

BK 7960PG0042

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Prepared by and return to:
Henry W. Jones, Jr.
Jordan, Price, Wall, Gray & Jones
P.O. Box 2021
Raleigh, N.C. 27602

PRESENTED
FOR
REGISTRATION
98 MAR 17 PM 3:18
Grantor Index:
Bradley W. Smith
Tammi L. Smith
LAURA PL. HEDGECOCK
REGISTER OF DEEDS
WAKE COUNTY

STATE OF NORTH CAROLINA

AGREEMENT AND RESTRICTIVE COVENANT
REGARDING LOT 3 AMHERST SUBDIVISION
APEX, NORTH CAROLINA

COUNTY OF WAKE

THIS AGREEMENT AND RESTRICTIVE COVENANT REGARDING LOT 3
AMHERST SUBDIVISION, made this 27 day of FEBRUARY, 1998 by
and between **BRADLEY W. SMITH** and wife, **TAMMI L. SMITH**
(collectively hereinafter, "Homeowner"), who reside at 604 North
Coalport Drive, Apex, Wake County, North Carolina 27502; and
AMHERST HOMEOWNERS ASSOCIATION (hereinafter, "Association") of
Raleigh, Wake County, North Carolina.

WHEREAS, Homeowner is the owner of real property in Wake
County, North Carolina, more particularly described as Lot 3 as
shown on the plat entitled Amherst Subdivision, Phase I, recorded
in Book of Maps 1995, Page 62 (hereinafter, the "Lot"), which lot
is more commonly known as 604 North Coalport Drive, Apex, Wake
County, North Carolina 27502; and

WHEREAS, the Lot is subject to the Declaration of Covenants,
Conditions and Restrictions for Amherst Subdivision recorded in
Book 6410, Page 128 of the Wake County Registry, as existing and
as may be amended (hereinafter, "Declaration"); and

WHEREAS, Article Eleven of the Declaration provides, in
part, that no modifications, additions or alterations shall be
erected upon the Lot until the plans and specifications for the

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same shall have been submitted to and approved in writing by the Architectural Standards Committee of the Association; and

WHEREAS, Homeowner constructed a five fence upon the Lot without obtaining the written approval for the same, as required by the Declaration; and

WHEREAS, Homeowner acknowledges that the fence is not authorized and that the Association has the right to seek a court order requiring Homeowner to remove such fence from the Lot; and whereas, Homeowner acknowledges that the architectural standards applicable to their Lot do not permit a fence greater than four feet in height; and

WHEREAS, Homeowner desires to keep and maintain the fence and, as a condition imposed by the Association to do so, desires to subject the Lot to the restrictive covenants contained hereinbelow; and

WHEREAS, the Association desires the voluntary removal of the Architectural Violation, as defined below, or the modification of the fence to bring it into compliance with its standards, without the expense or necessity for litigation, and is therefore willing to enter this Agreement with Homeowner provided that Homeowner subjects the Lot to the restrictive covenants contained hereinbelow.

NOW, THEREFORE, in consideration of the sum of the foregoing premises and the following mutual covenants and promises, the parties do hereby covenant and agree as follows:

1. Homeowner constructed the fence, which is in existence upon the Lot at the time of this Agreement, without obtaining the

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written approval for the same as required by the Declaration; such fence is also described by reference to the attached of the Property of Bradley W. Smith and wife Tammi L. Smith, dated 1 August 1995 (hereinafter, the "Architectural Violation").

2. The Association hereby agrees to temporarily waive the Architectural Violation. The temporary waiver contained is subject to the other provisions of this Agreement, is specific to Homeowner, and is expressly not binding upon Homeowners' successors in title or assigns.

3. Upon the earlier occurrence of the sale, conveyance or lease of the Lot or upon failure by the Homeowner to use the Lot as their primary residence, this temporary waiver shall expire and Homeowner hereby agrees to either (a) immediately remove the Architectural Violation in its entirety and carry it off the lot; or (b) modify the fence to bring it entirely into compliance with the Association's architectural standards, including the reduction of the height of the fence from five feet to four feet. Should Homeowner fail to comply with this paragraph, the Association shall have the right, permission and authority to enter the Lot and to remove the Architectural Violation in its entirety from the Lot and to properly dispose of it, charging all of its costs and expenses, including attorneys' fees, to Homeowner; Homeowner agrees that such costs and expenses shall be and constitute a lien upon the Lot, in the same manner as an unpaid assessment and shall be enforceable as provided in the Declaration, if such costs and expenses are not paid in full within thirty (30) days of written notice of the same to

Homeowner.

4. Association expressly reserves its right to seek all available remedies in law or in equity, whether for damages or for injunctive relieve, including without limitation, a court order requiring the removal of the Architectural Violation, should Homeowner or Homeowner's successors in title or assigns fail to comply with the provisions of this Agreement. Homeowner hereby agrees to waive and defenses and toll any applicable statutes of limitation or to stay any applicable statutes of repose for two years to begin the date that Homeowner conveys its interests in the lot (not including refinancing).

5. Homeowner agrees that all future modifications, alterations, additions, or changes to the Architectural Violation shall be fully subject to Article Eleven of the Declaration and further, that any modifications, alterations or changes to the Architectural Violation made without the prior written approval of the Architectural Standards Committee shall render the temporary waiver granted hereinabove to be null and void and shall entitle the Association to exercise all of its remedies pursuant to this Agreement and available to it in law or equity.

6. Invalidation of any provision of this Agreement or any portion thereof by a judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

7. This agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

8. This agreement contains the entire understanding

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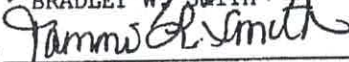
between the parties and may not be altered, modified, terminated, or discharged except in writing.

9. This Agreement is not effective until it is recorded in the office of the Wake County Register of Deeds, which shall be at the expense of Homeowner. Once recorded, this Agreement shall be notice to all prospective purchasers, successors in title and assigns.

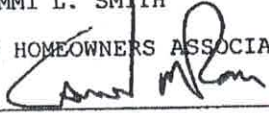
10. This Agreement shall be binding upon each of the parties, their heirs, devisees, personal representatives, successors in title and assigns. The covenants contained herein are appurtenant to the Lot and shall run with such land.

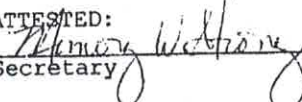
IN WITNESS WHEREOF, the parties have executed this instrument on the day and year first above written.

By: 
BRADLEY W. SMITH

By: 
TAMMI L. SMITH

AMHERST HOMEOWNERS ASSOCIATION

By: , President

ATTESTED:

Secretary

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STATE OF NORTH CAROLINA

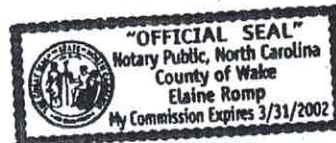
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Bradley W. Smith and Tammi L. Smith personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 27 day of Feb., 1998.

Elaine Romp
Notary Public

My Commission Expires: 3-31-2002



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STATE OF NORTH CAROLINA

COUNTY OF WAKE

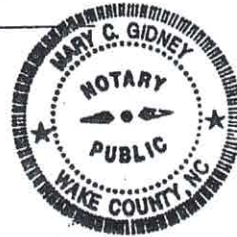
I, Mary C. Gidney, a Notary Public of the County and State aforesaid, certify that Memory W. Strong, personally came before me this day and acknowledged that she is the Secretary of Amherst Homeowners Association, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Memory W. Strong as its Secretary.

Witness my hand and official stamp or seal, this 11 day of March, 1998.

Mary C. Gidney
Notary Public

My Commission Expires: May 26, 2002

Jpc\jones\boa\amherst\emithagr



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate is of Elaine Kemp
Mary C. Gidney
Notary/(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAJRA M. RIDDICK, Register of Deeds

By Judith Callahan
Asst./Deputy Register of Deeds

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PRESENTED
FOR
REGISTRATION

Prepared by and hold for: Perry, Patrick, Farmer and Michael
000240 98 RUS. - (RM) 11:50

LAURA M. RIDDICK
REGISTER OF DEEDS
WAKE COUNTY

**SUPPLEMENTARY DECLARATION SUBJECTING ADDITIONAL PROPERTY
IN AMHERST SUBDIVISION TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS Supplementary Declaration made this 28th day of July, 1998, by **ENGLER HOMES/NORTH CAROLINA, INC.**, a Florida corporation (hereinafter "Engle")

WITNESSETH:

WHEREAS, Amherst Limited Partnership, a North Carolina Limited Partnership (hereinafter "Amherst"), was the original Developer of Amherst Subdivision located in the Town of Apex, White Oak Township, Wake County, North Carolina and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions recorded in Book 6410, Page 128, Wake County Registry (hereinafter the "Declaration"); and

WHEREAS, Amherst conveyed its interest in the real property described in Exhibit A attached hereto (hereinafter the "Property") and assigned its rights as Declarant under the Declaration to Engle (hereinafter sometimes referred to as "Successor Declarant") in that certain deed recorded in Book 7224, Page 109, Wake County Registry, and

WHEREAS, pursuant to Section D of Article 10 of the Declaration, Successor Declarant desires to subject additional property within Amherst Subdivision to the Declaration;

NOW, THEREFORE, in consideration of the premises, Successor Declarant hereby declares that the property identified and described on Exhibit A attached hereto and incorporated herein by reference shall be and hereby is annexed into the property covered by the Declaration and shall be and hereby is made subject to the Declaration and to the jurisdiction of the Amherst Homeowners Association Inc., a North Carolina non-profit corporation.

Said Property shall be owned, held, transferred, sold, conveyed, given, donated, devised, inherited, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations and liens (hereinafter the "Covenants and Restrictions") contained in the Declaration, which Covenants and Restrictions shall run with the land and be binding on all parties having or acquiring any right, title and interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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IN WITNESS WHEREOF, Successor Declarant, as owner of the Exhibit A property, has each caused this Supplementary Declaration to be executed and sealed in its corporate name by its duly authorized officers, the day and year first above written.

ENGLE HOMES/NORTH CAROLINA, INC.

(Seal)

By:

[Signature]
Vice President

ATTEST:

[Signature]
Assistant Secretary



STATE OF NORTH CAROLINA -- WAKE COUNTY:

I, G. MARK TEAGUE, a Notary Public for said County and State certify that RICHARD W. MOORE personally appeared before me this day and, being by me duly sworn, says and deposes that he is an Assistant Secretary of **ENGLE HOMES/NORTH CAROLINA, INC.**, a Florida corporation, and that, by authority duly given and as the act and deed of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by him as its Assistant Secretary.

Witness my hand and official stamp and seal, this the 28th day of July, 1998.



[Signature]

Notary Public

My commission expires: 1/23/1999

STATE OF NORTH CAROLINA -- WAKE COUNTY:

The foregoing certificate of G. MARK TEAGUE, Notary Public, is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By:

[Signature]
Deputy/Asst. Register of Deeds

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Drawn by and HOLD FOR:
PERRY, PATRICK, FARMER & MICHAUX, P.A.

PRESENTED
FOR
REGISTRATION

93 AUG 26 AM 10:43

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

LABOR & DEEDS
REGISTERED DEEDS
RESTRICTIVE COVENANT VARIANCE

WHEREAS, ENGLE HOMES/NORTH CAROLINA, INC., a Florida corporation is the owner of the real property and improvements thereon (hereinafter the "Property") located at 118 Rocklyn Lane, and further described as Lot 97, AMHERST Subdivision, Phase 2, Section A, as shown on the plat recorded in Book of Maps 1998, Page 147, WAKE County Registry;

WHEREAS, the Property is subject to that certain Declaration of Covenants, Conditions and Restrictions recorded in Book 6410, Page 128, and to the Supplementary Declaration recorded in Book 8120, Page 2252, Wake County Registry, (hereinafter collectively referred to as the "Covenants");

WHEREAS, Article 12, Section C of the Covenants states, in part, that "No above grade structure...may be constructed or placed on any Lot except within...[e]ight (8) feet from the Lot side line";

WHEREAS, as shown on the survey dated 08/18/98, entitled "SURVEY FOR WILLIAM ALAN GRIEP [&] SUZANNE MARIE GRIEP", White Oak Township, Wake County, North Carolina, prepared by Leonard H. Sullivan, Jr. R.L.S. (Job #3061798), the home on the Property was constructed only 7.01 feet from the side lot line (a common line with Lot 98 as said Lot is shown on the plat of AMHERST Subdivision referenced above);

WHEREAS, Article 15 of the Covenants permits the Board of Directors of the Amherst Homeowners Association, Inc. (hereinafter the "Corporation") "to allow reasonable variances and adjustments" to the Covenants "in order to alleviate practical difficulties and hardship in their enforcement and operation".

WHEREAS, Article 15 of the Covenants further provides that in order for a variance to be effective it must be executed on behalf of the Corporation and must be recorded in the Wake County Registry.

WHEREAS, the Board of Directors has determined that the home is situated on the Property in such a manner that it complies with the six (6) foot side yard setback required by the Apex Zoning Ordinance and that enforcement of the more restrictive side setback provided in the Covenants would not be practical;

NOW, THEREFORE, the Board of Directors of the Corporation hereby grants a variance for the 8 foot side setback requirement provided for by the Covenants as same applies to the Property so as to permit the home to remain 7.0 feet from the side lot line.

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IN WITNESS WHEREOF, Amherst Homeowners Association, Inc. has caused this instrument to be executed in its name by its duly authorized officers and its seal to be affixed thereto, as of the 24th day of August, 1998.

AMHERST HOMEOWNERS ASSOCIATION, INC., (Corporate Seal)
a North Carolina corporation

By: [Signature]
President

ATTEST: [Signature]
Secretary

STATE OF NORTH CAROLINA -- WAKE COUNTY:

I, Mary C. Gidney, a Notary Public for said County and State, do hereby certify that Mary Catherine Hall personally came before me this day and acknowledged that ~~he~~/she is Secretary of AMHERST HOMEOWNERS ASSOCIATION, INC., a North Carolina corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by ~~him~~/her as its Secretary.



WITNESS my hand and official stamp or seal, this the 24TH day 1998.

Mary C. Gidney
Notary Public
My commission expires: May 26, 2002

STATE OF NORTH CAROLINA -- WAKE COUNTY:

The foregoing certificate of Mary C. Gidney Notary Public is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By: [Signature]
Deputy/Asst. Register of Deeds

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Drawn by and HOLD FOR:
PERRY, PATRICK, FARMER & MICHAUX, P.A. 000739

PRESENTED FOR REGISTRATION

98 SEP -4 PM 4:47

AMENDMENT TO SUPPLEMENTARY DECLARATION SUBJECTING ADDITIONAL LAND IN AMHERST SUBDIVISION TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS Supplementary Declaration Amendment made this 24th day of August, 1998, by ENGLE HOMES/NORTH CAROLINA, INC., a Florida corporation (hereinafter "Engle")

WITNESSETH:

WHEREAS, Amherst Limited Partnership, a North Carolina Limited Partnership (hereinafter "Amherst"), was the original Developer of Amherst Subdivision located in the Town of Apex, White Oak Township, Wake County, North Carolina and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions recorded in Book 6410, Page 128, Wake County Registry (hereinafter the "Declaration"); and

WHEREAS, Amherst conveyed its interest in the real property described in Exhibit A attached hereto (hereinafter the "Property") and assigned its rights as Declarant under the Declaration to Engle (hereinafter sometimes referred to as "Successor Declarant") in that certain deed recorded in Book 7224, Page 109, Wake County Registry, and

WHEREAS, pursuant to Section D of Article 10 of the Declaration, Successor Declarant subjected the Property to the Declaration in an instrument recorded in Book 8120, Page 2252, Wake County Registry, and entitled "Supplementary Declaration Subjecting Additional Land in Amherst Subdivision to Declaration of Covenants, Conditions and Restrictions" (hereinafter the "Supplementary Declaration");

WHEREAS, Article 10, Section D of the Declaration also allows for modifications to the covenants and restrictions contained therein to be made when additional property is subjected to the Declaration;

WHEREAS, Article 12, Section C of the Covenants states, in part, that "No above grade structure...may be constructed or placed on any Lot except within...eight (8) feet from the Lot side line";

Pursuant to N.C.G.S. §47-36.1, this document is being re-recorded to attach the Exhibit A, which was omitted from the original recording. I am signing as the attorney who drafted the instrument.

G. Mark Teague
G. Mark Teague

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PRESENTED FOR REGISTRATION
95 JAN 17 PM 1:11
KENNETH C. STEEL
REGISTER OF DEEDS
WAKE COUNTY

Prepared by and mail to: Stam, Fordham & Danchi, P.A., P.O. Box 1600, Apex, NC 27502

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR AMHERST SUBDIVISION

THIS DECLARATION, made and entered into this the 17th day of January, 1995 by AMHERST LIMITED PARTNERSHIP a North Carolina Limited Partnership, referred to as "Developer");

WITNESSETH:

WHEREAS, Developer proposes to sell and convey certain lots shown on the plat to be used for residential purposes and to develop said lots, and additional property within the Development Area which may be acquired by Developer, into a well planned community; and

WHEREAS, Developer, prior to selling and conveying the aforesaid residential lots, desires to impose upon such lots certain mutual and beneficial restrictions, covenants and conditions and charges (hereinafter collectively referred to as "Restrictions") for the benefit and complement of all of the residential lots in the subdivision in order to promote the best interests and protect the investments of Developer and Owners:

NOW, THEREFORE, Developer hereby declares that all numbered lots shown on the plat entitled Amherst Subdivision, Phase I, recorded in Book of Maps 1995, Pages 62, 63 and 64 in the office of the Register of Deeds of Wake County, North Carolina, and any additional property within the Development Area as may by subsequent amendment be added to and subjected to this Declaration, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to the following Restrictions. This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

ARTICLE 1

DEFINITIONS

As used herein,

A. "Articles" means the Articles of Incorporation of Amherst Homeowners Association.

B. "Corporation" means Amherst Homeowners Association, a North Carolina non-profit corporation. The "Board of Directors" or "Board" shall be the elected body governing the Corporation and managing the affairs of the Corporation.

C. "By-Laws" means the Bylaws of Amherst Homeowners Association.

D. "Community Use Areas" means all real and personal property, together with those areas within dedicated portions of the Development Area and the Subdivision which may be deeded to or acquired by the Corporation for the common enjoyment of the members of the Corporation.

E. "Common Expenses" means and includes actual and estimated expenses of maintaining and operating the common area and operating the Corporation for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation.

F. "Dedication" means the act of committing a portion of the Development Area or the Subdivision to the purposes of this Declaration.

G. "Developer" means Amherst Limited Partnership, its assigns or any legal entity acquiring ownership of portions of the Development Area heretofore not dedicated with the intent and for the purpose of further development.

H. "Development Area" shall mean that property described by deeds recorded in Book 5918, Page 424 and Book 6362, Page 305, in the Office of the Register of Deeds of Wake County, North Carolina. For reference see that certain map or plat entitled "Subdivision for Beaver Run Limited Partnership" (28.349 acres) recorded in Book of Maps 1993, Page 1438, and a map of contiguous property entitled "Subdivision for S & F Management Corp" (42.765 acres) recorded in Book of Maps 1993, Page 1440, Wake County Registry. Declarant reserves the right to include within the Development Area lands contiguous to those described above.

I. "Lot" means a separately numbered tract of land lying within the Subdivision or other dedicated portion of the Development Area and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "dedicated". The Owner of all of a numbered Lot may combine such numbered Lot, part or parts of another such numbered Lot and the aggregate shall be considered as one Lot for the purpose of these Restrictions.

J. "Subdivision" means Amherst Subdivision and any portion of the Development Area which has been dedicated pursuant to or by reference to this Declaration.

ARTICLE 2

APPLICABILITY

These Restrictions shall apply to all subdivided numbered Lots shown on the plat or map of Amherst Subdivision Phase One recorded in Book of Maps 1995, Page 62, 64, Wake County Registry, and additional plats or maps of subdivisions of the Development Area. (hereafter referred to as "Lot" or "Lots"), which Lots are for residential purposes only. These Restrictions shall not be applicable to any unnumbered lands or lands designated on the plat as "Reserved" or other lands of Developer, and Developer is withholding these parcels from these Restrictions pursuant to its general scheme of development, the absence of Restrictions thereupon being intended to allow Developer maximum flexibility in the determination of the development of such parcels.

ARTICLE 3

A. A Corporation named Amherst Homeowners Association has been or will be formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain, and operate the Community Use Areas and facilities located upon the Community Use Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

B. Each Owner of each Lot within the Subdivision shall be a member of the Corporation. The Declarant, by this Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to the Corporation:

1. That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Corporation;
2. That each shall be subject to the rules and regulations of the Corporation with regard to ownership of a Lot; and
3. That any unpaid assessment, whether general or special, levied by the Corporation in accordance with these Restrictions, the Articles or the Bylaws shall be a lien upon the Lot upon which such assessment was levied, and shall be the personal obligation of the Owner of the Lot at the time the assessment fell due.

C. Each membership in the Corporation shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

D. The Corporation shall have one class of members who shall be all Owners. Each member shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members

and, the vote for such Lot shall be exercised as they, among themselves, determine, but no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

ARTICLE 4

MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Community Use Areas of the Subdivision shall be the sole right and responsibility of the Corporation. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Corporation, but may be delegated or contracted to managers or management services.

ARTICLE 5

COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

- A. All amounts expended by the Corporation in operating, administering, managing, repairing, replacing and improving the Community Use Areas of the Subdivision; all amounts expended by the Corporation in insuring the Community Use Areas in the Subdivision; all amounts expended by the Corporation in legal, engineering, architectural fees; all similar fees which may be incurred by the Corporation from time to time in performing the functions delegated to the Corporation by these Restrictions; and all amounts expended in any form by the Corporation in enforcing these Restrictions, the Articles or the Bylaws.
- B. All amounts expended by the Corporation in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the Bylaws.
- C. All amounts declared to be Community Expenses in the Bylaws or in these Restrictions.
- D. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Community Use Areas in the Subdivision.

ARTICLE 6

ANNUAL GENERAL ASSESSMENT

- A. The Declarant for each Lot owned, hereby covenants and each Owner of any Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so-expressed in such deed) is deemed to covenant and agrees to pay to the Corporation annual general assessments or charges as

hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of Paragraph 6 of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien up on such Lot.

B. Until June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment shall be Two Hundred and no/100 Dollars (\$200.00) per Lot.

1. From and after June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased each year not more than ten percent (10%) above the assessment for the previous year without any vote of the membership.

2. From and after June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased by an amount greater than ten percent (10%) of the assessment for the previous year provided the proposed increase is approved by a vote of two-thirds (2/3) of the members who are voting in person or by a proxy at a meeting duly called for this purpose.

3. The Board of Directors may fix the annual general assessment at an amount not in excess of the maximum.

4. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members. After the initial notice of the assessment, the assessment shall become due and payable as provided by the Board of Directors.

C. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph B (2) shall be sent to all members not less than thirty (30) 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 sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 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.

D. The annual general assessments levied by the Corporation shall be used exclusively to improve, maintain and repair the Community Use Areas, to pay the expenses of the Corporation, to pay the cost of lighting and irrigating the Community

the Areas, to pay the cost of any insurance the Corporation determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon the Community Use Areas.

E. The Corporation shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Lot is binding upon the Corporation as of the date of its issuance.

F. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu therefor, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE 7

SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for capital improvements and extraordinary expenses. In the event the Owner of a Lot fails to comply with the provisions of Article 12 hereof, the Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

ARTICLE 8

LIEN FOR ASSESSMENTS

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of ten percent (10%) per annum, costs of collection, court costs, and reasonable attorneys fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the Clerk of Superior Court of Wake County or file a suit to collect such delinquent assessments and charges. The Corporation may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

ARTICLE 9**COMPLIANCE WITH THIS DECLARATION, THE ARTICLES
AND BYLAWS OF THE CORPORATION**

In the case of failure of a Lot Owner to comply with the terms and provisions contained in this Declaration, the Articles or the Bylaws of the Corporation, the following relief shall be available:

A. The Corporation, an aggrieved Lot Owner or Owners within the Subdivisions on behalf of the corporation, or any Lot Owner on behalf of all the Lot Owners within the Subdivision shall have the right to bring an action and recover sums due, damages, injunctive relief, and/or such other and further relief as may be just and appropriate.

B. The Corporation shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.

C. If the violation is the nonpayment of any general or special assessment, the Corporation shall have the right to suspend the offending owner's voting rights and the use by such Owner, his agents, employees and invitees of the Community Use Areas in the Subdivision for any period during which an assessment against the Lot remains unpaid.

D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failure of the Corporation or any Person to enforce any restriction contained in these Restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

ARTICLE 10**PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS,
AND EXCEPTIONS AND RESERVATIONS BY DECLARANT**

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Subdivision for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Corporation shall have the right to make reasonable rules and regulations respecting the use of same.

2. The Corporation shall have the right to suspend the voting rights of a Lot Owner and his right to use the Community Use Areas within the Subdivision for any period during which any assessment due against such Owner's Lot remains unpaid as is provided in Article 9 hereof, and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

B. The Corporation hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Community Use Areas. Provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

C. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Community Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

D. Developer shall have the right, at its election, without the consent of any owner or owners, to bring within the coverage and operation of these Restrictions additional properties within the Development Area as may be developed in the future. The addition to property authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Wake County, North Carolina, a Supplemental Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property. The Supplemental Declaration may contain a complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or appropriate in the sole judgement of the Developer to reflect the different character, if any, of the added properties and as are not inconsistent with the plan, intent and spirit of this Declaration.

E. Easements and rights of way over and upon each Lot for drainage and the installation and maintenance of utilities and services are reserved exclusively to Developer for such purposes as Developer may deem incident and appropriate to its overall development plan, such easements and rights of way being shown or noted on the aforesaid recorded plat of the Subdivision, which plat is incorporated by reference and made a part hereof for a more particular description of such easements and rights of way. The easements and right of way areas reserved by Developer on each Lot pursuant hereto shall be maintained continuously by the owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the respective owner except those for which a public authority or utility company is responsible.

F. The rights of the use of utility and service easements and right of way areas as provided and defined herein for any type of cable transmission system is reserved exclusively to Developer, and no other cable transmissions service company or

organization shall be permitted to service any Lot or combination of Lots except with the express permission of Developer.

ARTICLE 11

ARCHITECTURAL STANDARDS AND ARCHITECTURAL STANDARDS COMMITTEE

The Board of Directors shall establish an Architectural Standards Committee (hereinafter referred to as the "Committee") which shall be composed of five (5) members. The Board of Directors shall have the right to appoint and remove, at any time and without cause, three (3) members. The Developer shall have the right to appoint and remove two (2) members of the Committee so long as the Developer continues to own any portion of the Development Area. At such time as the Developer no longer owns any portion of the Development Area, or upon notification by the Developer to the Board of Directors that it does not desire to continue to appoint two (2) members of the Committee, all five (5) members shall be appointed or removed, at any time and without cause, by the Board of Directors.

A. No construction, which term shall include within its definition, clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Committee has been obtained.

B. The Committee shall have exclusive jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved. The Committee shall prepare and, on behalf of the Board of Directors, shall promulgate architectural standard guidelines ("guidelines") and application and review procedures ("procedures"). The guidelines and procedures shall be those of the Corporation and the Committee shall have the sole and full authority to prepare and to amend the guidelines and procedures. The Committee shall make the guidelines and procedures available to owners, builders and developers who seek to engage in the development of or construction upon the Lots and who shall conduct their operations strictly in accordance therewith.

C. The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions and the guidelines; if the design, color scheme or location upon the Lot or Lots of the proposed improvements are not in harmony with the general surroundings or adjacent structures; if the plans or specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or detail, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to this Declaration or the owners thereof.

D. The Committee shall approve or disapprove plans, specifications and details submitted in accordance with its procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided, however, that plans, specifications and details revised in accordance with Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans, specifications and details within thirty (30) days after submission of the same to the Committee, approval, for the purposes of this Article, shall be deemed to have been given by the Committee.

E. The Committee, or its agent, shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details. Upon completion of the construction in accordance with the approved plans, specifications and details, the Committee shall issue a certificate of completion to the owner, if so requested.

F. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his residence or permitted pertinent structures, or to paint the interior of the same any color desired.

G. Neither the Developer nor the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

H. The requirements of this Article shall not constitute a lien or encumbrance on any Lot on which construction is completed, and any subsequent purchaser thereof for value without notice thereof is in no way effected by the failure of his predecessors in title to comply with the terms hereof. The requirements of this Article shall not apply to the Developer with regard to original erection or construction of a dwelling on a Lot.

ARTICLE 12

RESTRICTIONS ON USE AND OCCUPANCY

A. No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on less than a numbered Lot other than one (1) detached, single family residence dwelling and such outbuildings as are usually accessory to a single family residence dwelling, including a private enclosed garage with space for not more than three (3) automobiles. Unenclosed carports, or similar storage structures, shall not be erected, placed or permitted to remain on any lot.

B. Any one story dwelling constructed on a Lot subject to these Restrictions shall contain not less than fourteen hundred (1,400) square feet of fully enclosed and heated floor area devoted to living purposes (exclusive of roofed or unroofed porches,

traces, garages and any outbuildings). A one and one-half or two story dwelling shall contain not less than fifteen hundred (1,500) square feet of such area.

C. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except within the minimum building setback lines as set forth herein:

- (a) Twenty-five (25) feet from the Lot front line.
- (b) Eight (8) feet from the Lot side line.
- (c) Twenty-five (25) feet from the Lot rear line.
- (d) Eighteen (18) feet from the second street side of a corner lot.

The term "lot front line" defines the boundary line of the Lot that is contiguous to and bounded by the named street as shown on the recorded subdivision plat.

The term "lot rear line" defines the boundary line of the Lot that is farthest from and substantially parallel to, the line of the street on which the Lot abuts.

The term "lot side line" defines a boundary line that extends from the street on which the abuts to the rear line of the Lot.

An owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may construct a dwelling and/or other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, all such structures to comply with the minimum building setback lines from the actual boundary lines of the subject owner's property, and thereafter such combinations of Lots or portions thereof shall be treated for all purposes under these Restrictions as a single lot.

D. The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:

1. No mobile home, trailer, camper, tent, or temporary house, temporary garage or other temporary outbuilding shall be placed or erected on any Lot provided, however, that the Committee may grant permission for temporary structures for storage of materials during construction. No such temporary structure as may be approved shall be used at any time as a residence.

2. Once construction of a dwelling or other improvements is started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement.

3. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good and workmanlike manner and quality. The exterior of all dwellings and permitted structures shall be either natural wood, stone, hardboard, brick or vinyl. The covering for all roofs shall be wood shake singles or standard fiberglass shingles or, if approved by the Committee, similar dimension and

similar style shingles. No used structures shall be relocated or placed on any Lot and no structures shall have an exterior constructed of concrete blocks, asbestos or asphalt siding. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling on the Lot.

4. Except structures erected by the Developer, no structure erected upon any Lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained from the Committee.

5. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

6. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot or other area in the subdivision.

7. Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.

8. No stripped, partially wrecked, or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot. Any vehicle on a lot must have a current inspection sticker and registration.

9. No truck or other vehicle in excess of a one-ton load capacity nor any mobile home, trailer, camper, similar vehicle or boat shall be parked or kept overnight or longer, on any Lot, in such a manner as to be visible to the occupants of other Lots or the users of any street or recreation area.

10. All fuel storage tanks shall be buried below the surface of the ground.

11. Outdoor poles, clotheslines and similar equipment are prohibited.

12. No sign (excluding typical "For Sale" and builder identification signs or similar signs and temporary political signs), billboard or other advertising structure of any kind may be erected or maintained upon any Lot. Construction identification signs approved by the Committee showing the Lot number and name of the builder may be exhibited upon the Lot during the period of construction.

13. All dwelling connections for all utilities including but not limited to, water, electricity, gas, telephone and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority.

14. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets in a reasonable number may be kept provided they are not kept, bred or maintained for any commercial purpose and provided, further, that such pets do not constitute a danger or nuisance to other Lot owners or to the neighborhood.

15. The erection of fences shall require approval of the Committee as provided in Article 11 hereof but no fence shall be erected along the front line of any Lot nor along the side line of any Lot that adjoins a street. No fence of chain link type construction or in excess of four feet in height shall be approved by the Committee.

16. Entrances to enclosed garages may face in any direction provided that all such garages shall have a door or doors that completely close off the garage entrance and such door or doors shall remain completely closed except during periods of actual use of such garage entrance.

17. Window air-conditioning units are prohibited.

18. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other Lot owners or the neighborhood.

ARTICLE 13

COMMON AREAS

Common Areas appurtenant to the Subdivision, whether or not shown and delineated on any recorded plat of the Subdivision, shall be considered private and for the sole and exclusive use of the Owners of Lots within the Subdivision. Neither Developer's execution nor the recording of any plat nor any other act of Developer with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas.

ARTICLE 14

WAIVER

No provision contained in these Restrictions, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce its repeated.

ARTICLE 15

VARIANCES

The Board of Directors in its sole discretion may allow reasonable variances and adjustments of these Restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various Persons with each such Owner having an easement upon areas owned by the Corporation.

To be effective, a variance hereunder shall be recorded in the Wake County Register of Deeds Office, shall be executed on behalf of the Corporation; and shall refer specifically to this Declaration.

ARTICLE 16

DURATION, AMENDMENT AND TERMINATION

A. The covenants and Restrictions contained in this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time, they shall be automatically extended for successive periods of one (1) year. This Declaration may be amended in full or part during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty percent (60%) of the Lot Owners provided, that no amendment shall alter any obligation to pay Community Expenses to benefit the Community Use Areas, as herein provided, or affect any lien for the payment of same. To be effective any amendment must be recorded in the office of the Register of Deeds of Wake County, North Carolina and a marginal entry of same must be signified on the face of this document.

B. Invalidation of any one of these covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE 17

CAPTIONS

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

ARTICLE 18

ASSIGNABILITY OF RIGHTS AND LIABILITIES

Developer shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of same in any manner.

ARTICLE 19

SUCCESSOR DECLARANT

Successor declarant is one who has expressly assumed the rights and obligations of the declarant by a written instrument recorded in the Wake County Registry and that the development rights granted to the declarant in the restrictive covenants inure to the benefit of any successor who has expressly assumed the status of "successor declarant".

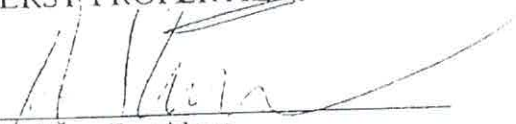
ARTICLE 20

LIBERAL CONSTRUCTION

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners' association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

IN TESTIMONY WHEREOF, AMHERST LIMITED PARTNERSHIP, a North Carolina Limited Partnership, has caused this instrument to be executed in the appropriate company or partnership name by duly authorized general partner(s) and has adopted as its seal the word "Seal" appearing beside its name, this sealed instrument being executed and delivered on the date first above written.

AMHERST LIMITED PARTNERSHIP (SEAL)
by AMHERST PROPERTIES, INC., General
Partner


Arthur Steckler, President

