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Franklin County North Carolina  
Brandi S. Davis Register of Deeds  
BK **1819** PG **183-224**

By: *Betty Sharrington Deputy*

Prepared by and Return To:  
HAROLD E. RUSSELL, JR., Attorney at Law  
Russell Law Group, PLLC  
Post Office Box 19001  
Raleigh, NC 27619

NORTH CAROLINA

**RESTATED DECLARATION OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR ASHTON MEADOWS**

FRANKLIN COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made this 20 day of June, 2011, by Satterwhite Construction, Inc., a North Carolina corporation, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, Declarant has previously caused to be recorded on December 15, 2008 a certain Declaration of Covenants, Conditions and Restrictions for Ashton Meadows in Book 1711, Pages 703-745, Franklin County Registry; and

WHEREAS, Declarant owns all the land subject to said Declaration and desires to terminate and declare void said Declaration recorded in Book 1711, Pages 703-745 and to cause these Restated Declaration of Covenants, Conditions and Restrictions to be effective for Ashton Meadows;

WHEREAS, Declarant is the owner of certain real property in Franklin County, North Carolina which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property");

WHEREAS, Declarant intends to establish a planned community under the North Carolina Planned Community Act, N.C.G.S. §47F-1-101, *et seq.*; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of North Carolina, as a non-profit corporation, ASHTON MEADOWS HOMEOWNERS ASSOCIATION, INC. to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the Assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the value of the project, to ensure, for the benefit of each Owner, the specific rights, privileges and easement in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas, as provided in this Declaration and the Organizational Documents.

NOW, THEREFORE, Declarant hereby declares all of the Property described on Exhibit A, including without limitation, every Lot (as hereinafter defined) which is a part of the Property, shall be held, sold, used, occupied, and conveyed subject to the North Carolina Planned Community Act and the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## **ARTICLE I** **DEFINITIONS**

Section 1.01. "Act" is defined as the "North Carolina Planned Community Act", currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements as enacted from time to time.

Section 1.02. "Additional Property" shall mean and refer to additional real estate near or contiguous to the Property, which may be made subject to the terms of this Declaration in accordance with the provisions of Article II of this Declaration.

Section 1.03. "Architectural Control Committee" shall mean a committee of at least three (3) individuals appointed by the Declarant during the Declarant Control Period or the Board of Directors thereafter.

Section 1.04. "Assessment" shall mean and refer to the share of the Common Expenses from time to time assessed against a Lot and its Owner by the Association in the manner herein provided.

Section 1.05. "Association" shall mean and refer to Ashton Meadows Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 1.06. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.07. "Builder" shall mean and refer to a Person, other than the Declarant, who is regularly in the business of constructing Dwellings on real property for resale to other Persons,

and who purchases or becomes the Owner of one or more Lots or development parcels in the Property for the purpose of construction thereon a Dwelling for resale to other Persons.

Section 1.08. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 1.09. "Common Area" or "Common Areas" shall mean that certain portion of the Property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. Common Area may include open space/protective yard, parking areas, private open space, the existing ponds, and any recreational facilities constructed, erected or installed on the real property that is part of the Common Areas, if any. Any Stormwater Control Measures serving more than one Lot, which are situated outside the public street rights of way, are Common Areas, including any stormwater management area.

Section 1.10. "Common Expenses" shall mean and refer to all sums lawfully assessed against a Lot by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas, expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of this Declaration or the Bylaws; and insurance premiums.

Section 1.11. "Declarant" shall mean and refer to Satterwhite Construction, Inc., a North Carolina corporation, its successors and assigns and as provided in the Act.

Section 1.12. "Declaration" shall mean and refer to this Restated Declaration of Covenants, Conditions and Restrictions for Ashton Meadows Subdivision and all valid amendments and Supplemental Declarations hereto applicable to the Property recorded in the Office of the Register of Deeds of Franklin County, North Carolina.

Section 1.13. "Dwelling" shall mean and refer to a place of residence constructed upon a Lot within the Property.

Section 1.14. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

Section 1.15. "FHA" shall mean and refer to the Federal Housing Administration of the U.S. Department of Housing and Urban Development, "HUD" shall mean the U.S. Department of Housing and Urban Development, and "VA" shall mean and refer to the U. S. Department of Veterans Affairs.

Section 1.16. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Franklin or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the portion of the Property, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

Section 1.17. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision Map of the Property (provided said map has been approved by Declarant or the Association) with the exception of the Common Area and road rights-of-way which are offered for public dedication. Except where otherwise indicated by context, the term "Lot" shall include the improvements on such Lot.

Section 1.18. "Lot-In-Use" shall mean and refer to any Lot on which a Dwelling has been fully constructed and for which a certificate of occupancy or similar certificate has been issued by the appropriate governmental agency.

Section 1.19. "Map" or "Maps" shall mean and refer to any plat or map of the Property constituting the initial phase or any additional phases (if they are annexed pursuant to Article II hereof) which may be recorded by Declarant in the Franklin County Registry hereafter.

Section 1.20. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.21. "Mortgage" means any mortgage, deed of trust and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of any obligation.

Section 1.22. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

Section 1.23. "Organizational Documents" shall mean and refer to the Articles of Incorporation and Bylaws of the Association, and all lawful amendments thereto.

Section 1.24. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.25. "Person" means any individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

Section 1.26. "Property" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference and such additions thereto as may hereafter be annexed and brought within the jurisdiction of the Association.

Section 1.27. "Registry" shall mean and refer to the Franklin County Register of Deeds.

Section 1.28. "Stormwater Control Measures" shall mean and refer to the stormwater facilities situated outside the public street rights-of-way and serving more than one Lot and located on the Property as private drainage easements or stormwater management areas designated on recorded Maps of the Property.

Section 1.29. "Subdivision Plan" is defined as the most current development plan approved by the local municipality for any portion of the Property or the Additional Property, including a subdivision plan, site plan, group housing plan or cluster unit development plan. When two or more Subdivision Plans are approved for the same portion of the Property (for example, a phase or section within a cluster unit development), the most current and most specific plan controls.

Section 1.30. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the offices of the Register of Deeds of Franklin County, to bring Additional Property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described hereinbelow.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**  
**AND WITHIN THE JURISDICTION OF THE ASSOCIATION**

Section 2.01. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be held, sold, used, occupied, transferred, mortgaged and/or conveyed by the 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, provisions of the Act, charges and liens set forth in this Declaration.

Section 2.02. Addition of Property by Declarant.

(a) Declarant may cause Additional Property (including Common Areas), including without limitation all or a portion of the Additional Property described on Exhibit B attached hereto, to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the offices of the Register of Deeds of Franklin County, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Any such Supplemental Declaration need only be executed by Declarant and the owner of the Additional Property being subjected to this Declaration, and shall not require the execution, joinder, or consent of any other party whatsoever. The rights set forth in this subsection (a) may be exercised by Declarant at any time and from time to time until December 31, 2027.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein and may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property.

(c) In addition to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any phase, section or portion of the Property owned by Declarant to additional covenants, conditions, restrictions, easements, charges and liens, by filing

an Additional Declaration in the Office of the Register of Deeds of Franklin County covering only such phase, section or portion of the Property. Such Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration.

(d) 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 and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

Section 2.03. Annexation of Additional Property by Association. Any other addition of Additional Property shall require the assent of two-thirds (2/3) of the votes of the entire Membership of the Association and shall follow the following procedure:

(a) Annexation of Additional Property shall be accomplished by recording in the Franklin County Registry a Declaration of Annexation duly executed by the Association, describing the lands annexed and incorporating the provisions of this Declaration either by reference or by fully setting out said provisions of this Declaration. The Additional Property shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation. Upon annexation, the land shall be used only for residential and ancillary purposes and shall be subject to this Declaration, and all Owners shall automatically become Members of the Association.

(b) The additions authorized above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Property in the Franklin County Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Property and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. Such Supplementary Declarations, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplementary Declaration. At the time of the filing of each Supplementary Declaration, there shall be recorded in the Franklin County Registry a Map or Maps which show the boundary line of each Lot annexed pursuant to such Supplementary Declaration and which delineates all Common Area annexed pursuant to such Supplementary Declaration. All Common Area

situated within the Additional Property shall be deeded to the Association in the same manner as set forth in this Declaration prior to the sale of any Lot of the Additional Property.

(c) The obligation for Owners of Lots in any portion of the Additional Property to pay the assessments described in Article V hereof shall commence upon the filing of the Supplementary Declaration in the Franklin County Registry annexing such portion. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Property, and such voting rights shall commence as of the date of the filing of the Supplementary Declaration.

### **ARTICLE III**

#### **PROPERTY RIGHTS**

Section 3.01. Title to the Common Area. Prior to the expiration of the Declarant Control Period (as hereinafter defined), the Declarant hereby covenants for itself, its successors and assigns that in accordance with the Act it will convey fee simple title to the Common Area shown on the same recorded Subdivision Map of the Association, which Common Area shall include any private roads or drives which may have been previously created free and clear of all encumbrances and liens, except utility and drainage easements and those easements stated in Article IX. Title to Common Area within real property annexed pursuant to this Declaration shall be similarly conveyed to the Association. The Common Area shall be preserved for the perpetual benefit of the Owners of the Lots, and the Common Area is restricted against private or public ownership for any reason other than as provided by the Act. Common Area shall not be subsequently subdivided or conveyed by the Association except as permitted by and in accordance with this Declaration, the Act and the ordinances, rules, regulations and procedures, including variances, of the local municipality.

Section 3.02. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and a right and easement over the Common Area for access, ingress and egress to and from streets, parking areas, walkways and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Admission and Other Fees: Subject to the ordinances of the local municipality, if any, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of recreational facilities, if any, which may constitute a portion of the Common Area;

(b) Suspension of Use of Common Area: The right of the Association to suspend the voting rights and right to use any of the recreational facilities, if any, which may constitute a portion of the Common Area by an Owner, his family, occupants, tenants, guests and invitees for any period during which any Assessment against his Lot remains unpaid. Such rights also may be suspended, after reasonable notice and hearings, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for any infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;

(c) Borrowing for Improvements: The right of the Association, in accordance with its Organizational Documents and the Act, to borrow money for the purpose of constructing, repairing or improving the Common Area and its facilities, and in aid thereof, with the assent of Members entitled to cast at least eighty percent (80%) of the votes of the entire membership, but

in any event not less than sixty-seven percent (67%) of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder;

(d) Dedication and Transfer of Common Area: Except as restricted by applicable law, including but not limited to the ordinances, regulations and procedures, including variances of the local municipality, the right of the Association to dedicate or transfer all or any part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, and provided said dedication or transfer shall be approved as provided herein. No such dedication or transfer shall be effective unless Members entitled to cast at least eighty percent (80%) of the votes of the entire membership, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Act and the ordinances, regulations and procedures, including variances of the local municipality, have been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;

(e) Guests: The right of the Association to limit the number of guests that a Member may allow to use the Common Area and facilities, if any;

(f) Use of Common Area: The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and facilities, if any, by the Members and others and to formulate, publish, impose and enforce rules and regulations and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules and regulations concerning parking;

(g) Easements: The right of the Declarant, during the period of Class B membership, with regard to the Property which may be owned for the purpose of development, to grant easements in and to the Common Area and facilities, if any, to any public agency, authority, or any utility for such purposes as benefits the Property or any portion thereof. This Section 2.01(g) may not be amended or deleted, without the written consent of Declarant;

(h) Exchanges: The right of the Association, as provided by and consistent with the local municipal laws and regulations, as the same may be amended from time to time, to exchange all or part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Act; and

(i) Rules and Regulations: The right of the Association or Board to formulate, publish, impose and enforce rules and regulations as provided by this Declaration for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.



Section 3.03. Delegation of Use. Subject to Section 3.02 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area to the members of his family, his lawful tenants, contract purchasers who reside on such Owner's Lot and to his guests, invitees and licensees.

Section 3.04. Television Antennas. The Association may provide, but is not required to provide, one or more cable television or telecommunication systems, central television antennas or other telecommunications-receiving devices for the convenience of the Members. The costs of services provided under these contracts may be included in annual or special assessments applicable to the Lots. The Association may regulate or prohibit the erection of antennas, satellite dishes and related equipment on any Lots in accordance Article VII of this Declaration. No exterior antennas, dishes, towers, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained without the prior written consent of the Board of Directors or Architectural Control Committee.

Section 3.05. Parking Rights. If a Lot is improved with a garage and/or is served by a driveway for which an easement is provided under this Declaration, then each of the following areas shall constitute an assigned parking space for such Lot: the garage, the driveway and the space in the common parking areas, if any, in front of such driveway. Owners of Lots, members of their family, their guests or tenants shall not be permitted to park any vehicles on the streets of the Property. Garages shall be used for parking of motor vehicles and shall not be used as storage areas nor converted to other uses, such as conversion to living area. The Board may regulate all parking on the Common Areas including but not limited to the parking of boats, trailers, and other such items on the Common Areas. No boats and other water craft, trailers, campers, tractors, trucks other than pickup trucks rated at three-fourths (3/4) tons or less, and motor vehicles other than passenger motor vehicles for eight (8) or fewer passengers shall be parked within the right of way of any street within the Property, nor shall any of these be regularly parked on the Property except upon a Lot in area screened from view of the Common Area and the streets within the Property. Such screened areas shall first be approved in writing by the Architectural Control Committee or the Board may designate portions of the Property for the storage of water craft, trailers, campers, tractors and trucks. No inoperable motor vehicles shall be regularly stored on any Lot or on the streets of the Property. The Board may from time to time adopt appropriate rules for the temporary parking of any of these items on the Property.

Section 3.06. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, including but not limited to the Amenities and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to their effective date. Such rules and regulations shall be binding upon the Owners (with the exception of the Class B Member), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice and opportunity to be heard, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use the Common Area. All rules and regulations shall be uniform with respect to the Lots. Notwithstanding anything to the contrary in this

Declaration, the Board of Directors may not suspend an Owner's right of ingress and egress over the Common Areas and right to the use of parking spaces as provided in this Declaration.

Section 3.07. Taxes on Common Area. The Association shall be responsible for and shall cause to be paid out of annual assessments all ad valorem taxes, special assessments and assessments for public and private capital improvements made to or for the benefit of the Common Area or levied against the Common Area, if any.

#### **ARTICLE IV** **THE ASSOCIATION**

4.01. Membership. Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association and the Members 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. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Property as a planned community under the provisions of the Act, all Persons who are entitled to distributions of proceeds under the Act shall be Members of the Association. No Owner, whether one or more Persons, shall have more than one membership for each Lot owned.

4.02. Membership Classes. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of the 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant, or its assigns, and shall be entitled to ten (10) votes for each Lot owned by the Class B Member. The Class B membership shall be reinstated if before December 31, 2027 Additional Property is annexed to this Declaration.

4.03 Declarant Control Period. "Declarant Control Period" means the period of time during which the Declarant shall at all times be entitled to appoint and remove the Association's Board of Directors and the officers of the Association, and during which the Class A Members shall have no right to nominate, elect, or remove, or exercise any vote to nominate, elect, or remove, the Board of Directors, such period of time beginning on the date that the Association is incorporated and ending on the happening of any of the following events:

(1) When Declarant has conveyed ninety percent (90%) of the maximum number of Lots allowed for the Property (as amended and supplemented from time to time) under the Subdivision Plan to Owners;

(2) At such earlier time as Declarant terminates such right by execution of a written instrument of termination; or

(3) Anything to the contrary in this Declaration, the Bylaws, the Articles of Incorporation, or the Act notwithstanding, if not sooner ended or terminated, the Declarant Control Period shall end on December 31, 2017.

During the Declarant Control Period, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as determined by the Board in its sole and absolute discretion, and those acts that the Act or other applicable laws provide may not be undertaken unilaterally by the Board, such as, to the extent required, ratification of the budget, borrowing of funds to pay operational costs of the Association and conveying fee simple title to all or any part of the Common Area.

4.04 Special Declarant Rights. Declarant specifically reserves certain "Special Declarant Rights" as defined in the Act including, without limitation, the right, but not the obligation (i) to complete improvements indicated on the Maps and Subdivision Plans; (ii) to exercise any development rights enumerated in the Declaration; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the Common Area for the purpose of making improvements and maintaining the Property or the Additional Property which may be added to the Property; (v) to make the Property and Association part of a larger planned community or group of planned communities; (vi) to make the Association and Property subject to a master association; or (vii) to appoint or remove any officer or board member of the Association or any master association during the Declarant Control Period.

## **ARTICLE V**

### **COVENANT FOR COMMON EXPENSE AND SPECIAL ASSESSMENTS**

Section 5.01. 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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments collected as hereinafter provided. All annual assessments shall be fixed at a uniform rate for all Lots; provided, however, as to any Lot which is not a Lot-In-Use and is owned by Declarant, shall not be assessed any annual amount.

Assessments may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board from time to time. The annual and special assessments, together with

interest thereon, applicable late fees and the costs of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot against which each such assessment is made until paid in full. Each such Assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 5.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to pay the Common Expenses and to promote the beautification of the Property, the recreation, health, safety and welfare of the residents of the Property, to enforce these covenants and the rules and regulations of the Association, and in particular for the acquisition, improvement and maintenance of the Common Area, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the cost of maintenance as provided in this Declaration and, in particular, for the payment of governmental or private water, electric and sewage disposal charges attributable to the Common Areas, as well as other like expenses, including but not limited to, operation, maintenance and repair of Stormwater Control Measures and for such other purposes permitted by the Act. Assessments shall include, but not be limited to, the payment of taxes, liability insurance and all assessments for the public improvements of the Common Area, and easements appurtenant thereto, the enforcement of these covenants and the rules of the Association and, in particular, for the improvement and maintenance of the Property, private streets, drives and parking areas, and the employment of attorneys, accountants and other professionals on behalf of the Association when necessary. The Association shall be required to maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Association Common Area out of the assessment levied.

Section 5.03. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those other portions of the Property or Lots which the Association may be obligated to maintain. Such reserve fund is to be established and maintained out of regular assessments as a Common Expense, but if the reserve fund is inadequate, a special assessment may be made.

Section 5.04. Maximum Annual Assessment. The following provisions shall not operate so as to restrict the Association or the Board in performing the duties and obligations required of the Association or the Board under the Act, but they shall be a limitation on discretionary costs and expenses above and beyond such duties and obligations:

(1) Until January 1, 2012, the maximum amount annual assessment shall be Five Hundred and No/100 Dollars (\$500.00) per Lot-In-Use.

(2) From and after January 1, 2012, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership. Any budget increasing assessments by less than

twenty percent (20%) is ratified unless ninety percent (90%) of the total votes of each class of Members vote to reject the budget at a duly called meeting.

(3) From and after January 1, 2012, the maximum annual assessment may be increased above twenty percent (20%) of the maximum annual assessment for the previous year 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.

(4) The Board of Directors may fix the annual Assessment at an amount not in excess of the maximum annual assessment.

(5) Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses as required by the Act. If the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. Upon the expiration of the Declarant Control Period, the Declarant shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be responsible for the payment of assessments and other amounts pursuant to other sections of this Declaration.

Section 5.05. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, or any other purpose permitted under the Act. Any such special assessment shall have the two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Fines levied by the Board of Directors shall be treated as special assessments otherwise due to the Association, and as such, will be a lien against the Owner's Lot if not paid. Such fines shall be paid no later than thirty (30) days after notice of the imposition or assessment of the fines.

Section 5.06. Working Capital Fund. In addition to any other assessment provided in this Declaration, at the earlier of the closing of the first sale of each Lot after such Lot becomes a Lot-in-Use, or upon the occupancy of such Lot as a Dwelling, a sum equal to One Hundred Fifty and No/100 Dollars (\$150.00) shall be collected from the purchaser and transferred to the Association at the time of the closing of the sale of each Lot-In-Use to a party other than the Declarant or its assigns. Each Lot's share of the working capital fund shall be paid to the general operating fund of the Association to be used in the same manner specified for annual assessments. All sums paid into the working capital fund are in addition to and not in lieu of regular assessments for Common Expenses.

Section 5.07. Notice and Quorum for Any Action Authorized Under Sections 5.04 and 5.05. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.04 or 5.05 of this Article shall be sent to all Members not less than fifteen (15) days

nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. This provision shall continue to reduce the quorum by one-half from that required by the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 5.08. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and annual assessments shall be due and payable and collected on an annual, semi-annual, quarterly or monthly basis or as deemed appropriate by the Board of Directors.

Section 5.09. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to a Lot-In-Use on the earlier of the date such Lot-In-Use was conveyed by the Declarant to a third party purchaser or the date such Lot becomes a Lot-In-Use. The first annual assessment for such Lot shall be adjusted according to the number of months remaining in the calendar quarter or year. The Board of Directors shall adopt a proposed budget for the Association and fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The Board of Directors shall send to each Member a written summary of the proposed budget and a written notice of the annual assessment due subject thereto. If necessary, a written notice of the meeting of Members to consider ratification of the proposed budget must be sent to all Members at least ten (10) days and not more than sixty (60) days in advance of such meeting called for that purpose. Unless otherwise provided in the Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. The proposed budget shall be ratified unless at that meeting a majority (or such smaller percentage as required by the Act) of the votes of all Members rejects the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new budget is ratified. The due date shall be as previously set forth herein, unless otherwise 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.10. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment remaining not paid thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of eighteen percent (18%) per annum, or other such rate as established by the Association as provided in the Act, but in no event shall such interest exceed the highest rate allowed by law, and shall also be subject to late fees as approved by an affirmative vote by a majority of the Board of Directors and as permitted by law. The annual, special and special

individual assessments, together with such interest thereon, monthly late fees, and the costs of collection thereof (including, without limitation, reasonable attorney fees and fees not to exceed One Hundred Fifty and No/100 Dollars (\$150.00) in total per each act of delinquency, to be charged by the Association or the Association's managing agent for offsetting the costs of collection) as are hereinafter provided shall be a charge on the Lot and shall be a charge on the Lot and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the personal and continuing obligation of the Owner of such Lot at the time when the assessment became due. The Association, upon an affirmative vote by the majority of the Board of Directors, may increase or decrease the amount charged by the Association or the Association's managing agent for offsetting the costs of collection, provided that written notice is provided to all owners of record at the time of said change. Sixty (60) days after the delinquency, the Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest thereon, late charges and reasonable attorney fees of any such action, or foreclose the lien against the property in a like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of this Section, the amount of delinquent assessments and late charges shall be considered evidenced by this paragraph, and therefore, evidence of indebtedness shall exist hereby. Each Owner, by acceptance of a deed to a Lot hereby expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association. 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.

Section 5.11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage or first deed of trust on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veteran Affairs ("VA") or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Association. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage, deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be a Common Expense collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5.12. Exempt Property. The following portions of the Property, subject to this Declaration, shall be exempt from the assessment created herein:

1. All portions of the Property dedicated to and accepted by a local public authority; and

## 2. The Common Area.

Section 5.13. Fines, Designated to be Special Assessments. In the event of a violation by any Owner, other than Declarant, or any tenant of a Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, and in conformance with the provisions of the Act, the Association shall notify the Owner and any tenant of the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, the Association may, at its option:

1. Impose a reasonable fine against the Owner or tenant as provided in this Article and in conformance with the Act or suspend privileges and services provided by the Association; and/or
2. Commence an action to enforce the performance on the part of the Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
3. Commence an action to recover damages; and/or
4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Architectural Control Committee or erected in accordance with the Architectural Control Committee's approval, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable legal/attorney's fees, shall be assessed against the applicable Owner as a Special Assessment against the Owner's Lot. The Association shall have a lien for any such Special Assessment and any associated Interest, costs or expenses, including legal/attorney's fees, and may take such action to collect such Assessment or foreclose said lien in the manner of any other Assessment as provided in this Declaration. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records or applicable court of jurisdiction.

Section 5.14 Fines. The amount of any fine shall be determined by the Board, and shall not exceed any amount mandated by the Act or any other applicable law, if any. Prior to imposing any fine, the Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this Declaration, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Owner of a leased Dwelling shall have the right to participate in any hearing involving the tenant of such Dwelling,



and the Association shall provide notice to the Owner of such Dwelling concurrently with the Association's notice to the tenant of the subject Dwelling. The Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Owner or tenant. If the Owner or tenant fails to attend the hearing as set by the Board, the Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against an Owner shall be deemed a Special Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

Section 5.15. Association Funds Not Asset of Owners. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any Common Expense or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the Organizational Documents of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or for any assessment which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association are an asset of the Association which may be used in the operation and management of the Property.

## **ARTICLE VI** **INSURANCE**

Section 6.01. Ownership of Policies. All insurance policies upon the Common Area, which shall be purchased by the Association, shall be for the benefit of all the Association and the Owners and their mortgagees as their interest may appear.

Section 6.02. Coverage. The Board of Directors or its duly authorized agent may have the authority to and shall obtain insurance for the Common Area, including but not limited to the recreational facilities, if any, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form liability policy covering the Common Area and all damage or injury caused by the negligence of the Association or any of its agents in an amount as determined by the Board of Directors and shall include an endorsement to cover liability of the Owners as a group to a single Owner. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. There also shall be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary. Such policies shall contain clauses providing for waiver or subrogation, if possible. All such insurance coverage shall be written in the name of the Association.

Section 6.03. Fidelity Insurance or Bond. The Association may maintain banker fidelity bonds or other similar insurance coverage for all officers, directors, trustee and employees of the Association and for all other Persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds or to otherwise deal in the assets of the Association to a management agent, such management agent shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to one-half (1/2) of the total annual assessments on all Lots plus reserve funds accumulate.

Fidelity bonds required herein shall:

1. name the Association as an obligee;
2. contain waivers by the issuers of the fidelity bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and

3. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

Section 6.04. Premiums. Premiums for contracts of insurance and fidelity bond coverage purchased by the Association shall be paid by the Association and charged ratably to all Owners as an assessment according to the provisions of Article IV above.

Section 6.05. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association, as insurance trustee under this Declaration. The sole duty of the Association, as insurance trustee, shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6.06. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association, as insurance trustee, shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) the proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS**

Section 7.01. Purposes. The Property are hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Property; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereof of poorly designed or proportioned structures, add structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive Dwellings

thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Property and thereby to enhance the values of investments made by the purchasers of Lots therein. It is specifically disclosed that different architectural styles, sizes and prices of Dwellings may be built by the Declarant or its assigns to provide a variety of housing options.

Section 7.02. Plan Approval Requirement. Other than improvements constructed, installed, planted or otherwise made by the Declarant or its assigns, no building, sign, fence, outside lighting, hedge, wall, roof, shingle replacement, walk, antenna, deck, porch, carport, garage, or other structure or landscape planting shall be commenced, constructed, erected, altered, permitted or planted on any Lot, nor shall any addition, alteration, replacement, repair to the exterior or other change in exterior appearance of a Dwelling or Lot be made thereto, nor shall any building, wall, fence, or other structure be rebuilt after destruction by any hazard until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation shall have been submitted to and approved in writing by the Declarant or its assigns during the period of Class B membership, and thereafter the Architectural Control Committee.

The Architectural Control Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure, landscaping and materials or location on which the same are built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property.

In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within thirty (30) days after written request for final approval or disapproval such plans and specifications shall be deemed unapproved. To the extent not prohibited by the Act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require approval for any improvements, constructed, made, installed or planted by the Declarant, or its assigns, nor to permit interference with the development of the Property by the Declarant, or its assigns, so long as said development follows the general plan of development of the Property approved by FHA and/or VA, if any, or by the local municipality from time to time.

Section 7.03. Architectural Committee. The Board of Directors shall designate the number of and appoint the members of the Architectural Control Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Control Committee, the remaining members of the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time with or without cause, and without prior notice, by the Board.

Section 7.04. Procedures. No improvement shall be erected, remodeled or placed on any Lot, except by the Declarant, or its assigns, until all plans and specifications and a site plan have been submitted to and approved in writing by the Architectural Control Committee as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any improvements situated thereon and drainage arrangement; and
- (d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Control Committee, or matters in which the Architectural Control Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications (including a site plan showing the location of the contemplated improvements on the Lot) for all improvements proposed to be constructed on a Lot shall be submitted to the Architectural Control Committee for approval or disapproval. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the set of plans and specifications (specifically including, but without limitation, the above described site plan) approved by the Architectural Control Committee must again be submitted to the Architectural Control Committee for its inspection and approval. The Architectural Control Committee's approval or disapproval as required herein shall be in writing. Once the Architectural Control Committee has approved the plans and specifications for the proposed improvements, the construction of such improvements must be promptly commenced and diligently pursued to completion. If such construction is not commenced within the time set therefore by the Architectural Control Committee in the written approval (but in no event later than two (2) years after such approval), such approval shall be deemed rescinded, and before construction of improvements can thereafter be commenced on the Lot in question, the plans and specifications therefore must again be approved by the Architectural Control Committee pursuant to this Article.

The Architectural Control Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Current copies of the architectural standards bulletins shall be available to interested persons at the principal office of the Association for a reasonable cost.

Section 7.05. Enforcement. The Architectural Control Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions

contained herein. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney fees in connection therewith.

Section 7.06. Conditions. As a condition to the granting of approval of any request made under this Article, the Declarant or the Board or the Architectural Control Committee, as the case may be, may require the Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Declarant or the Board as the case may be. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such improvement shall be added to and become a part of the annual assessment or charge applicable to such Lot, and subject to the lien rights provided in this Declaration.

Section 7.07. Grounds for Disapproval/Defects. Denial of approval of such plans, locations or specifications may be based upon any grounds, including purely aesthetic and environmental, which the Declarant, Board of Directors or Architectural Control Committee, as the case may be, in its sole discretion, shall deem sufficient. The Declarant, Board of Directors and Architectural Control Committee shall not be responsible for any deficiencies or defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

Section 7.08. Verification of Compliance with Plans. The Declarant, Board of Directors or Architectural Control Committee, as the case may be, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of improvements, to inspect the work being undertaken and to determine such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 7.09. Limitation of Liability. Neither the Architectural Control Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this Article or the Declaration. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, he will not bring any action or suit against the Association, Declarant or Architectural Control Committee to recover any such damages.

Section 7.10. Compensation. No member of the Architectural Control Committee shall be entitled to compensation arising out of services performed pursuant to this Article. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

Section 7.11. Maintenance by Association. Common Areas and improvements thereon shown on the recorded Maps of the Property shall be maintained by the Association.

The streets within the Property shall be dedicated for public use on each recorded Map. Declarant shall remain responsible for any maintenance or repair necessary for any streets until maintenance is formally accepted by the local municipality or other appropriate government entity.

Section 7.12. Owner's Maintenance Obligations. Each Owner shall be responsible for all repair and maintenance of his Lot except such maintenance and repair specifically required to be provided by the Association under this Declaration or the Organizational Documents. No such maintenance by an Owner shall reduce any assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may perform maintenance not performed by an Owner as required in this Declaration. Any additional maintenance costs incurred by the Association as a result of an Owner's failure to maintain or repair as provided in this Declaration shall be added to and become a part of the assessment to which such Owner's Lot is subject.

Section 7.13. Negligence, etc. In the event that the need for maintenance or repair of any Lot or Common Area is caused through the willful or negligent acts or omissions of an Owner, or such Owner's family, tenants, contract purchasers, guests, invitees, contractors, employees or authorized representatives, such Owner shall be responsible for the cost of such maintenance and repair, which shall be added to and become a part of the assessment applicable to the Lot owned by such Owner. The Association shall have the right, but not the obligation, to enter onto an Owner's Lot and to perform any maintenance or repair required to be performed by an Owner under this Declaration in the event that an Owner fails to commence any such maintenance or repair within thirty (30) days after written notice from the Association to such Owner specifying the need for such maintenance and repair or such Owner, after commencing such maintenance and repair, fails to diligently pursue to completion such maintenance and repair within a reasonable period of time; provided, however, no notice nor waiting period shall be required with respect to an emergency condition existing on an Owner's Lot.

Section 7.14. Building Location. No building shall be located on any Lot nearer to the front line, rear line or side line than as indicated on the recorded Map or per the Code of the local municipality. The Architectural Control Committee may for good cause waive a violation of the set-back requirement provided for herein. This waiver shall be in writing and recorded in the Franklin County Registry. The waiver executed by the Architectural Control Committee shall be, when recorded, conclusive evidence of compliance with the requirements of this Article and the Declaration. A waiver is allowed so long as it does not violate local government zoning regulations. Declarant reserves the right to waive in writing any minor violation of this Article, and for purposes hereof, any violation which does not exceed twenty percent (20%) shall be considered a minor violation.

Section 7.15. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Map and over the rear ten (10) feet on each Lot and five (5) feet on each side, on each Lot, unless shown in excess of such distances on

a recorded Map, in which case the Map shall control. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements that are included as Common Area and those improvements for which a public authority or utility company is responsible. No easement shall exist along an interior Lot line on any Lot on which a house is constructed within an area which would otherwise be an easement, if the placement of the house is permitted in these covenants. So long as Declarant owns at least one Lot within the Property, Declarant reserves the right to waive in writing this rear and side line easement requirement.

## **ARTICLE VIII**

### **USE RESTRICTIONS**

**Section 8.01. Permitted Use.** No Lot shall be used for any purpose other than a single family residential Dwelling; provided, however, the Declarant excepts and reserves the right for itself and its assigns to use any Lot or Dwelling as construction or sales offices and/or models which may be shown to prospective purchasers of Lots. No garage shall be converted or used as a bedroom, storage room or other living space, nor shall the number of bedrooms in a Dwelling on any Lot be increased without the approval of the Association and the local municipality. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family Dwelling not to exceed two and one-half stories in height and have a private garage for not more than three (3) cars. No attached or detached garage shall be used for human habitation temporarily or permanently.

**Section 8.02. No Businesses.** Except as specifically provided in this Section, no trade, business, industry, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot or other part of the Property, except that any Owner may lease his Lot for residential purposes in accordance with this Declaration if prior approval is granted by the Declarant in writing; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Property and sales of the Lots and the construction and maintenance of houses and other improvements on the Lots, and to the various activities of the Association in furtherance of its powers and purposes. The Declarant and its agents and builders may use any Lot or Lots and any Dwelling thereon for office, sales or display purposes.

An Owner or occupant residing in a Dwelling on any Lot may conduct business activities within such Dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning requirements without the need for a variance; (c) the business activity does not involve door-to-door solicitation of residents of the Property; (d) the business activity does not, in the reasonable judgment of the Board of Directors, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is



noticeably greater than that which is typical of Lots in which no business activity is being conducted; (e) the business activity is consistent with the residential character of the Property, does not create a hazardous or dangerous condition nor threaten the security or safety of other occupants of the Property, and is not a nuisance nor an unreasonable annoyance or offensive use, all as may be determined in the sole discretion of the Association's Board of Directors.

The terms "business", "trade", "industry", "occupation" and "profession" as used in this Section, shall be construed to have their ordinary, generally-accepted meanings and shall include, without limitation, any occupation, work or activity which involves the provision of goods or services to persons other than the provider's immediate family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or whether a license is required. The leasing of a Lot in accordance with this Declaration shall not be considered a business or trade within the meaning of this Section.

Section 8.03. Prohibited Structures. No Owner shall at any time place on such Owner's Lot or any other portion of the Property, any mobile, manufactured or modular home, nor shall any tent, shack, barn, other outbuilding, camper or other temporary structure of a similar nature be used as a residence either temporarily or permanently upon any Lot, with the limited exception of construction trailers, sales offices and the like for use by Declarant or its assigns or designees for overseeing construction and sales during the construction process. Accessory buildings of any nature whatsoever, including but not limited to detached garages, storage buildings, dog houses, greenhouses, etc. shall not be placed on any Lot without the prior written approval of the Architectural Control Committee. No exposed above-ground tanks, except for recreational swimming pools approved by the Architectural Control Committee, will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must exceed in height by at least one (1) foot any such tank as may be placed therein. No fence, wall, hedge or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the Architectural Control Committee. Fencing of any type or design is allowed only by approval of the Architectural Control Committee. In-ground swimming pools, hot-tubs, children's play equipment or similar structures shall not be constructed or allowed to remain on any Lot or portion of the Property without written approval by the Architectural Control Committee, and shall be screened from the view of any street, Common Area or adjoining Lot.

Section 8.04. Animals. No animal, livestock or poultry of any kind shall be raised or kept on any Lot, except that no more than three (3) dogs, cats or other usual household pets may be kept and maintained thereon, provided that such pets shall not be a danger or menace to others, that they are not kept or maintained for any commercial purposes or in such a manner to be offensive, threatening or dangerous to the residents of the Property and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable laws, ordinances and regulations of the State of North Carolina, Franklin County and the local municipality, (ii) such rules and regulations as the Board of Directors may adopt from time to time, and (iii) the keeping of such animals does not increase the premiums for any insurance maintained by the Association or which will result in the cancellation of any such insurance. In the event of a dispute over whether an animal is a permitted household pet for purposes hereunder, the determination of the Declarant during the period of Class B Membership and thereafter by the

Board of Directors shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the absolute power to prohibit any particular pet from being kept on the Property, including inside a residence, if the Board of Directors in its sole and absolute discretion determines the pet is threatening, menacing, dangerous, a nuisance, or otherwise has a negative impact on the Property. Additionally no kennel or dog run or similar structure shall be constructed or allowed to remain on any Lot.

Section 8.05. Outside Antennas. No outside radio or television antennas or discs shall be erected on any Lot or Dwelling within the Property, but a satellite dish with a diameter of two (2) feet or less may be installed, in a location that is not visible from the street in front of the Dwelling, upon receipt of permission for the same granted by the Declarant or the Board of Directors or its Architectural Control Committee. To the extent this restriction may later be determined to be unenforceable pursuant to applicable laws, including but not limited to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), an Owner nevertheless shall be restricted in its placement of said antennas to an area which is least visible from the front of the Lot or Dwelling and which causes or is likely to cause the least interference with the placement and use of antennae and disks by other Owners. Any permitted antenna or disk shall be installed, maintained and replaced in accordance with rules and regulations adopted by the Board from time to time. Nothing in this section, however, shall prohibit (but shall not obligate) the Declarant or the Association from erecting a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the Lots and charging fees for usage thereof.

Section 8.06. Insurance Risks. Nothing shall be kept and no activity shall be carried on in any Dwelling, Lot or on the Common Areas, nor shall any Owner do or keep anything, nor cause or allow anything to be done or kept on his Lot, or in his Dwelling or on the Common Area, which will increase the rate of insurance, applicable to residential use, for the Property or the contents thereof or which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Areas.

Section 8.07. Signs. No Owner shall display, or cause or allow to be displayed, to public view on his Lot any sign, placard, poster, billboard, or identifying name or number on any portion of a Lot, the Common Area or the right-of-way of any street or road within the Property except as permitted in this Declaration or as required by the local municipality. Notwithstanding the foregoing, the Declarant, and only the Declarant, may place "For Sale" or "For Rent" or other similar marketing signs on any Lot it owns. During the development of the Property and the marketing of Lots, the Declarant, builders and their realtors may maintain offices and may erect and display such signs and banners as the Declarant deems appropriate as aids to such development and marketing provided that such signs do not violate any applicable laws. No Owner, other than the Declarant, shall display, or cause or allow to be displayed, to public view on his Lot any "For Sale" or "For Rent" sign which exceeds twenty-four (24") inches in width or fifteen (15) inches in height. The Board of Directors may adopt Rules and Regulations concerning the color and placement of signs by Owners other than the Declarant. A sign advertising a yard sale or other temporary activity may be displayed on a Lot for no more than seventy-two (72) consecutive hours. Notwithstanding the foregoing, the Board of Directors has

the authority to require any sign, other than a sign maintained by the Declarant, be removed if it determines, in its sole discretion, such sign to be detrimental to the Property. Easements are reserved as shown and designated on the recorded Maps of the Property to erect and construct entrance signs and landscape or streetscape areas. Notwithstanding the foregoing, political signs or signs intended to influence the outcome of any election may be displayed no earlier than 45 days prior to the subject election, and no later than seven (7) days after the subject election. The number and size of such signs shall be in compliance with all local ordinances regulating such signs or, in the absence of any such ordinance, shall be limited to three (3) such signs with maximum dimensions of 24" by 24".

No Owner, other than the Declarant, shall be permitted to install any signs on or in the following: (i) the Common Area, (ii) within the right of way of any residential street within the Project, or (iii) on any other portion of the Project located outside the boundaries of such Owner's Lot.

Section 8.08. Rental or Leasing of Dwellings. No Dwelling shall be rented or leased to or occupied by a greater number of unrelated individuals than the number of bedrooms in the Dwelling. No Lot shall be rented to or occupied by a number of individuals, whether or not unrelated, which exceeds twice the number of bedrooms in the Dwelling; provided, however, a Lot may be rented to or occupied by a number of individuals which is not more than three (3) times the number of bedrooms in the Dwelling so long as all such individuals occupying such Dwelling are within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) or who are legal guardian and ward. For purposes of this Section, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless one of their parents or legal guardian also occupies the same Lot as such parent's or legal guardian's principal residence.

Any lease between an Owner and a tenant for the lease of such Owner's Dwelling shall be subject to the approval of the Declarant while Class B Membership exists and provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Dwellings shall be in writing and shall be for a term of not less than one hundred eighty (180) days. All leases shall contain this Declaration as an addendum to the lease, and a copy of such lease shall be delivered to the Association.

Section 8.09. Maintenance of Lots. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. All siding and roofing shall be properly maintained such that the siding and roofing shall be kept free of mold, fungus or other causes of discoloration. No clothesline may be erected or maintained on any Lot. Each Owner shall further maintain the Lot with no grass grown over eight (8) inches in height and landscaping on his Lot in a clean and neat condition and shall keep his landscaping trimmed so as not to be

unsightly and will remove any dead trees and undergrowth to present a pleasing appearance. 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 which will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots. No trash, rubbish, stored materials, wrecked or inoperable vehicles, vehicles unlicensed for more than thirty (30) days, or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, or other debris for collection by governmental or other similar garage and trash removal units. In the event any Owner fails or refuses to comply with any of the foregoing, the Declarant or Association may demand the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot or by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant or Association may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant or the Association. No such entry as provided herein shall be deemed a trespass.

Section 8.10. Garbage Cans and Trash Removal. Garbage cans or approved dumpsters shall be located or screened so as to be concealed from view of neighboring Lots, Common Areas and street rights of way. All rubbish, trash, and garbage shall be regularly removed from any Lot and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Owner for removal. Yard waste must be disposed of properly and not deposited on any other Lot, the Common Areas or street rights of way within the Property. Notwithstanding the foregoing, the Declarant reserves for itself and its approved builders of Dwelling within the Property the right to dump and bury rocks, trees, stumps and similar debris as needed for efficient development of the Property provided that such dumping and burying are done according to good building practice and in accordance with all applicable governmental laws and regulations.

Section 8.11. Nuisances. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, orders, rules, requirements, ordinances and regulations of all governmental agencies having jurisdiction thereof relating to any portion of the Property shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Property, nor shall anything be done thereon which may be or become a nuisance or an unreasonable annoyance to the neighborhood. Activities associated with the development of the Property and the construction of Dwelling or Common Area facilities on the Property shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the local municipality. Other than in connection with the development of the Property or the construction and sale of Lots and Dwelling by the Declarant or its assigns, no trade materials or inventories may be stored upon a Lot.

Section 8.12. Rules and Regulations. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard spaces of each Lot and the Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for reasonable inspection during normal business hours.

Section 8.13. Subdivision of Lot. No Lot shall be subdivided nor its boundary lines changed except with the prior written approval of the Declarant or its assigns, if during the period of Class B membership, and thereafter with the prior written approval of the Board; provided, however, the Declarant reserves the right to subdivide, re-subdivide or recombine any Lot or other property in the Property owned by the Declarant. Any subdivision, re-subdivision or recombination of the Property or any portion thereof shall be done in accordance with all applicable laws and regulations.

Section 8.14. Open Space Preservation and Protection Areas. Within any portion of the Common Area which is designated or approved as open space preservation and protection areas, no land-disturbing activity, placement of impervious surfaces, removal of vegetation, encroachment, construction or erection of any structure shall occur except with approval of the Association and in accordance with a watercourse buffer permit first being issued by the local municipality.

Section 8.15. Stormwater Control Measures – Potential Fines & Liens. Portions of the Common Area are or may be subject to drainage easements, as shown on the recorded Maps. If so required, stormwater control measures shall be maintained by the Association in accordance with the requirements of the local authorities. Stormwater control measures are required to comply with the local authorities' requirements, and the failure to maintain stormwater control measures is a violation potentially subjecting each Lot Owner to significant daily penalties and other enforcement action.

Section 8.16. Development Rights Reserved. Notwithstanding any provisions or restrictions contained in this Declaration, rules and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and approved builders during the period of Class B membership to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Property, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

Section 8.17. Government Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 8.18. Pond. There is a pond located in the Common Areas of the Property which may be part of the Stormwater Control Measures. Said pond and all walking trails shall be maintained by the Association. The Association hereby indemnifies and holds harmless the Declarant as it relates to any and all actions and activities associated with said pond. The following provisions and conditions apply to said pond:

- (a) no boats shall be allowed or permitted on the pond except for a boat used by the Association for maintenance, care and repair of the pond or facilities attendant thereto;
- (c) no net fishing shall be allowed or permitted on the pond;
- (d) no dumping or discharging of any substance into the pond shall be allowed or permitted;
- (e) the Association shall not be responsible for supervision of any activities or unauthorized use of or on the pond by Owners, their family members or guests or by any other person not authorized to access to the pond; and
- (h) there shall be no docks on the pond.

The Association may modify these rules and regulations and preempt new rules and regulations so long as they do not violate the purposes of said pond and the Code requirements of the local municipality.

## **ARTICLE IX**

### **EASEMENTS/BUFFERS**

Section 9.01. Utilities. Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage facilities are reserved as indicated on the recorded Maps of the Property. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the power and authority to grant and establish upon, over and across the Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Common Areas or Lots.

Section 9.02. Encroachments. In the event that any improvements on a Lot shall encroach upon any Common Areas or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Areas into any such Lot for so long as such encroachment shall naturally exist. Notwithstanding anything hereinabove to the contrary, this provision does not authorize any

encroachments except those encroachments which exist by virtue of original construction by the Declarant or its assigns or with Declarant's express approval.

Section 9.03. Easement for Governmental Agencies. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, utility companies and public service agencies (and any other Person providing services to the Property under agreement with or at the direction of the Association) as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage channels and facilities, utilities, and fire lines and acting for other purposes consistent with public safety and welfare, including without limitation, law enforcement, fire protection, emergency and rescue services, garbage collection and delivery of mail. An easement is hereby established for the benefit of the local municipality over the Common Area and over the front five (5) feet of each Lot for the setting, removal and reading of water meters, the maintenance and replacement of water, sewer and drainage channels and facilities and the collection of garbage.

Section 9.04. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to the conveyance of such Lots or the Common Area by the Declarant. The Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property. If a Lot is served by a driveway as indicated on a recorded Map of the Property (provided such Map was approved by the Declarant or the Association), there is created an appurtenant easement over the Common Areas in favor of such Lot for the construction, reconstruction, repair and maintenance of such driveway and for the exclusive use of such driveway for ingress, egress, regress and parking purposes. Such driveway easement is subject to water, sewer and utility lines lying under such driveway and the repair and maintenance of such lines. The Association and the other Owners shall not obstruct or interfere with the use of such driveway except as is incident to the repair and maintenance of Common Areas and water, sewer and utility lines. If the Association obstructs or interferes with the permitted uses of such driveway, the Association shall make reasonable efforts to provide alternative parking for such Lot during the period of obstruction or interference.

Section 9.05. Easements Appurtenant to Lots. All private streets and driveway areas in the Common Areas shall be subject to an easement in favor of every Lot to which they are adjacent or which they are intended to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 9.06. Emergencies, Etc. Every Lot and Dwelling shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Dwelling on any Lot and that endangers any Lot or portion of the Common Areas, or as necessary to correct any grading for drainage purposes.

Section 9.07. Easements to Association. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection with the exercise of any right, duty or obligation of the Association under this Declaration or its Organizational Documents.

Section 9.08. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Each Owner of a Lot shall have a perpetual access easement over the adjoining Lots and/or Common Area to the extent reasonably necessary to repair, maintain or reconstruct the Dwelling on such Owner's Lot. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable laws, ordinances and regulations. Upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable. No fence, wall, storage shed or similar type of structure or any other kind of obstruction shall be permitted within the area lying within five (5) feet of the adjoining Lot that will obstruct such access to the adjoining Lot.

Section 9.09. Access Easement. Each Owner shall have the right to ingress and egress over, upon and across the Common Area as necessary for access to his Lot and shall have the right to lateral support for his Lot.

Section 9.10. Easement Reserved by Declarant for Development. Until December 31, 2027, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself, its successors and assigns including, but not limited to Persons constructing Dwellings and other improvements on the Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Property, including but not limited to construction of the recreational facilities and installation of utilities. The reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to:

- A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Property with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Property any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;
- B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business



offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;

- C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any portion of the Property, including, without limitation, Lots or Common Areas conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto; and
- D. This section may not be amended without the written consent of Declarant.

**Section 9.11. Drainage.** The Declarant reserves for itself and its assignees, including but not limited to the Association, the right and easement to enter upon any Lot or the Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Common Area in order to correct surface water drainage problems existing on any Lot or the Common Area. Any alterations made pursuant to the foregoing easement shall be made at the sole cost and expense of the Declarant or its assigns, as the case may be, and shall not unreasonably interfere with the Owner's use and enjoyment of his Lot. Declarant hereby agrees in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Control Committee, as the case may be, must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

## **ARTICLE X**

### **RIGHTS RESERVED TO INSTITUTIONAL LENDERS**

**Section 10.01. Entities Constituting Institutional Lenders.** "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

**Section 10.02. Obligation of Association to Institutional Lenders.** So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- A. To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by an accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by May 15th of each calendar year;

- B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Organizational Documents of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association;
- C. To receive notice of any condemnation or casualty loss affecting the Common Area or any portion thereof;
- D. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- E. To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof; and
- F. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender or to the place which it may designate in writing.

Section 10.03. Requirements of Institutional Lender. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address of the Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage together with sufficient pertinent facts to identify such mortgage or identifying any Lot or Lots owned by such Institutional Lender. Such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## **ARTICLE XI** **GENERAL PROVISIONS**

Section 11.01. Enforcement. The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and the Organizational Documents. Failure by the Association, Declarant or any Owner to enforce any such restriction, condition, covenant, reservation lien or charge herein contained shall in no event be deemed a waiver of the right to enforce any such restriction, condition, covenant, reservation, lien or charge at any other time or in connection with the same or any other event, nor shall it be deemed a waiver of the right to request that law enforcement, public safety and animal control officers enter the Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

Section 11.02. Severability. Invalidation of any one of these covenants, conditions or restrictions or any provision herein by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 11.03. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land and shall insure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as specifically otherwise provided herein, this Declaration may be amended by an affirmative vote or written agreement signed by Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment must be recorded with the Franklin County Registry. In the event Declarant or its assigns have arranged for and provided purchasers of Lots with FHA insured or VA mortgage loans, then prior approval of FHA/VA may also be required for amending this Declaration.

Section 11.04. Amendment of Declaration Without Approval of Owners. The Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgages or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale of such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Association, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

Section 11.05. Certificate of Amendment Form. If any amendment, to these covenants, conditions and restrictions is so approved and executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

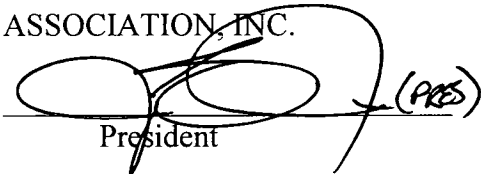
(a) Reasonably assure itself that the amendment has been validly approved by the Association. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined).

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF ASHTON MEADOWS SUBDIVISION

By authority of its Board of Directors, Ashton Meadows Homeowners Association, Inc., hereby certifies that the foregoing instrument has been duly approved or executed by the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated and is therefore a valid amendment to the existing Declaration of Covenants, Conditions and Restrictions of Ashton Meadows Subdivision.

This the 20 day of June, 2011.

ASHTON MEADOWS HOMEOWNERS  
ASSOCIATION, INC.  
 (PRES)  
President

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Franklin County Registry.

All amendments shall be effective from the date of their recordation in the Franklin County Registry. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors and recorded, it shall be conclusively presumed such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 11.06. Voting. Voting of Members of the Association shall be in accordance with the applicable provisions set forth in the Association's Bylaws.

Section 11.07. Contract Rights of Association. As long as there is a Class B Membership, any contract or agreement entered into by or on behalf of the Association shall contain a provision giving the Association the right to terminate such contract or agreement, with or without cause, upon the giving of not more than thirty (30) days written notice to the other party or parties.

Section 11.08. Underground Utilities and Street Lighting. Declarant reserves the right to subject the Property described hereinabove to a contract with public utility companies for the installation of underground utility service and the installation of street lighting, either of which or both of which may require a continuous monthly charge to the Owner of the Lot. Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of each Lot. Upon acceptance of a deed to a

Lot, each Owner agrees to pay said continuing monthly payments therefore as approved by the North Carolina Utilities Commission or other appropriate government authorities.

Section 11.09. FHA/VA/FNMA Approval. As long as there is a Class B membership, the following actions, if required, shall be approved by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association, as the case may be: annexation of Additional Property, dedication of Common Area, deeding in trust the Common Area, mergers and consolidations and amendment of this Declaration.

Section 11.10. Gender and Grammar. The singular, wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

Section 11.11. Liability Exemptions. In no case shall the local municipality be responsible for failing to provide any emergency or regular fire, police or other public service to the Common Area or the Lots or to their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, the Owners or their occupants. In no case shall the local municipality or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 11.12. Address. Each Member agrees to keep the Association informed of his address at any time, and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster, and the roster as so completed shall be sufficient evidence of the Ownership of each Lot. If a Member fails to provide the Association with its address or otherwise fails to keep its address current, the Association may use the address shown on the Franklin County tax records for the Owner of the Lot for which such membership exists as the Member's address.

Section 11.13. Conflicts. In the event of a conflict between the terms and provisions of this Declaration and the Bylaws or Articles of Incorporation of the Association, the terms and provisions of this Declaration shall control. In the event of a conflict between the terms and provisions of the Bylaws and the Articles of Incorporation of the Association, the terms and provisions of the Articles of Incorporation shall control.

Section 11.14. Permanently Undisturbed Open Space Areas. Within any Basin Areas, if any, no land disturbing activity, no new construction, expansion, encroachment, nor placement of any impervious surface shall occur without the prior issuance of a permit by the Franklin County.

## Section 11.15 DISPUTE RESOLUTION.

### 1. Consensus for Association Action.

(a) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds (2/3) of the voting Members. A voting Member representing Lots owned by Persons other than the voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds (2/3) of the total number of Lots represented by the voting Member. This Section shall not apply, however, to: (i) actions brought by the Association to enforce the Declaration or the Organizational Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

### 2. Alternative Method for Resolving Disputes.

Declarant, its officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in this Section 3 (collectively, "Claims") to the procedures set forth in this Section 4.

### 3. Claims.

Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Declaration or the Organizational Documents or the rights, obligations and duties of any Bound Party under the Declaration or the Organizational Documents, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 11.15, Paragraph 4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.15, Paragraph 4.

(a) any suit by the Association against any Bound Party to enforce the provisions of Article IV (Assessments);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court

may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article VI (Architectural Control and Building Restrictions) or Article VII (Use Restrictions);

(c) any suit between or among Owners, which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Organizational Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 11.15, Paragraph 4.

#### 4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

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

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

(iii) the proposed remedy; and

(iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

#### (b) Negotiation and Mediation.

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

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Supplemental Mediation Procedures for Residential Construction.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the

mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth the Parties are at an impasse and the date mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 11.15, Paragraph 4 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 11.15, Paragraph 4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

(c) Binding Arbitration.

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Arbitration Procedures for Residential Construction. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three (3) arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one (1) arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) Unless provided otherwise by AAA's Supplemental Arbitration Procedures for Residential Construction, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

5. Amendment of Article.

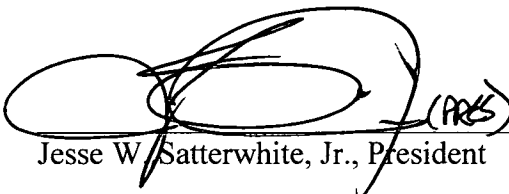
Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Declaration.

[Signature page to follow]



IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

DECLARANT: SATTERWHITE CONSTRUCTION, INC.,  
a North Carolina corporation

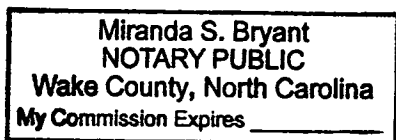
BY:  (PRES)  
Jesse W. Satterwhite, Jr., President

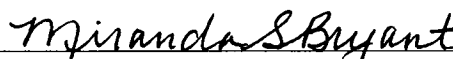
STATE OF NORTH CAROLINA

COUNTY OF WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jesse W. Satterwhite, Jr.

Date: 06/20/2011



  
Signature of Notary Public  
Printed Name: Miranda S. Bryant  
My Commission Expires: 01/18/2015

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**EXHIBIT A**  
**(Property subject to this Declaration)**  
Legal description

Located in Youngsville Township, Franklin County, North Carolina and being all of Tracts 1 and 2 of the J. Wilbur Hill Estate shown on that map recorded in Book of Maps 1995, Page 390, Franklin County Registry.