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 Stephen Ford, Register



**DECLARATION OF
 PROTECTIVE COVENANTS, CONDITIONS
 RESTRICTIONS AND EASEMENTS
 OF WYNMURE, PHASE II**

THIS DECLARATION is made this 13th day of January, 2005, by MICA, Inc., a South Carolina corporation (hereafter "Developer").

W-I-T-N-E-S-S-E-T-H

WHEREAS, Developer is the owner of certain lots of land in Spartanburg County, South Carolina, located at the corner of Murph and Harrison Roads, and more particularly shown and described upon a plat entitled "Wynmure", Phase II prepared for MICA, Inc. by Lavender, Smith & Associates, Inc., dated August 23, 2004, and recorded in Plat Book 157, page 315, RMC Office of Spartanburg County, South Carolina.

WHEREAS, Wynmure will be a residential community, and the Developer desires to provide for the preservation of values and amenities of said community and for the maintenance of common facilities and, to these ends, desires to subject all of the lots in Wynmure as shown on the above plat to the within Protective Covenants, Conditions, Restrictions, Easements, charges and liens (herein referred to as covenants and/or restrictions) for the benefit of each and every owner in Wynmure, and

WHEREAS, Developer deems it desirable to create an agency to which should be delegated and assigned the powers of maintaining and administering common facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereafter created.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual benefits and advantages to the Developer and to future property owners of lots shown on the above plat, Developer does hereby impose upon Wynmure the following covenants, conditions, restrictions, easements, charges and liens, which shall bind the Developer, its successors and assigns, and all future owner of said lots, their respective heirs and assigns:

1. DEFINITIONS. The following words when used herein (unless the context shall require a different meaning) shall have the following meanings:

A. "Association" shall mean and refer to Wynmure Homeowners Association. Said "Association" will be formed at a time to be determined by the Developer or its nominee.

B. "Wynmure" shall mean and refer to all of the lots and property shown upon the plat of "Wynmure Subdivision - Phase II", referred to above.

C. "Sign Easements" shall mean and refer to any area designated as a Sign Easement shown on any plat for Wynmure. These easements may be used for the placement of Subdivision signs and landscaping. Any and all landscaping placed in these easements and the subdivision sign(s) shall be maintained by the Homeowner's Association.

D. "Developer" shall mean and refer to MICA, Inc.

E. "Lot" or "lot" shall mean and refer to any numbered parcel of land shown upon a plat of Wynmure prepared for the Developer and recorded in the RMC Office in Spartanburg County.

F. "Owner" shall mean and refer to the recorded owner, whether one or more person or entities, of fee simple title to any Lot situated within Wynmure, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in paragraph 31 hereof.

2. SINGLE FAMILY RESIDENTIAL USE. No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed 2 ½ stories in height and, if approved in advance in writing, a private detached garage or hobby-type/storage building.

3. SUBDIVISION OF LOTS. Developer or any subsequent owner of a lot, with prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. Notwithstanding any provision herein, Developer reserves the right to re-subdivide any portion of the property for the purpose of adjusting property lines or consolidating lots, provided, however no such changes shall create any greater number of lots than that shown on the plat of Wymure.

4. MINIMUM HEATED AREA. No dwelling shall be erected on any lot having less than two (2) bathrooms and no less than Two Thousand (2000) square feet of heated floor area. All dwellings shall have an attached garage which is connected to and is an integral part of the single family dwelling. If the dwelling has a second story, the first floor must have no less than Twelve hundred (1200') square feet of heated floor area. The floor area required by this article shall not include basements, porches, verandahs, breezeways, terraces, garages, or hobby-type/storage buildings.

5. BUILDING SETBACK LINES. No building or portion of a building, including stoops, verandahs, steps and porches shall be located on a lot nearer the front property line or nearer the side street property line of the lot than the setback line(s) shown for such lot on the plat of Wymure referred to in the deed to such lot from Developer, nor nearer than twenty (20) feet to any side/rear lot property line. Nonetheless, Developer reserves the right and privilege, upon showing of special, unique or unusual circumstances to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

6. DEVELOPER PLANTED LANDSCAPING. The Red Maple trees planted by the Developer along Harrison Rd, Murph Rd. and Thorncrest Dr. are to be maintained and replaced (if needed) by the owners of the lot(s) upon which the trees are planted. Owners of these lots are NOT allowed to cut down, remove, or prune to excess, any Red Maple tree(s) without written approval of the Developer or its nominee. If a Red Maple tree is replaced, the replacement tree must have a minimum of a 4 inch trunk.

7. APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS.

A. No building or structure, whether it be the dwelling house, any garage, hobby-type building or driveway shall be erected, placed or altered on any lot until the building plans, elevations, location, specifications and driveway have been approved in writing by Developer or its nominee. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Any proposed detached garage or hobby-type/storage building must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

B. The completion of improvements upon a lot shall include the landscaping of the yard, including the grassing or sodding of the yard and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling.

C. The front elevation of the dwelling's foundation must be a minimum of twelve (12") inches above the finished grade of the yard.

D. All garages shall be equipped with an overhead door(s). No garages shall open (face) any street. The Developer reserves the right to waive this provision.

E. Approval of plans and specifications for lots number 37 & 51 will be subject to meeting the following standards:

(1) No structure or garage on these lots shall face or open to Thorncrest Drive. The dwelling structure shall face Sabrewood Lane and no driveway shall access Thorncrest Drive.

(2) The Developer has broad discretion, which may be exercised purely for aesthetic reasons and no other, with respect to the approval of the location of a detached garage, hobby-type storage building, and fencing on these lots.

8. **PROHIBITED BUILDING MATERIALS.** Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco or some other material approved by Developer or its nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any building.
9. **TRAILERS AND MOBILE HOMES PROHIBITED.** Trailers and mobile homes, including typical double-wide mobile homes, manufactured homes or other factory-built or pre-built homes are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot.
10. **REQUIREMENTS FOR DRIVEWAYS.** All driveways shall be constructed of either asphalt paving or concrete and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street having an existing "rolled" curb, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction/work is being done shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer or its nominee.
11. **DEVELOPER'S DISCLAIMER. DEVELOPER AND ITS SUCCESSORS, ASSIGNS, AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPERS, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM DEVELOPER, WHETHER GRANTED OR DENIED. FURTHERMORE, DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL FUTURE OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR CONSTRUCTION.**
12. **GENERAL EASEMENTS.** Developer reserves an easement ten (10') feet inside each side and rear lot line of each lot for the installation, maintenance and repair of utilities and/or storm drainage facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of Wynmure. All utility service lines from existing streets shall be installed underground to any dwelling or other structure located upon a lot.
13. **SEWAGE.** All sewage shall be disposed of by septic tank or other means approved by the State/County Board of Health..
14. **FENCING.** All fencing size, type and locations must be approved in writing by the Developer, or Developer's Nominee, except as follows: split rail, black or dark green coated chain link, approved wooden fencing or shadowbox fencing, may be installed from the middle of the side of the house to the side property lines, along or inside the side property lines to the rear property line, and along or inside the rear property line. No fence shall exceed six feet in height. The Developer, or his nominee, may disapprove fencing for any reason, including aesthetic reasons. No fencing of any kind shall be installed or allowed to remain on any lot which shall interfere, damage or obstruct the installation or maintenance of any utility. On corner lots, no fences shall be erected beyond the side building setback line shown on the plat above referred to. Any and all fencing erected on any corner lot must meet special additional requirements as to appearance, materials used, style and location. Written approval must be obtained from the Developer before ANY fence construction can take place on corner lots.
15. **BUSINESS ACTIVITIES PROHIBITED.** No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of this item shall not be construed to prohibit the making of hand-crafted items for occasional off premises sale.
16. **NUISANCES AND OFFENSIVE ACTIVITIES.** No nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted upon any lot or allowed to exist on any lot or the adjoining street or streets.
17. **PARKING OF BOATS AND RECREATIONAL VEHICLES.** Any camper, boat, trailer, motorhome, recreational or commercial vehicles must be stored behind closed doors of a garage, or located where it cannot be seen within public view of any street. No bus, transfer tractor, transfer trailer or tractor-trailer combinations shall be allowed in the Subdivision at any time except for loading and unloading. Only vehicles bearing current license plates shall be parked or stored within public view from the street. No truck over three quarter (3/4) ton, no trailers, no tractors, no commercial vehicles and no automobiles bearing advertisements, signs, or placards are to be

stored or parked on residential property unless screened from public view from the street or from adjoining property except when making deliveries/service /repair calls. No inoperable motor vehicle, wrecked vehicle or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage.

18. PORTABLE OR METAL BUILDINGS PROHIBITED. Non-permanent/portable and metal storage buildings are prohibited to be placed or remain on any lot.
19. SWINGSETS/CLOTHESLINES, ETC. Swingsets, sandboxes, gym sets, playhouses and any such similar devices or structures primarily for children's use and enjoyment must be located on the rear portion of a lot. Basketball goals are allowed on driveway areas or in the rear portion of any lot. No additional concrete or asphalt pad may be poured for ANY recreational use from any back corner of the home to the front property line. All clotheslines and poles shall be installed on the rear portion (from any rear corner of the home to the rear property line) of a lot away from the street.
20. POOLS. No above ground pools of any design may be constructed or placed on any lot. In ground pools are acceptable provided they are located on the rear portion of the lot (from any rear corner of the home to the rear property line), staying within all other guidelines and setback requirements herein stated. Any in ground pool MUST be enclosed with a fence (with locking gate) that complies with paragraph 14.
21. NO TEMPORARY RESIDENCES. No garage or hobby-type/storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
22. ANIMALS. No domestic fowl, cows, hogs, horses, mules, wild animals or any other farm type animals shall be kept on any lot at any time, provided, however, household pets, such as cats and dogs, may be kept on a lot, provided such pets shall not exceed a total of three (3) in number and provided further that the owner thereof shall be responsible for the control and conduct of such household pets so that they are not an annoyance, hindrance or nuisance to others.
23. SCREENING OF YARD EQUIPMENT. Lawnmowers, or other lawn maintenance equipment shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property.
24. TELEVISION ANTENNA AND SATELLITE DISHES. A standard roof-mounted or chimney-mounted television antenna or a 24" (or smaller) satellite dish is permissible, but no other type of antenna, satellite dish or similar device for the transmission of signals of any kind shall be erected or allowed to remain on any lot without the written permission of the Developer or its nominee.
25. COMPLETION OF IMPROVEMENTS. All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other natural calamity.
26. COVENANT OF GOOD APPEARANCE AND REPAIR. Each lot owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or Wynmure Homeowners Association, Inc., or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days to correct specified deficiencies. In the event the owner or owners of a lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 32.1. **THE DEVELOPER, THE ASSOCIATIONS OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEE OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.**
27. SIGNS. No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall have the right to use additional signs for the development of the property. The subdivision identification signs shall be exempt from this provision.
28. MAINTENANCE OF STREET RIGHT-OF-WAY. The owner of a lot shall be responsible for the planting and maintaining of the area from the property line(s) to the edge of the pavement or curb of the street or streets upon which said lot abuts.

29. **FUEL TANKS.** All fuel tanks or containers shall be buried underground, or enclosed in a structure (and located only in the rear portion of the property), in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control, whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance, and be approved by the Developer in accordance with its building approval procedure as above set forth.

30. **MAIL RECEPTACLES.** All mailboxes or other mail receptacles and their supporting structure, including the fixing of the location and height thereof, shall conform to Developer's uniform requirements. It shall be the responsibility of each property owner to contact the Developer or its nominee for information about and fixing of location of each mailbox. The Developer will use an example of the style mailbox and supporting structure at the entrance to the subdivision for the distribution of subdivision information. After the installation, each owner has the responsibility of keeping same in good repair and appearance.

31. **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.**

A. **Membership.** Every person or entity who is a recorded owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

B. **Voting Rights.** All members as defined in Paragraph "A" including the Developer shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Paragraph "A". When more than one person holds such interest or interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

32. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

A. **Creation of Lien and Personal Obligation of Assessments.** The Developer for each lot owned by it within Wynmure hereby covenants and each owner of any lot by acceptance of a deed to a lot within Wynmure, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

(1) Any annual assessments or charges to be determined; and

(2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the lot owners in Wynmure and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

(1) For the payment of expenses related to the upkeep, maintenance and replacement of signs within Wynmure identifying the subdivision, containing street names or other safety signs, if any.

(2) For the payment of services for any street lighting undertaken and accepted by the Association.

(3) For the payment of expenses for services in connection with the maintenance, upkeep and improvement of any landscaping, fencing, lighting or watering systems that may be installed in any landscape easement.

(4) For any other purpose, cost or expense reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with these restrictions.

C. **Basis of Annual Assessments.** The Board of Directors of the Association may, after consideration of current maintenance cost and future needs of the Association, fix the initial annual assessment. Lots owned by the Developer or Builders shall be exempt from annual assessments until such time as a completed dwelling shall have been constructed thereon. Such an exemption shall not affect the Developer's or Builder's voting rights in the Association.

D. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purposes of the meeting.

E. Change in Annual Assessments. Any change in annual assessments shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. Quorum for Any Change in Assessments/Special Assessments. The quorum required for any action respecting assessments, shall be the number of Members present at a meeting duly called and convened.

H. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half (1 ½%) per month (ANNUAL PERCENTAGE RATE - 18%) from the delinquency date. The Association may bring an action at law against the owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus reasonable attorney's fee and the costs of the action.

J. Lien of Assessment is Subordinate to Recorded Mortgages. The lien of assessment provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the assessment lien, provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosures or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

33. ENFORCEMENT BY HOMEOWNERS ASSOCIATION. Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Wynmure Homeowners Association, Inc., shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the by-laws of the Association adopted in accordance with the terms hereof.

34. DELEGATION OF DEVELOPER'S RIGHTS. All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or part of such reserved rights to the Homeowner's Association.

35. TERM OF ENFORCEMENT AND AMENDMENTS. These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2025, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Wynmure agree in writing to terminate or change same. Notwithstanding anything herein to the contrary, the Developer, its successors, and assigns, reserves the right to waive, modify or change in writing, any of the terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver, modification or change shall substantially affect the overall plan of development

36. EFFECT OF COVENANTS AND ENFORCEMENT.

A. Effect of Provisions of These Covenants. Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Wynmure do promise, covenant and undertake to comply with each provision of these covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot within Wynmure is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer, the Association and all other owners, their respective heirs, successors and assigns;

(3) shall be deemed a real covenant by the Developer for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot within Wynmure;

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot within Wynmure, which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

B. Who May Enforce. The benefits and burdens of these covenants run with the land at law and in equity, and the Developer, the Association, their respective successors and assigns, and any owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event. Each and every owner of property with Wynmure shall have the same right and obligation for enforcement of any provision of these covenants. The responsibility does not rest solely or wholly with the Developer.

C. Against Whom May the Covenants be Enforced. The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, or any other person whose activities bear a relation to the property, including guests and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent the terms hereof.

D. Enforcement Remedies. In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct, business, or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

37. MISCELLANEOUS.

A. No Waiver. Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Association or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. Captions. The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. Board Authorization. All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with the terms of this instrument.

D. Gender, Tense, Number and Applicability of Definitions. When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

E. Savings Clause. If any provision or provisions of this instrument are found to be ineffective or unenforceable for any reason in the final judgment of any court having jurisdiction of the subject matter, hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 13th day of January, 2005.

Witness(es)

[Signature]

Ruby V. Hall

MICA, Inc.

By: *[Signature]*
Paul A. Burnett, Jr. - President

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

PROBATE

Personally appeared before me the undersigned witness who on oath states that he/she saw the above named Developer sign, seal and as its act and deed, deliver the within-written Protective Covenants, conditions, Restrictions and Easements, and that he/she with the other witness subscribed above, witnessed the execution thereof.

[Signature]

SWORN TO and subscribed
before me this 13th day
of January, 2005.

Ruby V. Hall (SEAL)
Notary Public of South Carolina

My Commission Expires: 4-15-13

RECORDED
INDEXED
JAN 14 2005
Spartanburg County, South Carolina
Office of the Register of Deeds