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Iredell County, NC
Brenda D. Bell Register of Deeds

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR

Anniston

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STATE OF NORTH CAROLINA

COUNTY OF IREDELL

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR ANNISTON

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this
"Declaration") is made this 25th day of
January, 2005 by *Anniston, LLC*, a North Carolina limited liability company (the "Declarant").

WITNESSETH:

Declarant is the owner of that certain real property located in Iredell County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated hereby by reference (the "Property"), which Property is being developed by Declarant (and one or more affiliates of Declarant) as a residential community known as *Anniston*.

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Property and for the maintenance of the Property and Improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described.

Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Property. Developer further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereafter created, in order to sufficiently preserve, protect and enhance the values in the Property, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas. To that end, Declarant has or will cause to be incorporated under North Carolina law, pursuant to Articles of Incorporation, *Anniston Homeowners Association, Inc.*, as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the bylaws adopted by the corporation.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Property. Subject to the above-described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

ARTICLE I

DEFINITIONS

All capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Declaration.

Section 1. "Additional Property" shall mean additional real estate other than the submitted property which may be subject to the terms of this declaration in accordance with the provisions of Article II.2 of this declaration.

Section 2. "Annual Assessments" shall mean the assessments established pursuant to Article 5 of the Declaration.

Section 3. "Architectural Control Committee" shall mean and refer to the committee appointed by the Board to oversee the development enforcement of architectural control standards and restrictions with respect to the Property and to perform certain other functions described in the Declaration.

Section 4. "Architectural and Landscape Guidelines" shall mean those rules, regulations and guidelines promulgated from time to time by the Architectural Review Committee pursuant to the power set forth in Article VII, Section 3. All Architectural and Landscape Guidelines, whenever promulgated shall have the same force and effect as if they were originally set forth in this Declaration as restrictions.

Section 5. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association hereto and incorporated herein by reference.

Section 6. "Association" shall mean and refer to *Anniston Homeowners Association, Inc.*, a North Carolina non-profit corporation, its successors and assigns.

Section 7. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 8. "Bylaws" shall mean and refer to the Bylaws for the Association which are incorporated herein by reference.

Section 9. "Common Area" or "Common Areas" shall mean and refer to all real property specifically shown and designated on any Plat as "Common Area" "Common Open Area," "Common Open Space," "Open Space," or "COS." The Common Areas shall be owned by the Association (except as otherwise provided herein) for the common use, benefit; and the Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Property.

Section 10. "Declarant" shall mean and refer to *Anniston, LLC*, a North Carolina limited liability company or its assigns.

Section 11. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as same may be amended and/or supplemented from time to time as herein provided.

Section 12. "Guidelines" shall mean and refer to the Architectural and Landscape Guidelines.

Section 13. "Lot" shall mean and refer to any numbered or lettered tract of land for the purpose of building and maintaining a single family residence (excluding any Common Area) shown on any Plat which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located. No tract of land shall become a "Lot" as that word is used herein until a Plat of the area in which the same is located is recorded in the Office of the Register of Deeds of Iredell County, North Carolina.

Section 14. "Member" shall mean and refer to every person or entity that holds membership in the Association.

Section 15. "Planned Community Act" shall mean and refer to The North Carolina Planned Community Act, North Carolina General Statutes Chapter 47E, as amended hereafter, and any successor Statute which is enacted to amend or replace Chapter 47E.

Section 16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 17. "Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Office of the Register of Deeds or Iredell County, North Carolina.

Section 18. "Property" shall mean and refer to that certain real property located in Iredell County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof.

Section 19. "Roadways" shall mean and refer to the roads, streets, and cul-de-sacs in the Property, as shown on the Plats, and any other roads, streets, and cul-de-sacs on the Property, all to be maintained by the Declarant until accepted for maintenance by the North Carolina Department of Transportation or other governmental entity, as set forth herein.

Section 20. "Septic Field Easement" or "SFE" shall mean and refer to the septic easement or septic easements reserved over the Common Areas for the benefit of certain Lot Owners, described on the plat(s) as SFE or other similar designation.

Section 21. "Septic Supply Pressure Line Easement" shall mean and refer to an easement for the purpose of locating one or more individual septic pressure lines to allow for a Lot Owner to transport his septic flow from his lot to a Septic Field Easement "SFE."

Section 22. "Septic System" shall mean and refer to all pipes, tanks, lines, supply pressure line, including all drainage fields and equipment and apparatus installed on the lot or within the Septic Field Easements. The Septic System also includes any Septic Supply Pressure Line that runs from the lot to an off-site Septic Field Easement through a Septic Supply Pressure Line Easement or roadway.

Section 23. "Street Lights" shall mean and refer to those certain street lights leased by Declarant and installed upon, along and/or over the rights-of-way of the Roadways and Common Areas.

Section 24. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of Iredell County, North Carolina, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration. By acceptance of any deed conveying title to a portion of the Property, execution of a contract of purchase or acceptance of a lease or license concerning any portion of the Property or by taking possession of any portion of the Property; whether from Declarant or a subsequent owner or lessee, any future owner, lessee, licensee or occupant shall accept such deed, contract, lease, license or possession upon and subject to each and all of the covenants, conditions, restrictions, reservations and easements set forth herein. Each person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to the covenants, conditions, restrictions, reservations and easements set forth herein, and in all future supplementary or amended Declarations, whether or not any reference thereto is contained in the instrument by which such person or entity acquires an interest in the Property.

Section 2. Additions to the Property.

(a) Declarant or assigns may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the Iredell County Register of Deeds, containing a description of the Additional Property and a statement by the Declarant or assigns of its intent to extend the operation and effect of this Declaration to the Additional Property. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in this Declaration.

(c) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III

COMMON AREA

Section 1. Ownership of Common Areas. Except as otherwise provided herein, Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association; provided, with respect to any part of the Common Areas leased by Declarant (e.g., Street Lights), Declarant shall assign its rights under such lease to the Association. The Declarant reserves the right (but shall not be obligated) to construct within the Common Areas, among other things, (i) the Street Lights (which will be leased from a third party) and other lighting, signage and irrigation facilities; (ii) the trails, drainage facilities and other Improvements; and (iii) certain additional recreational amenities and facilities, for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

(a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to ensure the availability of the right to use the Common Areas to the Owners and the safety of all Owners within the Common Areas;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas, including Septic Field Easements and Septic Supply Pressure Line Easements; and

(d) any and all other applicable provisions of this Declaration, including, without limitation, the right of the Declarant or the Association to restrict the use of certain Common Areas to specific designated Owners as described in this Declaration, including, but not limited to, granting exclusive Septic Field Easements "SFE" or Septic Supply Pressure Line Easements.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and facilities, if any, located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

Section 4. Prohibited Activities. Common Area shall not be used for off-road motorized vehicles including motorcycles, "four-wheelers", ATV's, golf carts, or the like. No hunting or trapping of any wild life, including, but not limited to, ducks, geese, other birds, small game, or deer shall be permitted within the Common Area.

ARTICLE IV

THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws. In addition, as long as Declarant owns any part of the Property, Declarant shall be a member of the Association.

Section 2. Voting and Voting Rights. The Association shall have two (2) classes of voting membership:

(a) **Class I.** The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Lot owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class II.** The Class II Association member shall be Declarant. The Class II Association member shall be entitled to five (5) votes for each Lot owned by Declarant.

Notwithstanding anything contained herein to the contrary, the Class II Association membership shall cease and be converted to the Class I Association membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that the Class II membership cease and be converted to the Class I membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2030.

For a period ending not earlier than two (2) years following the recordation of this Declaration and for so long as the Declarant owns at least two (2) Lots in the Subdivision, the Declarant shall have the exclusive authority to designate, appoint and remove all members of the Association's Board of Directors and Officers. To the fullest extent permitted by the Planned Community Act, no Director or Officer appointed by the Declarant shall be removed by the Members or Board of Directors.

Section 3. Availability of Documents. The Association shall maintain current copies of the Declarations, the Bylaws and other rules concerning the Property as well its own books, records, and financial statements as are necessary for its management and oversight functions or as required by the Planned Community Act. All such documents shall be available upon reasonable notice and during normal business hours for inspection by all Owners, mortgagees and insurers and guarantors of mortgages that are

secured by Lots. In addition, any mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 4. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

Section 5. Insurance. The Association shall be required to obtain and maintain to the extent obtainable, public liability insurance and officers' and directors' liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to the development, covering each member of the Board of Directors, the Managing Agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than a million dollars per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Owners as a single group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than one million dollars per occurrence for claims for bodily injury and property damage. The Board shall obtain such other coverages as the Board shall determine from time to time desirable.

Section 6. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

ARTICLE V

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special, Special Individual Assessments and Special Septic Inspection Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed to covenant and agrees to pay to the Association Annual Assessments, Supplemental Annual Assessment, Special Assessments, Special Individual Assessments and Special Septic Inspection Assessments (collectively, the "Assessments"), as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot, as the case may be, against which each such assessment or charge is made. Each such assessment or charge, together with interest,

costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner, at the time when the assessment fell due, of the Lot, as the case may be, against which such assessment or charge is made. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such assessments or charges, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Lot, as the case may be, against which such assessments or charges are made.

Section 2. Purpose of Annual Assessments.

(a) Maintenance of the entryways to the Property shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon;

(b) To the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may be, the Association shall maintain or cause to be maintained the swales and medians and associated landscaping and related Improvements along and within the public roadways adjoining Common Open Space.

(c) Maintenance of any Improvement within the Common Area (including, without limitation, any fencing, parking area, trails, pool or other recreational amenity or facility located therein) shall include, not be limited to, any and all interior and exterior maintenance (including, where necessary, repair and/or reconstruction), landscaping and payment of all utility charges related to any such Improvement.

(d) to pay all costs associated with the lease and operation of the Street Lights, including, but not limited to, monthly lease payments and utility costs;

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

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

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

(h) to carry out all other purposes and duties of the Association, the Board of Directors and the Architectural Control Committee as stated in the Articles, the Bylaws and in this Declaration; and

(i) to maintain a contingency reserve fund for the purposes set forth in this declaration hereof in amounts as determined by the Board of Directors.

The expenses of the Association for the foregoing are sometimes referred to herein as "common expenses."

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

Annual Assessments provided for herein shall commence as to all Lots shown on a Plat of any phase of the Property as of the date of the conveyance of the first Lot on such plat by Declarant to an Owner (other than Declarant) of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. The Annual Assessment amount for the calendar year beginning January 1, 2005 shall be Six Hundred and No/00 Dollars (\$600.00) per Lot. The Annual Assessment amount for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with the terms of

this Article V. Annual Assessments shall be due and payable in advance in equal installments on a semi-annual basis commencing on January 1 and July 1 of each calendar year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in Section 4(a), the budget is ratified unless at such meeting members exercising a majority vote in the Association reject the budget. The failure of the Association to send, or of a member to receive, such notice shall not relieve any member of the Obligation to pay Annual Assessments.

The Annual Assessment for any lot owned by Declarant shall be liable for Annual Assessments at a rate which is one-third (1/3) of the rate otherwise payable.

Section 4. Maximum Annual Assessment

(a) For calendar year 2005 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the members (unless required under the Planned Community Act) or other applicable law, in which case the procedures set forth in Section 3 above shall apply), may increase the Annual Assessment applicable to each Lot by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index, All urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the members, unless required under the Planned Community Act or other applicable law, in which case the procedures set forth in Section 3 above shall apply.

(b) For calendar year 2006 and thereafter, the maximum annual assessment applicable to each Lot may be increased above the maximum amount set forth in subparagraph (a) of this Section 4 by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property), subject to the procedures set forth in Section 3 above if applicable.

(c) The Board of Directors may fix the Annual Assessment applicable to each Lot at an amount not in excess of the maximum set forth in Subparagraph (a) of this Section 4 (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in Section 3 above, if applicable. In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

(d) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing