that cable television shall not be available to a Lot within the subdivision, a television antenna may be installed upon approval of the Board. If such approval is rendered by the Board, such antenna shall remain only until such time as cable television does in fact become available to said Lot. Provided however, that the Board reserves the right to approve installation of satellite dishes on a case by case basis predicated on product technological advances.



## GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, any Owner, or any other person, firm or corporation owning any interest in a Lot, shall have the right to enforce, by any proceeding at law or equity, all conditions, covenants and restrictions now or hereinafter imposed by the provisions of this Declaration. Failure to any such party to enforce any such covenant, condition 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 these covenants, conditions or restrictions by Judgment or Court Order shall in no way affect any of the other provisions not expressly held to be void, and such remaining provisions shall remain in full force and effect.

Section 3. Effective Period. The covenants, conditions and restrictions of this Declaration shall run with the land and bind the Owners of Lots for a period of twenty-five (25) years from the date this Declaration is recorded, after which time such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years until terminated as hereinafter provided. The reserved easements shall permanently run with the Lots.

Section 4. Amendment and Termination. This Declaration may be altered, modified, canceled or changed at any time in any manner by a written document executed by the Declarant and Builder, together with the Owner or Owners of a majority of the Lots (Declarant's signature shall be necessary whether or not the Declarant and Builder shall own any Lot or Lots at the time of execution, and Lots owned by Declarant and Builder shall be included as to the execution by a majority of Lot Owners). Any such amendment must be recorded in the Mecklenburg County Public Registry and shall not be effective until so recorded. Provided, however that within the initial 25 year period this document may not be amended without the approval of Declarant and/or Builder as long as Declarant and/or Builder owns lots in the subdivision. After the initial twenty-five (25) year term hereof, this Declaration may be modified or terminated by a vote of the Owners of a majority of the Lots.

Section 5. Excluded Properties. Nothing contained herein shall be construed to impose any restrictions on or easements in any land or property owned by the Declarant, other than the subdivision referred to hereunder.

Section 6. Enforcement of Expenses as a Lien Upon Property. All costs incurred by the Declarant or the Board in the enforcement of the terms and conditions hereof, including court costs, costs of correcting deficiencies by any Owner of a Lot or Lots, and reasonable attorneys fees in the enforcement hereof, shall be a personal liability of the Owner or Owners of such Lot or Lots subject to the enforcement or correction hereunder, and furthermore, such costs and fees shall be a lien upon the Lot of the Owner, and each Owner agrees to accept such personal liability and the lien enforcement rights of the Declarant and the Board by acceptance of a Deed to any Lot or Lots in the subdivision.

Section 7. Headings. Article and Section headings are inserted for convenient reference, and are not to be construed as substantive parts of the paragraphs to which they refer.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be duly executed under seal on the day and year first above written.

HARRY GRIMMER & ASSOCIATES, L.L.C.

By: *Harry Grimmer*

Managing Member

ATTEST:

*H. Craig D...*

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, *Tammy L. Crosier*, a Notary Public in and for said County and State do hereby certify that *Harry Grimmer* personally appeared before me on this day and acknowledged that he is Managing Member of HARRY GRIMMER & ASSOC., L.L.C., and that by authority duly given and as the act of the L.L.C., the foregoing instrument was signed in its name by its Managing Member.

WITNESS my hand and official seal, this 22 day of August, 1995.

*Tammy L. Crosier*  
Notary Public

My Commission Expires My Commission Expires Nov. 11, 1995

(Notarial Seal)