

2/16/01 copy

COUNTY OF MECKLENBURG

STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
LANGSTON

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of this 26<sup>th</sup> day of July, 2001, by LANGSTON SUBDIVISION, LLC, referred to in this instrument as "Declarant."

STATEMENT OF PURPOSE

Declarant is the owner of those certain parcels of land located in Mecklenburg County, North Carolina, more particularly described on the map recorded in Map Book 35, Pages 471-472 in the Mecklenburg County, North Carolina, Public Registry (the "Submitted Property"), reference to which is hereby made. Declarant desires to create thereon an exclusive residential community of single-family residences to be named LANGSTON.

It is in the best interest of Declarant, as well as to the benefit, interest and advantage of each person or other entity later acquiring any property in LANGSTON, that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed and set forth and declared to be covenants running with the land.

Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the real property in LANGSTON and for the continued maintenance and operation of such recreational and common areas as may be provided.

DECLARATION

In consideration of the premises and for the purposes stated, Declarant hereby declares that all of the Submitted Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions (all of which are collectively referred to in this instrument as "restrictions"), which restrictions shall be construed as covenants running with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(1.1) "Association" shall mean LANGSTON HOMEOWNERS ASSOCIATION, INC., a non-profit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

Drawn by and Mail to: LandCraft Properties, Inc.  
I/L Financial Center  
201 North Tryon Street, Suite 2650  
Charlotte, NC 28202

FILE COPY	
FILED FOR REGISTRATION	DOC. # 200146863
DATE 8-30-01	TIME 15:42
BOOK 12614	PAGE 131
STAMPS	REC FEE 42.00
JOHN A. GIBSON, REGISTAR OF DEEDS MECKLENBURG COUNTY, NC	

(1.2) "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of LANGSTON but excluding those having such interest merely as security for the performance of an obligation.

(1.3) "Properties" shall mean the Submitted Property and such real property as may subsequently be brought within the jurisdiction of the Association.

(1.4) "Common Area" shall mean all real property and/or easements acquired by the Association in LANGSTON for the common use and enjoyment of members of the Association lying within the boundaries of the Properties. Common Areas, with respect to the Properties subject to this Declaration, shall be shown on the plats of LANGSTON recorded in the Mecklenburg County Public Registry and designated thereon as "Common Open Space" or "COS."

(1.5) "Lot" shall mean any numbered plot of land to be used for residential purposes shown upon any recorded subdivision plat of the Properties subject to this Declaration.

(1.6) "Declarant" shall mean and refer to LANGSTON SUBDIVISION, LLC, and shall also mean and refer to any person, firm, or corporation hereafter vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to LANGSTON SUBDIVISION, 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 conveyed), but no longer.

(1.7) "Person" shall mean a natural person, as well as a corporation, partnership, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

(1.8) "LANGSTON " shall mean the Submitted Property, together with such additions thereto as may from time to time be designated by Declarant in accordance with Article II hereof, whether or not such additions are contiguous with or adjoin the boundary lines of the Submitted Property.

(1.9) "FHA, HUD, and VA" shall mean and refer to the Federal Housing Administration, U.S. Department of Housing and Urban Development, and the Department of Veteran's Affairs, respectively. If any of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to HUD, FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by any of these departments.

#### ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

(2.1) The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Only the Submitted Property is hereby made subject to this Declaration; provided, however, Declarant shall have the right to subject other real property to these restrictions as provided in Section 2.2.

(2.2) Without further assent or permit, Declarant hereby shall have the right within seven (7) years from the date of recording this Declaration, exercisable from time to time, to subject any portion of the real property described on Exhibit A attached hereto to the terms and provisions of the Declaration in order to extend the scheme of this Declaration to other property to be developed as part of LANGSTON and thereby bring such additional properties within the jurisdiction of the Association (provided that the FHA and the VA determine that the annexation of such area is in accord with Declarant's general plan of development of LANGSTON as previously approved by them, if such determination and approval are necessary).

(2.3) Any addition of real property shall be made by filing of record one or more Supplemental Declarations in respect to the property to be then made subject to this Declaration, and the jurisdiction of the Association shall thereby then extend to such property and subject such addition to the assessments provided in this instrument for a just and proportionate share of the Association's expenses. Each Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character of the added properties and as are not inconsistent with the provisions of this Declaration.

### ARTICLE III: PROPERTY RIGHTS

(3.1) Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration, including but not limited to the following:

(a) The right of the Association to limit the use of the Common Area to Owners, their families and guests;

(b) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations, if any;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the consent of the membership if such easements are requisite for the convenient use and enjoyment of the Properties.

(3.2) Delegation and Use. The right and easement of enjoyment granted to every Owner in Section 3.1 of this Article may be exercised by members of Owner's family and guests thereof. An Owner may delegate to his tenants his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Association's Bylaws and rules and regulations, if any.

### ARTICLE IV: MEMBERSHIP AND VOTING RIGHTS

(4.1) Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(4.2) Voting and Voting Rights. The Association shall have two classes of voting membership:

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

(b) Class B. The Class B member shall be Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever first occurs:

- (i) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership; or
- (ii) Seven years from the date of recording of this Declaration; or
- (iii) When the Declarant voluntarily relinquishes majority control of the Association by a duly recorded instrument.

(4.3) Suspension of Rights. During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment, is paid. In the event of violation by a member of any rules or regulations established by the Board of Directors, such member's voting rights may be suspended by the board after a hearing. Such hearings shall only be held by the board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the board or the committee thereof.

#### ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1) Purpose of Assessment. The assessments levied by the Association shall be used: (a) to provide funds for maintenance, upkeep, landscaping and beautification of the Common Area in LANGSTON; (b) to provide services for the Association members to promote the health, safety and welfare of the residents of LANGSTON, and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including but not limited to the cost of repair, replacement and additions thereto; (c) for the maintenance of all recreational and related facilities, such as the tot lot which shall include play structures, located within the Common Areas as a common amenity, (d) for the maintenance of any trails or paths in the Common Area in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased or decaying trees, shrubs and bushes removed from such areas (e) for the payment of taxes assessed against the Common Area, for insurance related to the Common Area, for the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, for the employment of security personnel; (f) the provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Association shall decide to provide; (g) for the payment of monthly electric and water bills and other expenses resulting from the maintenance or beautification of entrance monuments, signs, and landscaping; and (h) for the payment of lawn service to mow the yards of all lots with a house constructed thereon; provided, that, the Declarant or the Association, by a vote of its Board of Directors, may suspend or terminate such lawn services at any time.

(5.2) Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in said Deed, is deemed to covenant and agree to pay to the Association;

(a) Annual assessments ("Annual Assessments") for the purposes specified in Section 5.1 in the amount hereinafter set forth; and

(b) Special assessments ("Special Assessments") for the purposes specified in Section 5.1 as may be approved by the members, to be established, and collected as provided herein.

In order to secure payment of the Annual and Special Assessments, such charges as may be levied by the Association against any Lot, together with interest, costs of collection and reasonable attorney's fees, shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment,

together with interest, late charges, costs of collection and reasonable attorney's fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligation.

(5.3) Exempt Property. The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development, the Federal Housing Administration, or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessments shall again accrue on such Lot. Any Lot which Declarant may hereafter designate for common use as part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.4) Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum Annual Assessment shall be Eight Hundred-Ninety and No/100 Dollars (\$890.00) on each Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year above the maximum assessment for the previous year without a vote of the membership by the percentage which is not more than the greater of (1) six percent (6%) or (2) the percentage increase in the Consumer Price Index from the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above the greater of six percent (6%) or the previous year increase in the Consumer Price Index by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum herein provided.

(5.5) Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Association members who are voting in person or by proxy at a meeting duly called for this purpose.

(5.6) Notice and Quorum for Any Action Authorized Under Sections 5.4 and 5.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.4 and 5.5 of this Article shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence in person or by proxy of members entitled to cast thirty percent (30%) of all the votes of each class shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be the presence in person or proxy of members entitled to cast twenty percent (20%) of all the votes of each class of members. No such subsequent meeting shall be held more than six (6) months following the preceding meeting.

(5.7) Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The Annual Assessments shall commence as to all Lots on the first day of the month following the date such property is submitted to the provisions of this Declaration. From the date on which the Annual Assessments commence on a Lot until the date on which the Lot is sold by the Declarant to a purchaser, the Declarant shall be liable for Annual Assessments at a rate which is one-quarter of the rate otherwise payable except that Declarant shall not be liable for Annual Assessments on any Lots if the Association is operating without a deficit. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year when filed. At least thirty (30) days

before January 1 of each year, the Board of Directors shall fix the amount of the Annual Assessment against each Lot and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's Annual Assessment shall be the fixed amount. Written notice of any change in assessment rate shall be sent to every owner. The Annual Assessments shall be due and payable in advance on January 1 of each year unless the Board of Directors votes to collect such assessments on a monthly basis and the due dates for the payment of Special Assessments 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 to date.

(5.8) Effect of Non-Payment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be assessed a late charge as determined by the Board of Directors, and bear interest from the due date at an annual rate of eight percent (8%) but in no event above the then maximum legal rate, and to the extent allowed by law. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorney's fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

(5.9) Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

(5.10) Collection Upon Sale by Declarant. Upon the sale of a Lot by Declarant, the purchaser shall pay to the Association at the closing of the sale that amount of money that is equal to that portion of the Annual Assessment attributable to the balance of the year in which the closing takes place. Any amounts prepaid by the Declarant shall be refunded by the Association. Any Special Assessment made before, but falling due after, the date of closing of the sale of a Lot by Declarant shall be paid in full to the Association by the purchaser at the closing of the sale.

#### ARTICLE VI: ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS

(6.1) Architectural Control Committee. Before all Class B Lots shall cease to exist and be converted to Class A Lots pursuant to Article IV, Declarant shall appoint an Architectural Control Committee consisting of not less than three members to serve as representatives of the Association's Board of Directors and enforce the restrictions hereafter set forth.

Prior to the formation of said Committee, Declarant shall have the responsibility of enforcing the restrictions set forth in this Article. Upon the later of the following two dates, the Architectural Control Committee shall be appointed by the Board of Directors: (1) Upon the termination of the Class B membership; or (2) seven years following the date of recording of this Declaration. Reference herein to the Committee shall mean the Declarant until such Committee is appointed. The following architectural, maintenance and use restrictions shall apply to each and every Lot now or hereafter subject to this Declaration.

(6.2) Approval of Plans and Architectural Committee. After the initial construction of the dwelling on a Lot has been completed by Declarant, no construction, reconstruction, remodeling, alteration, roofing or addition to any structure, building, fence, wall, drive or walkway, or exterior color change, shall be commenced or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made after completion of construction of said dwelling, unless and until the plans and specifications showing the nature, kind, shape, height, color, material and location of the same shall have been mailed to the Committee by certified mail with return receipt requested and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee. If the Committee fails to approve or disapprove such design and location within thirty (30) days

after said plans and specifications shall have been submitted to it, further approval will not be required and this Article will be deemed to have been fully complied with. Upon giving approval to such plans and specifications, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans as have been previously approved by the Committee. The Committee or the Board of Directors of the Association shall be entitled to stop any construction in violation of these restrictions.

(6.3) Residential Use. All Lots shall be used for residential purposes only.

(6.4) Building Line Requirements. No building shall be located nearer to the front property line or side street line than the building setback line as shown on the recorded maps of the Property. It is provided, however, that eaves, steps, stoops, porches and chimneys shall not be considered a part of the building for purposes of interpreting this Section (6.4). Minimum setback lines which may be shown on any recorded plat of the Properties are not necessarily intended to create uniformity of setbacks; they are meant primarily to avoid overcrowding and monotony. It is intended that setbacks may be staggered where appropriate so as to preserve the trees and other natural vegetation, and to insure each Owner the greatest benefit and enjoyment of his/her Lot. Any deviation from the building line requirements not in excess of ten (10) percent thereof shall not be construed as a violation of the building line requirements.

(6.5) Building Requirements. No dwelling shall be erected or placed on any Lot having a heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than 1500 heated square feet in the case of a one-story dwelling or 1250 square feet in the case of a two-story dwelling. No dwelling shall be erected or placed on Lots 39 through Lots 70, inclusive having a heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than 1600 heated square feet in the house pad level.

(6.6) Walls, Fences and Hedges. No fence, hedge or wall of any type or kind shall be erected or maintained on a Lot except such fences, hedges or walls as may be installed, constructed or erected with the initial construction of the main dwelling located on said Lot, or as may later be approved by the Committee as described in Paragraph (6.2) above. Fences may be made of brick, iron or white painted wood with a height not to exceed four (4) feet. These fences will not be permitted to be erected beyond 20' from the front corner of the house pad. All fences are restricted to the rear and side yard only. If any wall or fence restricts the Association's landscape maintenance company from accessing portions of an Owner's lot for lawn mowing services, then the applicable Owner shall be responsible for maintaining such portions of the Lot and no adjustment or credit against such Owner's requirement to pay the Annual Assessments shall be given.

(6.7) Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shed, tent, garage, carport, or any other structure of a similar nature shall be used as a residence either temporarily or permanently. Provided, however, this paragraph shall not be construed to prevent the Declarant from using sheds or other temporary structures during construction for such purposes as Declarant deems necessary or later approved by the Association. No television satellite dishes shall be erected on any Lot, except that a television satellite dish not exceeding 18 inches in diameter which is attached to the house and is not visible from the street shall be permitted. No radio or television antenna shall be allowed on the roof of any house or structure located on a Lot and no separate towers for antenna shall be erected on any Lot. No solar panels, solar collectors or other solar power apparatus shall be allowed on any Lot. No metal storage buildings, metal sheds, metal trailers or metal garages shall be permitted on any Lot. All other types of storage buildings, sheds, trailers or garages shall not be allowed on a Lot unless approved by the Architectural Control Committee as described in Section (6.2) above.

(6.8) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, pastured, or maintained on any Lot, except household pets which may be kept thereon in reasonable numbers as pets for the sole pleasure and use of the occupants, but not for any commercial use or purpose. All household pets shall be kept under Owner's control so as not to be a nuisance to other Owners. All household pets shall be kept under Owner's control so as not to be a nuisance to other Owners. The number of pets for all Lots are restricted to a maximum of two (2) cats and two (2) dogs except for newborn offspring of such household pets which are under four (4) months in

age. Birds shall be confined in cages.

(6.9) Signs. No signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale," which sign shall not exceed two feet by two feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot. Notwithstanding the above, the Declarant may erect and place permanent and temporary signs on or above any unsold Lot. Declarant shall also have the right of ingress, egress and regress over the aforesaid Lots in order to maintain and replace any such signs until 100% of the Lots have been sold.

(6.10) Nuisances. No offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to any other Owner. 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 such Lot to appear in an unclean or untidy condition or that is unsightly; nor shall any substance, thing or material be kept upon any Lot that will emit a foul odor or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding Lots. No trash, rubbish, stored materials, wrecked, unlicensed or inoperable vehicles, boats and/or trailers, recreational vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by governmental and other similar garbage and trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds or underbrush in a manner satisfactory to a majority of the Association Board of Directors, the Association may, through its agent or representative, five days after posting a notice on such Lot or mailing a notice to the Owner thereof at his property requesting the Owner to comply with the requirements of this paragraph, enter and remove all such unsightly objects, debris or other vegetation at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by the Association in the enforcement of this paragraph promptly upon demand. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to the Declarant while constructing residences upon any Lots.

(6.11) Clotheslines, Garbage Cans, Etc. No outdoor clotheslines shall be permitted. All garbage cans, lawnmowers and similar equipment shall be kept, in an enclosed structure or screened by adequate planting or fencing so as to conceal same from the view of neighboring Owners and Streets. Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any Lot.

(6.12) Use of Common Areas. No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Declarant's intent that this paragraph inure to the mutual benefit of all Owners within the Properties.

(6.13) Maintenance. All Lots, together with the exterior of all improvements thereon, all fences, walkways, landscape, and all portions of the Lot which cannot be accessed by the Association's lawn maintenance company for lawn mowing services, shall be maintained in a neat and attractive condition by their respective Owners. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing or caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks or other exterior improvements. In the event an Owner shall fail to maintain the premises and the improvements thereon in a manner satisfactory to the Association Board of Directors, the Association may, through its agent or representative, after approval by two-thirds (2/3) vote of the Board, have the right to enter upon said Lot and repair, maintain and restore the Lot and the exterior of the buildings and any other improvements thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject and the Owner shall be personally liable to the Association for the costs of such maintenance, and the cost, until paid, shall be a permanent charge and lien upon such Lot, enforceable to the same extent and collectible as provided for in Article V. Such entry as provided herein shall not be a trespass, nor shall the Association be liable for doing anything reasonably necessary or appropriate in connection with carrying out those provisions, provided such entry shall be at reasonable times and places so as not to interfere with the right of quiet enjoyment of the individual Lot Owner. For so long as the Association engages a lawn maintenance company,

the Association shall be responsible for causing all accessible portions of the yards on each Lot to be mowed by such lawn maintenance company. The Declarant or the Association, by a vote of its Directors, may terminate or suspend said service at any time.

(6.14) Above Ground Swimming Pools. No above ground swimming pools, except for small wading pools, are permitted on any Lot.

(6.15) Decorative Structures. No decorative statues, birdbaths, fountains, ornaments, figurines, or any other decorative structures or items are permitted in the front or side yards of any Lot.

(6.16) Boats, Commercial Vehicles and Recreational Vehicles. No boats, commercial vehicles, or recreational vehicles shall be permitted on any Lot except in an enclosed garage.

(6.17) Mailboxes. Mailboxes on each Lot shall conform to specifics set forth by the Architectural Control Committee.

(6.18) Parking. Vehicles are to be parked on driveways only. Parking on grass areas is prohibited.

(6.19) Swim Stream Buffer. Declarant understands and acknowledges that Six Mile Creek is currently under restrictions by Swim Stream Buffers identified by the North Carolina Department of Environmental Health and Natural Resources. The use of Six Mile Creek is subject to rules and regulations set forth in the Land Development Standards Manual issued by the Charlotte-Mecklenburg S.W.I.M. Stream Buffer Implementation Guidelines (the "Manual") and established by other state and local regulatory authorities, including a requirement that the local authority shall control a margin of thirty-five (35) feet around the stream measured on a line perpendicular to the surface water, landward from the top of bank on each side of stream. Each Owner of a Lot located partially within a thirty-five (35) foot wide margin from the normal pool elevation of Six Mile Creek (the "Swim Buffer Area") specifically but not limited to, Lots 24, 25, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50, shall be required to adhere to, and fully comply with, all applicable, state and local rules and regulations regarding the use of the waters of Six Mile Creek and the three zoned areas within the Swim Buffer Area (see attached buffer zones labeled Exhibit "B") which shall include but not be limited to the following provisions:

- a. *Streamside zone* of the buffer must be left undisturbed, in the *managed use zone*, a limited number of trees can be removed provided that the tree density remaining is a minimum of 8 healthy trees a minimum 6" caliper per 1000 sq.ft. Removal of existing vegetation must be performed in such a manner as to prevent damage to the roots of the remaining trees. No fill material can be brought into any of the buffer zones.
- b. Grading and other land disturbing activities are allowed only in the *upland zone*, however these activities must be performed in such a manner as to prevent damage to the roots of the remaining trees. Grass or other suitable ground cover can be applied to the *upland zone* as defined in the Manual
- c. No occupied structures can be placed in any of the three buffer zones. Non-commercial buildings for storage can be placed in the *upland zone* provided they do not exceed 150 sq.ft.
- d. Declarant hereby reserves an easement for the benefit of itself and any applicable local or state regulatory authority to have exclusive use and control of the Swim Buffer Area. Declarant and such authorities shall specifically have an iron pin or other acceptable property corner marker at street crossings and along the line marking the boundary of the Swim Buffer Area.

## ARTICLE VII: EASEMENTS

(7.1) General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot or the Common Area which will interfere with rights and use of any and all easements shown on said recorded plat.

(7.2) Utility and Drainage. An easement on each Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under and upon a strip of land ten feet (10') in width parallel and contiguous to the rear or back Lot line of each Lot and easements five feet (5') in width over, under and along the side lot lines of each Lot, in addition to such other easements as may appear on a recorded subdivision plat for LANGSTON. The purpose of these easements shall be to provide, install, maintain, construct and operate drainage facilities now or in the future and utility service lines to, from or for each of the Lots. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements except for party walls located on a portion of the side line or lines of a Lot. The easement area of each and all improvements in it shall be maintained continuously by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Declarant may exercise the right to remove obstructions in such easements upon Owner's failure to do so. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the herein reserved easements along any Lot lines when in its sole discretion adequate reserved easements are otherwise available for the installation of drainage facilities and/or utility service lines. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Declarant; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Declarant. The Association may likewise reserve and grant easements for the installation and maintenance of sewerage, utility and drainage facilities in, across, under and over the Common Area.

(7.3) Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and security guards employed by Declarant and all similar persons to enter upon the Properties or any portion thereof, in the performance of their respective duties.

(7.4) Declarant hereby reserves an easement for the benefit of itself and any applicable local or state regulatory authority to have exclusive use and control of the Swim Buffer Area. Declarant and such authorities shall specifically have an iron pin or other acceptable property corner marker at street crossings and along the line marking the boundary of the Swim Buffer Area.

## ARTICLE VIII: GENERAL PROVISIONS

(8.1) Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any Lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration.

(8.2) Duration. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each, unless earlier terminated as provided in Section (8.3) below.

(8.3) Amendments and Termination. This Declaration may be terminated during the first twenty (20) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter may be terminated by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. This

Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, by the Owners of at least two-thirds (2/3rds) of the Lots and the consent of the Declarant; provided, however, that the Declarant may amend this Declaration to correct minor and clerical errors, as determined by the Declarant, without approval of Owners and should the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) subsequently delete any of their requirements which necessitate certain provisions of this Declaration or make any such requirements less stringent, the Declarant, without approval of Owners, may amend this Declaration to reflect such changes. Any such amendment or termination shall not be effective until an instrument evidencing such change has been filed of record in the Mecklenburg County Public Registry.

(8.4) FHAVA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with FHA insured or VA mortgage loans, then as long as any Class B lot exists, as provided in Article IV hereof, the following actions will require the prior approval of the FHA or the VA: annexation of additional properties, other than as provided in Article II hereof, deeding, mortgaging or dedication of Common Area to persons other than the Association and amendment of this Declaration.

(8.5) Enforcement. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association, or, in proper case, by an aggrieved Owner. Any failure by Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidity of any covenant, condition or restriction or other provision of this Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

(8.6) Headings. Headings are inserted only for convenience and are in no way to be constructed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

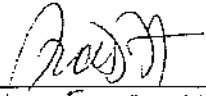
(8.7) Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Declarant or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

(8.8) Severability. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

**IN WITNESS WHEREOF**, the Declarant has caused this Declaration to be executed under seal on the day and year first above written.

LANGSTON SUBDIVISION, LLC, a North Carolina limited liability company.

By: LandCraft Properties, Inc., Manager

  
\_\_\_\_\_  
E.V. President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Dawn P. Sanders, a Notary Public, certify that Scott A. Stover, personally came before me this day and acknowledged that he (or she) is E.V. President of LANDCRAFT PROPERTIES, INC., a North Carolina corporation and Manager of LANGSTON SUBDIVISION, LLC, a North Carolina limited liability company, and that he (or she) as E.V. President, being authorized to do so, executed the foregoing on behalf of the corporation acting as Manager of said limited liability company.

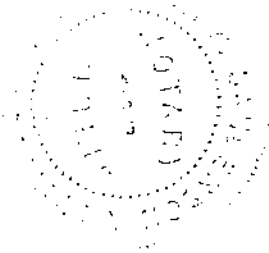
Witness my hand and official seal, this 26th day of July, 2001.

Dawn P. Sanders  
Notary Public

My commission expires:

10/30/02

[Affix Seal]



**LANGSTON SUBDIVISION**

**CONSENT OF MORTGAGEE**

BANK UNITED, being the Beneficiary under those certain Deed of Trusts dated April 19, 2000 from Declarant to BANK UNITED, conveying the property described in said Deed of Trust, recorded on April 20, 2000 in Book 11933 at Page 546 in the Mecklenburg County Public registry, does hereby consent to the recordation of this Declaration of Covenants, Conditions and Restrictions and the imposing of the provisions hereof on said real property, and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Declaration, including all exhibits hereto, shall be superior to the lien of said Deed of Trust on said real property. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall said consent be deemed to impose upon said Beneficiary any of the liabilities, duties, or obligations of the Declarants under the foregoing Declaration. Said Beneficiary executes this Consent of Mortgagee solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed as of the 29<sup>th</sup> day of August, 2001.

TRUSTEE:

By: [Signature]

BENEFICIARY:

WASHINGTON MUTUAL BANK, FA,  
a Federal Association, Successor to  
BANK UNITED, a Federal Savings  
Bank

By: [Signature]  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 27<sup>th</sup> day of August, 2001, personally came before me Scott K. Ernest, of Washington Mutual Bank, FA, successor to Bank United and being authorized to do so, executed the foregoing acting as Trustee of Washington Mutual Bank, FA, successor to Bank United.



Notary Public

[Notarial Seal]

My commission Expires:

9.5.05

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 29<sup>th</sup> day of August, 2001, personally came before me Scott K. Ernest, who being by me duly sworn, says that he is Vice President of Washington Mutual Bank, FA, successor to Bank United, Beneficiary, and that said writing was signed by him on behalf of said Corporation, by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said Corporation.



Notary Public

[Notarial Seal]

My commission Expires:

9.5.05