

**STATE OF NORTH CAROLINA**

**COUNTY OF FORSYTH**

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR BETHABARA TRACE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made \_\_\_\_\_, 2005, by MULVANEY HOMES, INC., a North Carolina corporation (the "Builder") and LPT Development Company, Inc. ("Developer") is hereby amended and restated as follows:

**STATEMENT OF PURPOSE**

Builder and Developer are the owners of real property located in Forsyth County, North Carolina, as more particularly described on Exhibit A attached hereto (the "Existing Property"). Builder and Developer desire to create thereon a residential community of single-family detached residential dwellings to be known as BETHABARA TRACE ("Subdivision"). The residential dwellings shall consist of traditional fee simple deeded properties.

Builder and Developer are submitting the Existing Property as shown on maps recorded in Map Book 48 at Page 16 and Map Book 49 at Page 48 in the Forsyth County Public Registry (collectively the "Submitted Property") to this Declaration.

Builder and Developer desire to insure the attractiveness of the Subdivision and to prevent any future impairment thereof; to prevent nuisances; to preserve, protect, and enhance the values of all properties within the Subdivision, and to provide other services as detailed herein; and to this end, desire to subject the Submitted Property to the covenants, conditions, restrictions, easements, assessments, charges, liens and other obligations hereinafter set forth, all of which are for the benefit of said Submitted Property and each owner thereof. The Builder and Developer also desire to limit the use of the Submitted Property for rental (non-owner-occupied) properties, as set forth in more detail in Article X.

Drawn by and Mail to:  
Cheryl D. Steele  
Horack Talley Pharr & Lowndes  
301 South College Street, Suite 2600  
Charlotte, NC 28202-6038

Builder and Developer have deemed it desirable, for the efficient preservation, protection, and enhancement of the values in said Subdivision, to create an organization to which will be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Builder has incorporated under North Carolina law BETHABARA TRACE HOMEOWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

Builder and Developer, by this Declaration, do hereby declare that the Submitted Property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges, and liens set forth in this Declaration which shall run with the Submitted Property and be binding on all parties owning any right, title, or interest in said Submitted Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1.1. “Act” shall refer to the North Carolina Planned Community Act, North Carolina General Statutes Section 47-F.

Section 1.2. “Articles of Incorporation” shall refer to the articles of incorporation of the Association, as filed with the North Carolina Secretary of State.

Section 1.3. “Assessments” shall mean any dues or other monies owed the Association pursuant to the terms of this Declaration.

Section 1.4. “Association” shall mean and refer to BETHABARA TRACE HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.5. “Board of Directors” shall mean and refer to the Board of Directors of the Association.

Section 1.6. “Builder” shall mean and refer to Mulvaney Homes, Inc. and its successors and assigns.

Section 1.7. “Bylaws” shall mean the bylaws of the Association, as amended.

Section 1.8. “Common Area” shall mean all portions of the Submitted Property which are deeded to the Association for the common enjoyment of all Owners. Common Area shall include, without limitation, all open space, walking trail connecting the Submitted Property to Historic Bethabara Park, and decorative street lights.

Section 1.9. "Declarant" shall collectively mean and refer to the Builder and their successors and assigns, if any, to whom the rights of Builder hereunder are specifically transferred by written instrument, subject to such terms and conditions as the Builder may impose, and Developer, as to that portion of the Existing Property Developer owns, if Builder does not consummate the acquisition of the Existing Property from Developer. Upon any transfer of any or all of its Builder's rights and obligations hereunder, the transferor shall be relieved of any and all obligations and liabilities with respect to the rights and obligations so transferred.

Section 1.10. "Developer" shall mean LPT Development Company, Inc.

Section 1.11. "Dwelling" shall mean any single family residential dwelling unit erected upon any Lot.

Section 1.12. "Homebuilder" shall mean any homebuilder or other contractor in the business of purchasing Lots from the Builder, and building thereon, and selling, residential dwelling units to the public.

Section 1.13. "HUD/ VA/FNMA/ FHLMC" shall refer to the U. S. Department of Housing and Urban Development, and/or the Veterans Administration, and/or the Federal National Mortgage Association, and/or the Fair Housing Loan Mortgage Corporation, any governmental authority which succeeds said organizations, and/or any other governmental or quasigovernmental authority which governs, regulates or administers the selling of residential dwellings or the issuing of mortgages on such dwellings.

Section 1.14. "Lot" shall mean and refer to any parcel of land, fronting on a public street, upon which is or may be placed one single-family detached Dwelling, with delineated boundary lines, appearing on plat or maps of the Subdivision recorded with Forsyth County. In the event any Lot is permissibly subdivided, increased or decreased in size by resubdivisions, through recordation of new subdivision plats, by deed or otherwise, each lot resulting from such subdivision or resubdivisions shall thereafter constitute a Lot for the purpose of this Declaration.

Section 1.15. "Map" shall mean and refer to any certain Subdivision map(s) which shows the Submitted Property and is or shall be recorded in the Forsyth County Registry.

Section 1.16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.17. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Submitted Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 1.18. “Subdivision” shall mean the entire Bethabara Trace Subdivision, which consists of and is identical to the portion of the Existing Property that is also Submitted Property.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

#### Section 2.1. The Submitted Property.

The portion of the Existing Property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Forsyth County, North Carolina, and is described on maps recorded in Map Book 48 at Page 16 and Map Book 49 at Page 48 in the Forsyth County Public Registry.

#### Section 2.2. Annexation of Additional Property.

Builder shall have the right, to be exercised in its sole discretion and without further approval of any party, to submit at any time from time to time, so long as it owns any Lot, any or all of the Existing Property and/or land contiguous to the Existing Property to the Submitted Property. The Existing Property may be annexed by Developer (or the then record owner thereof) to the Submitted Property if Builder does not consummate the acquisition of the Existing Property from Developer. Such additional property shall be added by recordation of a Supplemental Declaration identifying such contiguous property.

In the event the Builder adds additional property to the Property which is the subject of this Declaration, the Builder shall have the absolute right, all other provisions of this Declaration notwithstanding, to use any portion of the Property for roadway or other access to the property being added. This right shall include, but not be limited to, the right to use platted lots for vehicular and/or pedestrian access to the additional property.

#### Section 2.3. Conveyance or Transfer of Common Area.

The Common Area owned by the Association may be conveyed and/or mortgaged by the Association, provided that such conveyance and/or mortgage is approved by the Owners as required by the Act.

## ARTICLE III

### MEMBERSHIP CLASSIFICATIONS: VOTING RIGHTS & DUES OBLIGATIONS

#### Section 3.1. Membership.

Except for the Developer, every Owner of a Lot is subject to Assessments and shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

#### Section 3.2. Classes of Membership.

The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two (2) classes of membership, with respect to voting rights and dues.

#### **I. Voting Rights**

(a) Class A Membership. Every Owner of a Lot, other than the Builder and Developer shall be deemed to be a Class A Member. Until such time as the Class A Membership shall be entitled to full voting privileges, as hereinafter specified, the Class A Membership shall be entitled to vote only in regard to the following matters:

- (1) Any proposal of merger, consolidation or dissolution of the Association;
- (2) Any proposal to transfer or encumber any portion of the Common Area;
- (3) Any proposal pursuant to an amendment to this Declaration;
- (4) Any proposal to modify or amend the Articles of Incorporation or the Bylaws; and
- (5) Any other matter for which it is herein specifically provided, for which it is provided by the Act, the North Carolina Non-Profit Corporation Code or any other law, that approval of each and every class of membership of the Association is required. Except in regard to the foregoing matters, the Class A Membership shall be a non-voting membership until such time as the Class B Membership shall terminate, at which time the Class A Membership shall be the sole class of membership and shall be entitled to full voting privileges. When entitled to vote, Class A Members shall be

entitled to cast one vote for each Lot in which they hold an interest required for membership. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot not owned by the Builder.

(b) Class B Membership. The Builder shall be the Class B Member. The Builder shall be entitled to four (4) votes for each Lot owned by it. Class B Membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. The Class B Membership shall cease to exist and shall be converted to Class A Membership (as appropriate) upon the happening of either of the following events, whichever occurs earlier:

- (1) the date that 75% of the Lots are conveyed to Class A Members other than any Homebuilder; or
- (2) written notice of consent to such conversion by the Builder; or
- (3) seven years from the date of this Declaration.

## **II: Dues Obligations**

(a) Basic Dues: Basic Dues shall be the pro-rata share of all expenses incurred related to the maintenance of any portion of the Submitted Property, if any, that is shared by all Owners. Basic Dues shall be determined by dividing the total of such expenses by the total number of Lots on the Submitted Property.

(b) Class A Dues: Class A Dues shall be Basic Dues.

(c) Class B Membership Dues. The Class B Member shall not be responsible for any dues. The Class B Member shall have the right to pay any shortfall between the actual Association expenses and the actual revenues raised from the Class A Members payment of Basic Dues. The Class B Member shall at all times have the right to satisfy its obligations hereunder by providing services in-kind for the Association, such services to have a value mutually agreed upon by the Association and the Builder.

(d) Developer. The Developer shall not be responsible for any dues.

## ARTICLE IV

### PROPERTY RIGHTS

#### Section 4.1. Owner's Easement of Enjoyment.

Every Owner shall have a general right and easement of enjoyment of his own Lot and each Owner shall have a general right and easement over the Common Area which is deeded to the Association, subject to the provisions of this Declaration.

#### Section 4.2. Limitations on Easement of Enjoyment as to All Lots.

(a) Reservation of Five Foot Side-Line and Ten-Foot Rear-Line Easements. The Builder, the Association their successors and assigns and any third party contractor hired by them, shall have and hereby do reserve a permanent five-foot right of way along the side lines and a permanent ten-foot right of way along the rear lines of each Lot for purposes of the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, storm drainage, telephone service and other utilities and all walls, columns, lamps and entry ways appurtenant to the Common Area.

(b) Restrictions on Improvements or Interference with Easements. No improvement shall be built in such a way, and no other action shall be taken by any Owner, which in any way restricts or limits the easement rights granted and reserved herein.

(c) Reservation of Easements for Encroachments. Builder, for itself and for its successors and assigns, reserves a permanent right and easement over all of the Lots for encroachments of roofs, trim and molding, siding and any other integral components of structures, the walls of which are located on a common boundary line between adjoining Lots. This right and easement shall be for the continuing existence of any such encroachments; further, there shall be a perpetual right and easement of Owners and their employees, agents and representatives, to go upon adjoining property for the purpose of repair, maintenance and reconstruction of any structure located on the Lot of such Owners.

(d) No Entry Into Residences. Nothing in this section shall be interpreted to grant or reserve to any Owner, other than the Builder or the Association as specifically set forth

herein, the right to enter into the residence of any other Owner under any circumstances whatsoever.

(e) Reservation of Easements for Repair and Removal of Sediment Pond. The Builder, the Association and their successors and assigns, reserve the permanent right and easement over any of the Lots as may be reasonably necessary for access to and from any sediment pond serving the Subdivision and the maintenance, repair and removal of any such sediment pond.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

#### Section 5.1. Creation of the Lien and Personal Obligation of Assessments.

The Builder, for each Lot within the Submitted Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, 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 (2) General Special Assessments for capital improvements and (3) Specific Special Assessments, as determined by the Association, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, fines and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Submitted Property against which each such assessment or charge is made. Each such assessment, together with interest, costs, fines and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment or charge fell due. Notwithstanding the above, the Builder and the Developer shall not be required to pay to the Association: (1) Annual Assessments or charges (2) General Special Assessments for capital improvements and (3) Specific Special Assessments for any Lot within the Submitted Property owned by the Builder or the Developer.

#### Section 5.2. Purpose of Assessments.

(a) The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Submitted Property and in particular for the maintenance and improvement of the Common Area, including any and all costs for the installation, maintenance, repair and replacement of decorative street lighting due to the City of Winston-Salem for leasing the street lights and any utility bills in connection with the decorative street lights.

(b) 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 expense of operating and managing the Submitted Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws 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 of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot, by whatever means, and the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Submitted Property.

(c) The foregoing notwithstanding, no Assessment of any kind may be used for the purpose of filing or pursuing any legal action of any sort whatsoever (including but not limited to lawsuits, arbitrations, administrative proceedings, and mediations) unless approved by the Builder for so long as the Builder owns any Lot. Such limitation shall not apply, however, and Assessments may be used, for the bringing of any action to collect dues or to enforce the use restrictions set forth in this Declaration, or for the defense of any action brought against the Association.

#### Section 5.3. Maximum Annual Assessment.

(a) The Annual Assessments shall be established by the Board of Directors on an annual basis.

(b) The Board shall have the right to reduce the Annual Assessments at any time.

(c) The Annual Assessment shall not be increased by more than ten percent (10) each year.

#### Section 5.4. Capital Contribution.

Every Owner of a Lot other than the Builder or the Developer shall likewise be responsible for an initial capital contribution in an amount equal to one-sixth (1/6) of the Annual Assessment for

such Lot. Such capital contributions shall be due upon transfer of the title to any portion of the Submitted Property to an Owner other than Builder or the Developer, and may be applied to capital expenditures or repairs, and regular operating expenses.

Section 5.5. Notice And Quorum For Meetings.

Written notice of any meeting called for the purpose of taking any action authorized under this Article V hereof, except determination of the Annual Assessment and ratification of the annual budget, shall be sent to all Members not less than ten (10) 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 fifty percent (50%) of all the votes of each class of membership shall constitute a quorum or the percentage needed under the Act, whichever is lower. 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.

Section 5.6. Determination of Annual Assessments and Ratification of Annual Budget.

Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses anticipated to be incurred by the Association during such fiscal year and the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserve funding based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied against all of the members of the Association for any fiscal year is herein referred to as the "Annual Assessment"). Within thirty (30) days after adoption by the Board of Directors of any proposed budget for the Association, the Board of Directors shall provide a summary of the budget to all Owners and shall give notice of a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary and notice. A quorum need not be present at the meeting. The budget is ratified unless at the meeting a majority of all the Owners in the Association entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. The amounts so determined by the Board of Directors shall be levied against all of the members of the Association other than the Builder and all Lots not owned by the Builder. The amount of the Annual Assessment levied against each Lot shall be the same as the amount levied against every other Lot. Each Lot not

owned by the Builder shall be liable for that share of every Annual Assessment which is so determined by the Board of Directors. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments the Board of Directors shall determine, and after notice of the same shall have been given to all of the members of the Association by the Board of Directors, and shall be paid to the Association when due without further notice.

#### Section 5.7 Rate of Annual Assessment.

Both Annual and General Special Assessments shall be collected on a not more often than a quarterly basis.

#### Section 5.8. Date Of Commencement Of Annual Assessments; Due Date.

The Annual Assessments provided for herein shall be due in full on January 1 of each calendar year (other than the first year in which such Assessments are levied, in which case, such are due immediately upon assessment), and shall be payable, as determined by the Association in its absolute discretion, on a quarterly basis on the first business day of each quarter. The first such annual assessment shall be adjusted according to the number of days remaining in the calendar year after conveyance of the first Lot to an Owner, other than Builder.

General and Specific Special Assessments shall be due immediately when levied by the Association, or at such other time determined by the Association.

At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment against each Lot for the next year and at least thirty (30) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. The Association shall, upon demand, and for a fee to be determined by the Association, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Failure by any Owner to pay any dues in a timely fashion shall give the Association the right to accelerate all dues for the year in which such deficiency occurs. Upon notice of such acceleration, the delinquent Owner shall immediately be obligated to pay all remaining dues for that year.

Section 5.9. Effect Of Nonpayment Of Assessments; Remedies Of The Association.

Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. In addition to such interest charge, the delinquent Owner shall also pay such late charges or fines as may have been theretofore established by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the Lot in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust, and interest, late payment fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot; nor shall damage to or destruction of any improvement on any Lot by fire or other casualty result in abatement or diminution of the assessments provided for herein.

Provided, however, that an Owner's failure to pay any assessment shall not constitute a default under any mortgage given by that Owner, unless expressly agreed to by the Owner in writing.

Section 5.10. Exempt Property.

The assessments, charges and liens created under this Article V shall not apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the conveyance to any subsequent Owner. All land which shall be dedicated to and accepted by a local public authority, and all land granted to or used by a utility company, and property owned by a nonprofit organization exempt from taxation under the laws of the State of North Carolina shall be exempt from the assessments and charges created herein.

Section 5.11. Subordination to the Lien of First and Second Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first and second priority deed of trust or first and second mortgages. The sale or transfer of any Lot shall not affect the assessment lien; provided, however, the sale or transfer of any Lot which is subject to any first and second deed of trust or first and second mortgage, pursuant to a foreclosure thereof or under a power of sale, or any proceeding in lieu of foreclosure thereof, shall extinguish

the lien of such assessment as to payments which became due prior to such sale or transfer.

Section 5.12. Application of Payments.

In the event an Owner pays any funds after the imposition of any fines, or the incurrence of collection fees, the funds paid shall be applied first to any fines levied, then to any other late fees, if any, then to any special assessment, if any, then to the Annual Assessments, if any.

ARTICLE VI

ARCHITECTURAL CONTROL

No improvement of any sort shall be commenced, erected, or maintained upon the Submitted Property or any Lot, nor shall any exterior addition to or change or alteration made to any Dwelling (including but not limited to, color or painting of the exterior and type of exterior finish) without the express approval of the Builder, so long as the Builder owns any Lot, and thereafter, by the Board of Directors of the Association. In the event an Owner desires to erect an improvement, or alter the exterior of any Dwelling, the Owner shall submit to the Builder (or the Board, as appropriate), two copies of the plans and specifications showing the nature, kind, shape, height, materials, and location of the improvements. The Builder shall have absolute discretion as to the approval or denial of any improvements. The Board of Directors shall base its approval or denial upon reasonable consideration as to harmony of external design and location in relation to surrounding structures and topography. Absent such approval, the proposed improvement may not be commenced.

In the event an Owner of any Lot shall make unauthorized changes to any Dwelling and the improvements situated thereon in a manner unsatisfactory to the Builder (or the Board of Directors) the Builder (or the Board of Directors) shall have the right, through its agents and employees, to enter upon said Lot, or into said Dwelling, and to repair, maintain and restore the Lot, or the exterior of the Dwelling so that the improvement and/or violation no longer exists. The cost of such action, including materials and labor, and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be considered a Specific Special Assessment against that Owner(s) and said Lot(s).

Only construction of new structures or improvements shall be permitted, it being the intent of this section to prohibit the moving of any existing structure or improvement onto any Lot Dwelling.

## ARTICLE VII

### MAINTENANCE & SERVICE

#### Section 7.1. Maintenance and Service by the Association.

##### **I. Maintenance Obligations Benefiting All Lots**

Common Area. The Association shall provide ordinary care and maintenance for all portions of the Common Area, including certain street light fixtures installed on the Submitted Property and the electricity expense related to the operation thereof. Such care and maintenance shall be deemed to benefit all Lots.

##### **II. Maintenance Easements**

In order to enable the Association to accomplish its maintenance obligations as set forth in this Article, permanent rights and easements over all Lots, and into all Dwellings, have been reserved to the Association.

#### Section 7.2. Maintenance by Owners:

(a) Each Owner of a Lot shall be responsible for the maintenance, repair, and replacement of all improvements and landscaping upon his Lot. Each Owner shall maintain his Lot in an orderly fashion, keeping the grass cut and all vegetation of any kind neatly kept and trimmed. Provided, however, the external appearance of such maintenance, repairs or replacement shall be subject to the regulation and control of the Builder or the Association as provided in this Declaration. All Lots, together with the exterior of all improvements thereon, shall be maintained in a neat and attractive condition by the respective Owners. Such maintenance shall include, but not be limited to, painting, repairing, replacing or caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks or other exterior improvements.

No Owner shall excavate or extract earth from the Submitted Property for any business commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots unless otherwise approved in writing by the Builder or the Association; provided that the foregoing restriction shall not prohibit the Builder or its agent from grading and altering the elevation of any Lot in connection with the construction of a residence upon such Lot in conformity with the terms of this Declaration.

(b) Should an Owner fail to discharge his maintenance, repair or replacement responsibilities in a reasonable and prudent manner to standards harmonious with that of other Lots in the Subdivision as determined by the Builder in its discretion or, after the Builder owns no portion of the Submitted Property, by the Association, then the Builder (or Association, if appropriate) in its discretion may demand that 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 and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Association shall have the right to cause such maintenance, repair or replacement to be performed and to charge the cost thereof as a part of and in addition to the regular assessment attributable to the Lot and provided for in this Declaration, notwithstanding any provision to the contrary contained herein. Should an Owner fail to pay any charge billed in accordance with this subparagraph (b) within fifteen (15) days of such billing, then the Association shall have the right to levy fines and to claim a lien against the Lot and to foreclose such lien, all as provided for in this Declaration. No such entry as provided herein shall be deemed a trespass.

### Section 7.3. General Maintenance Provisions.

(a) In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Lot is subject, notwithstanding any provisions to the contrary contained herein.

(b) The Association shall have the power to enforce the obligations contained in this Article VII through the levy of General and/or Specific Special Assessments.

## ARTICLE VIII

### USE RESTRICTIONS ON LOTS

#### Section 8.1. Residential Use.

All Lots shall be used for single family residential purposes only. No structure erected, altered, placed or permitted to remain on any Lot shall exceed two and one-half stories in height. A private garage for each Lot for not more than two cars and other accessory structures customarily incidental to the use of the Lot may be erected. The term "single family" shall include one or

more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for advertising, displaying or otherwise making any outward appearance or showing of any commercial, business or professional purpose, including without limitation, utilizing any property for rental income. Notwithstanding the foregoing, however, nothing set forth in this Section shall prohibit: (a) the Builder from conducting sales, leasing and promotional activities on any Lot as Builder shall determine including, but not limited to, using any Lot as a model home or a sales office; (b) the Owner from receiving rental income for a maximum period of six months in a lease purchase arrangement for a Lot; or (c) the Owner of any Lot or any other person from using such Lot as an office, provided that such use does not create regular customer or client traffic to and from such Lot and no sign, logo, symbol or name plate identifying such business is displayed anywhere on such Lot. In no event may any Lot be used as a registered daycare or otherwise be used for the habitual care for compensation of two or more children unrelated to the Owner or a member of such Owner's household for more than four hours per day.

### Section 8.2. Setbacks.

No Dwelling shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded maps of the Subdivision. No building shall be located nearer any side lot line than the applicable zoning ordinance shall allow. Deviations from building line requirements not in excess of ten percent (10%) thereof shall not be construed as a violation of the building line requirements as long as such deviation does not violate any local ordinance or zoning.

### Section 8.3. Animals and Pets.

No animals of any kind shall be kept on any Lot except generally accepted household pets. No swine or goat or cattle of any kind shall be permitted. No pets shall be kept for commercial use or sale, and no more than three pets over the age of six months shall be permitted at any time. Birds shall be confined in cages. No pet shall be roped or tethered in open spaces or shall be permitted to remain outdoors for any extended period of time without supervision of an Owner, it being the intent of this restriction to prohibit the leaving of pets outdoors while the Owner is absent from the Dwelling. In no instance shall household pets become a nuisance or a threat to other Owners, or infringe upon the property rights of other Owners. In no event may any openly dangerous or vicious animal be kept or maintained on the Submitted Property. Owners shall remove and properly dispose of any waste deposited by their pets on any Common Area, any right-of-way, street, parking lot, or Lot of another Owner. All pets must be on leashes while on or within any Common Area.

#### Section 8.4. Signs.

No signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single "For Sale" sign, which sign shall not exceed two feet by three feet in dimension and shall refer only to the premises on which displayed, temporary political signs which shall not exceed five square feet in dimension, or Subdivision identification signs at such places as approved by the Builder or Association,

Absolutely no "For Rent" signs shall be permitted. Notwithstanding the above, Builder may erect and place signs of any size or shape on any unsold Lot or the Common Area. Builder shall also have the right of ingress, egress and regress over the aforesaid Lots and Common Area in order to maintain and replace any such signs until all of the Lots in the Subdivision have been conveyed by Builder.

#### Section 8.5. Nuisances/Rubbish.

No activity may be carried on which shall or may be offensive, illegal, or an annoyance or nuisance, as determined by Builder. Each Owner, his family, tenants, guests and invitees shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other Owner or resident of another Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes shall be located, used or placed on a Lot. No Lot or right-of-way shall be used for rubbish disposal, or for storage if such storage may cause such Lot or right-of-way to appear unclean or unsightly; nor shall any thing be kept upon any Lot or right-of-way that will emit a foul odor or will cause noise that might disturb the peace. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by trash removal service units, but such deposits shall only be permitted upon the specific day of pick up. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds, or underbrush or to maintain the structures of each Dwelling in a manner satisfactory to the Board of Directors, the Board of Directors may, five days after delivering notice to the Owner requesting the Owner comply with the requirements of this paragraph, enter and remove all such unsightly objects or vegetation at Owner's expense and Owner agrees to pay such costs incurred by the Association in the enforcement of this paragraph, such charge being deemed a Specific Special Assessment. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to Builder or to a Homebuilder while constructing residences upon any Lots.

#### Section 8.6. Clotheslines, Garbage Cans; Lawn Maintenance, General Upkeep of Lots, etc.

No clothes lines shall be permitted on any Lot. All garbage cans, lawn mowers, stored materials, wrecked, unlicensed, or inoperable vehicles, and similar equipment shall be kept in an enclosed structure or adequately screened by planting or fencing, as determined by the Board of Directors. Incinerators for garbage, trash or other refuse shall not be permitted anywhere in the Subdivision. All garbage cans and other sanitary containers must be kept in a garage or otherwise screened from view from the street, and shall not be permitted to be left on the street for pickup for more than 12 hours. Temporary window treatments (such as towels, bed sheets, etc.) shall not be permitted except for the first 30 days after an Owner takes possession of his/her/their Lot. No colored blinds shall be permitted upon any Lot. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in garbage cans or other sanitary containers. No weeds, vegetation, rubbish, debris, garbage, or other waste materials shall be permitted to accumulate on any Lot or any other portion of the Subdivision which would render it unsanitary, unsightly, or offensive. Each Owner shall keep his grass, hedges, shrubs, vines and mass planting of any kind trimmed or cut so as to appear neat and attractive, and shall promptly remove any dead trees, vines, shrubs or plants on his property. No part of any structure or the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections.

#### Section 8.7. Antennas, Satellite Dishes.

No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Lot. One radio/ television antenna not exceeding twenty-four (24) inches in height above the roofline of the Dwelling, and one satellite dish or disc not exceeding twenty-four (24) inches in diameter may be installed, provided that they are attached to the Dwelling and not visible from the street in front of the Dwelling. On Dwellings that have a southern-facing front elevation, or that for whatever reason cannot reasonably use satellite dishes subject to the foregoing limitations, it shall be permissible to place one satellite dish, not attached to the residence, in the front or side yard of such Lot, provided that such dish is no more than three feet from the Dwelling, and is screened from view by landscaping, such installation to be specifically approved by the Association.

#### Section 8.8. Walls, Fences and Hedges.

No fence, hedge or wall of any type or kind shall be erected or maintained on any Lot except such fences, hedges or walls as may be planted, installed, constructed or erected with the initial construction of the main dwelling located on said Lot, or as may be properly installed and improved by the Builder or the Association. No privacy fences higher than six (6) feet are

permitted on any Lot. In no event may any wall or fence or similar obstruction be erected or maintained along the front or side perimeter of any Lot nor may any approved wall, fence, hedge of any kind or type impede any easement, right of way or similar property boundary of any adjoining Lot. Fencing is only permitted along the perimeter beginning at the rear corner of the main dwelling on the Lot and along the rear perimeter of the Lot.

#### Section 8.9. Pools.

No swimming pools, spas, or hot tubs, except for small wading pools, are permitted on any Lot.

#### Section 8.10. Driveways and Parking Areas.

Only driveways and parking areas constructed of concrete or brick shall be permitted.

#### Section 8.11. Boats, Commercial Vehicles, Etc.

No boats, motor homes, trailers, campers, mobile homes, school buses, commercial trucks of any size, (trucks with signs or advertising and trucks used for commercial purposes as determined by the Association shall be considered “commercial trucks”), recreational vehicles in excess of twelve (12) feet in length or motorized vans used for commercial purposes (as distinguished from vans used solely as passenger vehicles), shall be parked within the right of way of any public or private street within the subdivision or placed upon a Lot for storage purposes, other than in an enclosed garage and except as may be necessary by an approved Homebuilder while constructing homes.

#### Section 8.12. Outbuildings.

There shall be no structure of a temporary nature on any Lot; all structures erected must have a permanent foundation (i.e.: poured concrete at least 4 inches thick). No trailer, shed, tent, garage or any other similar structure shall be used as a residence. Provided, however, this paragraph shall not be construed to prevent Builder from using sheds or other temporary structures during construction. Provided, further, this paragraph shall not be construed to prevent Owners of Lots from constructing a permanent detached garage, carport, or utility shed (such shed not to exceed 12 feet by 16 feet in area) if constructed of materials similar to those used in the residence upon such Lot, if located behind the rear wall of the residence, if constructed in conformity to existing structures within the immediate area, and if not located within any easements and approved by the Board of Directors or Builder.

Section 8.13. Basketball Goals and Mailboxes.

Basketball goals shall be permitted on a Lot if placed a minimum of ten (10) feet behind the concrete curb into such Lot, and placed outside of the public right-of-way. All goals and surrounding areas are to be maintained in a neat and orderly condition so as not to create a nuisance. No stone or masonry mailbox structures are permitted. All mailboxes are to be constructed of break-away materials as approved by the North Carolina Department of Transportation, and shall be identical to those originally installed by the Builder or Homebuilder. If identical mailboxes are no longer available, replacement mailboxes shall be of a style and design substantially similar to the original mailboxes installed by the Builder or Homebuilder, as approved by the Association.

Section 8.14. Minimum Square Footage.

Dwellings upon any Lot shall contain not less than a minimum of One Thousand One Hundred and Sixty Two (1,162) square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings.

Section 8.15. Subdivision of Lots.

No Lot shall be subdivided by sale or otherwise, except by and with the written consent of Builder and in compliance with local ordinances. The foregoing notwithstanding, the Builder shall at all times have the right to reconfigure all unsold Lots, provided that such reconfiguration is in compliance with local ordinances. Such reconfiguration by the Builder need not result in the same number of Lots existing in the Subdivision, it being the intent of this Section to provide the Builder with the right to change the size, and number of any unsold Lots in the Subdivision.

Section 8.16. Fire.

In the event any home or structure is destroyed or partially destroyed, said damage must be repaired and the improvement reconstructed within twelve months.

Section 8.17. Utility and Drainage.

An easement on each Lot is hereby reserved by Builder for itself and its successors and assigns along, over, under and upon a strip of land ten (10) feet in width along the rear lot lines, and easements five (5) feet in width along the front and side lot lines of all Lots, in addition to any other easements. The purpose of these easements shall be to provide, maintain, and operate drainage facilities and utility service lines to, over or for each of the Lots. Within these

easements, no structure, planting or other material shall be placed which may interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area and all improvements in it shall be maintained by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Builder may exercise the right to remove obstructions in such easements upon Owner's failure to do so, at Owner's expense, and Owner agrees to pay costs incurred by Builder in doing so. For the purpose of this covenant, Builder reserves the right to modify or extinguish the easements herein along any Lot lines in its sole discretion. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Builder; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may tie into established easements without first obtaining separate consents therefor from Builder.

#### Section 8.18. Emergency.

There is hereby reserved a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Submitted Property or any portion thereof, in the performance of their respective duties. Neither the Association nor the Builder shall be responsible for any damage caused to any Lots due to the use of this emergency personnel easement.

#### Section 8.19. Builder's Consent to Sales Material.

Until all of the Lots have been conveyed by Builder, all sales and advertising materials, and all forms of deeds, contracts for sale, and other closing documents for the sale of Lots by any Homebuilder shall be subject to the prior approval of Builder, which approval shall not be unreasonably withheld. If Builder fails to notify a Builder of approval or disapproval within thirty days, Builder shall be deemed to have approved the foregoing. Upon disapproval, Builder shall provide Homebuilder a list of required changes, and the above procedure shall be repeated until approval is obtained.

#### Section 8.20. Window Units.

No window air conditioning unit shall be installed in any window of any structure on any Lot nor shall be installed any air conditioner so that the same protrudes through any exterior wall of such structure on a Lot; provided, however, this Section shall not preclude the Builder from owning structures with such window air conditioning units.

Section 8.21. Awnings.

No patio coverings or awnings on the front of any Dwelling shall be permitted except as approved by the Builder or the Association.

Section 8.22. Recreational Equipment & Outside Furniture.

All recreational equipment and personal property other than automobiles must be stored in such a manner as not to be visible from any street in front of the Dwelling. All swing sets and similar recreational and exercise equipment must be located within the rear yard of each Lot and not be visible from any street in front of the Dwelling and comply with rules promulgated by the Association. No upholstered furniture or other similar fabric or material covered furniture and no blinds or similar blocking devices are permitted on any porch, stoop or outside area of any portion of any Lot, provided, however, exterior furniture designed for outside areas may be placed in the outside areas of any Lot.

Section 8.23. Storm Doors, Screen Doors.

No screen or storm doors shall be permitted on the front entrance to any Dwelling. Doors on the front entrance to any Dwelling must be made of glass or plexiglass which are transparent and have been approved by the Association.

Section 8.24. Pumps, Tanks.

No heat pump, propane tank, solar device, or other similarly exposed mechanical equipment other than those originally installed by the Builder or a Homebuilder approved by it, shall be placed on any Lot, unless screened from view from the street in front of the Dwelling, and from other Owners, and approved by the Association.

Section 8.25. Firearms.

No BB guns, pellet guns, paint ball guns or any other type of firearms are permitted on any Lot.

Section 8.26. Enforcement.

If any Owner shall violate or attempt to violate any of these restrictions, it shall be grounds for an action to recover sums due, damages or injunctive relief, or both, maintainable by Builder, the Association, or, in proper case, by an aggrieved Owner. Failure by Builder or any other Owner to enforce any of the foregoing restrictions or other provisions shall not be deemed a waiver of their

right to do so. The Association may file lawsuits for purposes of enforcing this Declaration as provided in this Declaration.

Section 8.27. Builder's Right to Repurchase.

If at any time Builder sells any Lot to a person or persons, firm or corporation, and such person or persons, firm or corporation shall intend to sell such Lot before any residence is constructed on said Lot, Builder reserves and shall have the right and option, but not the obligation, to purchase the Lot at a price not to exceed the original selling price with the option expiring thirty (30) days after the Owner notifies the Builder in writing of his, her or their intentions, said notice to be by certified mail with return receipt, and said notice shall contain the name and address of the intended purchaser and the price and all other terms of the intended sale.

Section 8.28. General.

Each Lot now or hereafter subjected to this Declaration shall be subject to all easements. No structure of any type shall be erected upon a Lot which will interfere with rights and use of any easement.

Section 8.29. Waiver.

Builder may, but need not, waive in writing any violation of the designated and approved building location lines on either side lot line, horizontal measurement only, provided that such violation does not exceed 10% of the applicable requirements and provided such violation does not violate any local ordinance or zoning.

Section 8.30. Parking.

No motor vehicle shall be parked or allowed to remain on any portion of the Submitted Property except on paved driveways, parking areas and streets. No vehicle of any kind may be kept, stored or parked on any non-paved area of the Submitted Property.

Section 8.31. Inoperable Motor Vehicles.

No inoperable, including, without limitation, motor vehicles without current tags, inspection or insurance, junked, dismantled or wrecked motor vehicle, or parts thereof, shall be allowed to remain on the Submitted Property. Violators will be towed by the Association at Owner's expense.

Section 8.32. Bulky Items.

Any item that cannot be disposed of properly in a closed container shall be placed at the street and the Owner shall make appropriate arrangements with the City of Winston-Salem for the pick-up of such item within one week.

Section 8.33. Other.

The Declaration or the Association from time to time may create, modify, amend, supplement or restate such other restrictions and they deem necessary or proper.

ARTICLE IX

INSURANCE

Section 9.1. Insurance Coverage to be Maintained, Use and Distribution of Insurance Proceeds.

(a) The Association shall maintain in full force and effect fidelity insurance coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

(b) If the Board of Directors so elects, officers and directors liability insurance covering the officers and directors of the Association may be obtained in such amount as the Board of Directors shall determine.

(c) The Association shall obtain and maintain at all times insurance on all personal property included in the Common Area, in an amount, after application of deductibles, not less than eighty percent (80%) of the actual cash value of the Submitted Property covered at the time such insurance is purchased and at the time of each renewal thereof, without deduction for depreciation, and exclusive of the cost of any real property, excavation, foundations, streets and parking facilities. Provided, however, that such insurance may be written on a co-insurance basis of not less than ninety percent (90%) of the policies evidencing such coverage shall insure against all risks of direct physical loss including fire and extended coverage perils. Such policies shall also contain clauses providing for a waiver of subrogation against any Owner and members of Owners household. They shall also contain the standard endorsements and shall provide that such

policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all the insureds, including all mortgagees. Such policies shall further provide that no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association will preclude recovery upon such policy. All such policies shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each insurance policy shall provide for the issuance of certificates or mortgage endorsements to mortgagees.

(d) The Association shall have the further right to purchase and maintain comprehensive general liability insurance coverage and such other insurance coverage as the Board of Directors may deem necessary and appropriate.

(e) Premiums upon insurance policies purchased by the Association shall be paid by the Association as common expenses to be assessed and collected from all of the Owners.

(f) All insurance policies purchased by the Association shall be for the benefit of the Association.

## ARTICLE X

### SPECIAL LIMITATIONS ON RENTAL PROPERTY

There are special restrictions on the rental of Dwellings within the Submitted Property. Acceptance of the deed to any Lot indicates an acceptance of the following limitations, to the fullest extent permitted by North Carolina or Federal law.

The Builder has determined, based upon its experience in the homebuilding and land development industries, that having a high percentage of rental properties (i.e. non-owner-occupied) ("Rental Properties") is detrimental to the long-term health, and financial value, of a community. Furthermore, the Builder and Developer desire for the Subdivision to comply at all times with the regulations promulgated by HUD/VA/FNMA/FHLMC, which may limit the number and/or percentage of Rental Properties in the Subdivision. Toward that end, the Builder and Developer hereby place the following special limitations on Rental Properties within the Subdivision:

1. No Dwelling upon a Lot may be offered for rent or for lease without the express written approval of the Association (and the Builder, for so long as the Builder owns any Lot). Owners desiring to rent or lease their Dwelling(s) shall submit a summary of the proposed rent terms and a copy of the proposed lease, at least 60

days prior to the proposed commencement date of such lease. Failure by the Association (and the Builder, as appropriate) to approve or deny such lease within 30 days of receipt shall constitute an approval of said Lease.

2. No lease shall have a term of less than six months or more than twelve months, and any proposed extension thereto shall be considered a new lease, subject to the same notice and approval requirements set forth herein.
3. Approval or denial of any proposed leases may be made by the Association (and the Builder, as appropriate) in its absolute discretion. The foregoing notwithstanding, all leases shall be denied in the event they would contribute to any of the following:
  - A. Having the total number of Rental Properties exceed 20% of the number of Dwellings in the Subdivision being non-owner-occupied;
  - B. Having the total number of Rental Properties exceed any limitation established by HUD/VA/FNMA/FHLMC.
4. Each Owner, by taking title to his Lot, acknowledges that the foregoing limitation on alienability of real property is reasonable under the circumstances, and serves to benefit the common scheme of the Subdivision, and the common well being of the Owners.

## ARTICLE XI

### GENERAL PROVISIONS

#### Section 11.1. Enforcement.

The Builder, the Association, any Owner or any other person, firm or corporation owning any interest in a Lot shall have the right to enforce by any proceedings at law or equity all conditions, covenants, restrictions, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by such party to enforce any such covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Builder or Association shall have the right to request that law enforcement, public safety and animal control officers come on the Submitted Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

In the event any Owner of any Lot fails or refuses to keep his property free from any such unsightly items, weeds, or underbrush or fails or refuses to correct any unclean, unsightly or unkept conditions, or is in violation of any restrictions set forth herein or any rules promulgated hereunder, the Association shall demand that the offending Owner comply with and remedy the same by mailing a notice or friendly reminder to the Owner at his Lot address requesting the Owner comply with the requirements of this Declaration or rules of the Association.

If the Owner has not complied with the friendly reminder within the time frame set forth therein after the mailing or posting of such friendly reminder, the Builder or Association shall issue a written notice to the Owner. Such written notice may include any of the following information as applicable: (i) the specific violation of this Declaration or of any rule of the Association, (ii) a description of the violation, (iii) any previous contact or correspondence to the Owner regarding the violation, (iv) the time and method for curing the Owner's noncompliance, (v) any potential penalties and hearing procedure information, (vi) contact names and phone numbers of the Association and (vii) a reminder of the purpose of this Declaration and the rules of the Association.

If the Owner has not complied with the written notice within the time frame set forth therein after the mailing or posting of such written notice, a hearing shall be held. The written notice when issued shall set forth the date, time and place of hearing. The hearing may be held on the same day as any Association meeting or at such other time as determined by the Association. The Owner shall be given the opportunity to present his or her case, setting forth all relevant factors, including, but not limited to, reasons for noncompliance with this Declaration and/or the rules of the Association and time frame for remedying the violation. The hearing panel shall issue a written decision which shall be given promptly to the Owner and which may impose reasonable fines including reasonable attorney fees or suspend privileges or services provided by the Association (except access to Lots) for reasonable periods of time.

If the Owner refuses to participate in the hearing or to comply with the decision rendered at the hearing, the Builder or its agent may avail itself of any remedy, at law or in equity, and may enter and remove all such unsightly items or growth or correct such violation or noncompliance at the Owner's expense or obtain injunctive relief by order of a court of competent jurisdiction, in which event the offending Owner shall be responsible for the costs and expenses of correcting such violation or noncompliance, including attorneys fees, associated with obtaining such injunctive relief. The Owner, by acquiring property subject to these restrictions, agrees (i) to pay such cost promptly upon demand by the Builder and (ii) that until such time and such cost and expenses are paid, the Builder shall be entitled to have a permanent charge and lien upon the offending Owner's Lot and shall be enforceable in accordance with the North Carolina General Statutes Section 47F-3-116. No such entry as provided herein shall be deemed a trespass.

#### Section 11.2. Severability.

Invalidation of any one of the covenants, conditions or restrictions of this Declaration, or any part thereof, by judgment or court order shall in no way affect any of the other provisions not expressly held to be void and such remaining provisions shall remain in full force and effect.

#### Section 11.3. Effective Period.

The covenants, conditions, and restrictions of this Declaration shall run with the land and bind the Association and the Owners of Lots for a period of twenty-five (25) years from the date this Declaration is recorded, after which time such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years until amended or terminated as herein provided. The reserved easements shall run permanently with each Lot.

#### Section 11.4. Amendment and Termination.

This Declaration may not be materially altered, amended, modified, or changed at any time during the first twenty (20) year period, except by a written document executed by the Builder, so long as the Builder owns any Lot, together with the Owner or Owners of sixty-seven percent (67%) of the Lots and thereafter by a written document signed by the Owners representing sixty-seven percent (67%) of the votes entitled to vote. Any such Amendment must be recorded in the Forsyth County Public Registry and shall not be effective until so recorded.

This Declaration may not be canceled or terminated at any time, except by a written document executed by the Builder, so long as the Builder owns any Lot, together with the Owner or Owners of eighty percent (80%) of the Lots and thereafter by a written document signed by the Owners representing eighty percent (80%) of the votes entitled to vote. Any such termination must be recorded in the Forsyth County Public Registry and shall not be effective until so recorded.

The foregoing notwithstanding, the Builder may amend this Declaration at any time to correct scrivener's errors, patent or latent ambiguities, or to make any other modifications whatsoever that do not materially adversely affect the rights or responsibilities of any Owner.

#### Section 11.5. Enforcement of Expenses as a Lien Upon Property.

All costs incurred by the Builder or the Association in the enforcement of the terms and conditions hereof, including court costs, fines levied, costs of correcting deficiencies by any

Owner of a Lot or Lots, and reasonable attorneys' fees in the enforcement hereof, shall be a personal liability of the Owner or Owners of such Lot or Lots subject to the enforcement or collection hereunder, and furthermore such costs and fees shall be a lien upon the Lot of the Owner, and each Owner agrees to accept such personal liability and the lien enforcement rights of the Builder and the Association by acceptance of a deed to any Lot or Lots in the subdivision; provided, however, said lien shall be subject to the limitations contained in Article V hereof.

Section 11.6. Amendment to Conform to Requirements of FHA/VA/FHMA/FHLMC.

Builder, without consent or joinder of the Association or any other Owner of Lot or Lots, may amend this Declaration to conform to the requirements of the FHA/VA/FNMA/FHLMC at any time during which Builder owns any of the Submitted Property.

Section 11.7. FHA / VA Approval.

In the event the Builder has arranged for and provided purchasers of Lots with FHA/VA insured mortgage loans, then as long as any Class B Lot exists and HUD/VA approvals are necessary to obtain financing for the Submitted Property, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, other than as provided in Article II hereof, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

In the event the necessary HUD/FHA/VA, or other governmental approval is not obtained for any action as called for in this Declaration, such failure shall not void said action, but shall merely make such action subject to subsequent disapproval or modification by the appropriate governmental agency.

Section 11.8. Headings.

Article and section headings are inserted for convenient reference and are not to be construed as substantive parts of the paragraphs to which they refer, except to the extent they differentiate between different classes of Lots, Members, or dues and Assessments.

Section 11.9. Assignment and Delegation.

The Builder reserves and shall have the right and option at any time and from time to time to assign and delegate any or all of its rights and its duties under this Declaration.

Section 11.10. Lender Consent.

Fidelity Bank, and David E. Royal, as Beneficiary and Trustee, respectively of that Deed of Trust recorded in Book 2490 at Page 1565 of the Forsyth County Registry, and which may have been or may be modified from time to time, which encumbers a portion of the Existing Property, approve this Declaration and agree to abide by its terms, and further recognize that they are not a Declarant hereunder, nor do they assert any rights, or accept any responsibilities of the Declarant. Their execution hereof is made only to express consent to be bound by said Declaration, and to subordinate the aforementioned Deed of Trust to this Declaration.

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

MULVANEY HOMES, INC.

By: \_\_\_\_\_  
\_\_\_\_\_, President

LPT DEVELOPMENT COMPANY, INC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
David E. Royal (TRUSTEE)

FIDELITY BANK (LENDER)

By: \_\_\_\_\_  
\_\_\_\_\_, President

STATE OF NORTH CAROLINA

COUNTY OF

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally came David E. Royal and acknowledged the due execution of the foregoing instrument in writing for the purposes therein expressed.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_\_\_.

---

Notary Public

My Commission Expires:

---

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said County and State, certify that \_\_\_\_\_ Personally came before me this day and acknowledged that he is \_\_\_\_\_ President of MULVANEY HOMES, INC., a North Carolina corporation, and that he, as \_\_\_\_\_ President, and being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

(Official Seal)

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said County and State, certify that \_\_\_\_\_ Personally came before me this day and acknowledged that he/she is \_\_\_\_\_ of LPT DEVELOPMENT COMPANY, INC., a North Carolina corporation, and that he/she, as \_\_\_\_\_, and being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public (Official Seal)

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said County and State, certify that  
\_\_\_\_\_ Personally came before me this day and acknowledged that he is  
\_\_\_\_\_ President of Fidelity Bank, a national banking association, and that he, as \_\_\_ President,  
and being authorized to do so, executed the foregoing on behalf of the bank.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public (Official Seal)

My Commission Expires: \_\_\_\_\_

**Approved By:**

\_\_\_\_\_  
Michael L. Mitchell

STATE OF NORTH CAROLINA

COUNTY OF

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Michael L. Mitchell and acknowledged the due execution of the foregoing instrument in writing for the purposes therein expressed.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Approved By:**

\_\_\_\_\_  
Hector Amadeo

STATE OF NORTH CAROLINA

COUNTY OF

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Hector Amadeo and acknowledged the due execution of the foregoing instrument in writing for the purposes therein expressed.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Approved By:**

\_\_\_\_\_  
Elizabeth J. Wentz

STATE OF NORTH CAROLINA

COUNTY OF

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Elizabeth J. Wentz and acknowledged the due execution of the foregoing instrument in writing for the purposes therein expressed.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**Approved By:**

\_\_\_\_\_  
Ramelia N. Shelf

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Ramelia N. Shelf and acknowledged the due execution of the foregoing instrument in writing for the purposes therein expressed.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_(Official Seal)  
Notary Public

My Commission Expires:\_\_\_\_\_

**Approved By:**

\_\_\_\_\_  
Martha Abell

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

Before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Martha Abell and acknowledged the due execution of the foregoing instrument in writing for the purposes therein expressed.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_,  
200\_\_.

\_\_\_\_\_(Official Seal)  
Notary Public

My Commission Expires:\_\_\_\_\_

**Exhibit A**  
**Legal Description**

Lying and being in Forsyth County, North Carolina and being more particularly described as follows:

Being Lots 1 - 13, 60, 61 and 62 and the common area as shown on Bethabara Trace Phase 1 recorded in Map Book 48 at Page 16 in the Forsyth County Public Registry and Lots 14 - 59 as shown on Bethabara Trace Phase II recorded in Map Book 49 at Page 48 in the Forsyth County Public Registry.