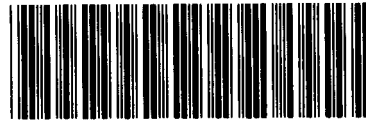


FOR REGISTRATION REGISTER OF DEEDS
 Judy D. Martin
 Moore County, NC
 August 30, 2010 04:08:30 PM
 Book 3766 Page 363-391
 FEE: \$98.00
 INSTRUMENT # 2010011324

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Campbell



INSTRUMENT # 2010011324

Prepared by & return to: Gorenflo Bierbaum & Campbell, PLLC

STATE OF NORTH CAROLINA

**AMENDMENT AND RESTATEMENT OF DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS FOR
 CYPRESS CREEK TOWNHOMES, PHASE I**

COUNTY OF MOORE

**THIS AMENMENT AND RESTATEMENT OF DECLARATION OF COVENANTS,
 CONDITIONS and RESTRICTIONS** (the "Amendment and Restatement") is made this 26th of August 2010, by
 and between Mid-State Development, LLC, a North Carolina limited liability company hereinafter called
 "Declarant" (whether one or more persons, firms, companies or corporations) and Cypress Creek Townhomes
 Association, Inc., a North Carolina not for profit corporation (hereinafter "Association"). The designation Declarant
 as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural,
 masculine, feminine or neuter as required by context.

W I T N E S E T H:

WHEREAS, Declarant recorded a Declaration of Covenants, Condition and Restrictions for Cypress Creek
 Townhomes, Phase 1, in Book 3743 at page 22 of the Moore County Registry (the "Declaration"); and

WHEREAS, Article IX, Amendment, provided that the Declaration may be amended by an instrument
 signed by not less than seventy-five percent (75%) of the Unit Owners; and

WHEREAS, Declarant is owner of not less than seventy-five percent (75%) of the Units; and

WHEREAS, This Amendment and Restatement is intended to replace the prior Declaration in its
 entirety and any reference to the Declaration shall mean this Amendment and Restatement as further amended
 from time to time.

WHEREAS, the Association, by and through its President, and Renee M. Anderson (owner of Unit 8,
 24 Cypress Circle) hereby join in to publish this Amendment and Restatement for the purpose of filing the new
 Amendment and Restatement on the public record in Moore County, North Carolina.

NOW, THEREFORE, Declarant hereby amends and restates the initial Declaration of Covenants,
 Conditions and Restrictions for Cypress Creek Townhomes, Phase 1, recorded in Book 3743 at page 22.

This Amendment and Restatement is intended to replace the prior Declaration in its entirety and any
 reference to the Declaration shall mean this Amendment and Restatement as further amended from time to time.

HENCEFORTH, any reference to the "Declaration" or Conditions, Restriction, Covenants, Agreements and Easements of Cypress Creek Townhomes shall mean the Amendment and Restatement which is attached hereto and incorporated by reference and this Amendment and Restatement shall run with the Land and bin All Present ad Future Unit Owners in Cypress Creek Townhomes.

Attached to this Amendment and Restatement are the Bylaws approved by the Board of Directors for filing with the Amendment and Restatement.

WITNESETH:

WHEREAS, in order to provide a coordination and continuity among the various phased communities, and the owners of townhomes in Cypress Creek Townhomes, it is deemed appropriate to have an association in which all owners of townhomes in Cypress Creek Townhomes are members; and,

WHEREAS, Declarant desires to have certain areas of Cypress Creek Townhomes owned by this Association and benefit all owners within the Cypress Creek Townhomes; and,

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection, and enhancement of the values and amenities in Cypress Creek Townhomes, and to insure the residents' enjoyment of the specific rights, privileges and easements in the common elements or common areas and facilities to create an organization o which will be delegated and assigned the powers of owning, maintaining and administering the common elements or common areas, facilities, and administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WEHREAS, Declarant has incorporated under the laws of the State of North Carolina, as a not for profit corporation, Cypress Creek Townhomes Association, Inc., for the purposed of exercising the functions aforesaid within the community known as Cypress Creek Townhomes;

NOW, THEREFORE, Declarant hereby submits said Townhome Property, and such additions thereto, and annexation thereto, as may hereafter be made pursuant to this Declaration, pursuant to Chapter 47F of the General Statutes of North Carolina as amended, known as the "Planned Unit Development Act" (herein the "Act"), and to that end does hereby publish and declare that all of the said Townhome Property to be known as "CYPRESS CREEK TOWNHOMES" which shall be held, sold, and conveyed subject to the terms and provisions of the Act, the terms and provisions of which shall apply hereto and control, except as herein modified by the following easements, restrictions, covenants, conditions, uses and obligations which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

A. Act. The North Carolina Planned Unit Development Act, Chapter 47F of the North Carolina General Statutes.

B. Additional Properties. Shall mean and refer to any lands adjoining the Property, which now are owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the properties by the Declarant and subjected to this declaration. The annexation of such additional properties shall become effective by the recording in Moore County by the Declarant of an amended declaration for each new section annexed.

C. Allocated Interests. The undivided interests in the Common Elements, the Common Expense liability, and in the Association allocated to each Unit.

D. Assessment. A share of the funds required for the payment of Common Expenses that from time to time is assessed against the Unit Owner by the Association.

E. Association. The non-profit incorporated Association known as Cypress Creek Townhomes Association, Inc., its successors and assigns, the entity responsible for the operation of the Townhome Development pursuant to the Act, which entity includes all of the Unit Owners acting as a group in accordance with this Declaration.

F. Board of Managers or Board. Shall mean the Officers of the Association, as defined herein.

G. Building. All structures and improvements now or hereafter erected upon the property.

H. Common Elements or Common Areas. Shall specifically include all the roads and streets, and any and all areas so designated on the plat(s) of the development, if any, or in a Supplemental Declaration, or in a deed or other written instrument. All common area shall be subject to the terms and conditions of this Declaration and the ordinances of the Town of Southern Pines and Moore County, where applicable.

I. Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

J. Common Expense Liability. The liability for Common Expenses allocated to each Unit pursuant to the Act, this Declaration, and the By-Laws, if applicable.

K. Declarant. Declarant shall mean and refer to Mid-State Development, LLC, a North Carolina limited liability company, its grantees, successors and assigns.

L. Declaration. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments thereto, which are recorded in the Office of the Register of Deeds, Moore County, North Carolina.

M. Development Rights. Among those rights hereby reserved by the Declarant are to add additional phases to the development, to make additions to or to change the configuration of the Townhome Units and to change or revise the common elements within the townhome development.

N. Limited Common Space. That area delineated specifically by metes and bounds description on the recorded plat(s) in front of each unit and extending to Cypress Circle for the use by the respective unit owner for driveway and walkway purposes and that provide access to such Unit.

O. Member. Member shall mean and refer to an Owner subject to assessment as provided in this Declaration.

P. Property, Properties or Townhome Property. The real estate shown on a plat dated June 23, 2010 entitled Phase One, Mid-State Development, LLC, Cypress Creek Townhomes and thereof recorded in Plat Cabinet at Slide in the Office of the Register of Deeds of Moore County, together with the Buildings and improvements located thereon, and such additional properties as may be subsequently subjected to this Declaration by Supplemental Declaration in the manner herein provided ("the Townhome Property" or "Townhome Development").

Q. Townhome. The real estate parcels that are designated as such for separate ownership.

R. Townhome Documents. This Declaration and the Rules and Regulations, if any, and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

S. Supplemental Declaration. A document filed by Declarant to change the configuration of the Townhome Units and to change or revise the Common Elements within the Townhome Development in the manner provided herein, or to add additional properties as may be subsequently subjected to this Declaration by Supplemental Declaration.

T. Unit or Townhome Unit. A part of the Property that is to be subject to private ownership, as designated on the Plat recorded in Plat Cabinet 15 at Slide 109, and subsequently recorded plats and as further defined in the Act.

U. Unit Owner or Owner. A person or entity, or any combination thereof, that is record owner of a fee simple title to any Unit that is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

V. Plats or Plans: the plats and plans required to be filed with the MOORE County Register of Deeds, including those plats or plans for the Townhomes entitled "CYPRESS CREEK TOWNHOMES, Phase I" being duly recorded in Plat Cabinet 15 at Slide 109 of the Moore County Registry, as the same may amended from time to time.

W. Special Declarant Rights. Rights reserved for the benefit of the Declarant that may not be altered by the members or unit owners, including, but not limited to rights (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any Development Right; (iii) to maintain sales offices, management offices, signs advertising the Townhome Property and models; (iv) to use easements through the common area(s) for the purpose of making improvements within the Townhome Property or within real estate which may be added to the Townhome Property; or (v) to appoint or remove any officers or executive board members of the Association during the period of Declarant control, all of which Special Declarant Rights are more fully set forth herein.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

A. Declarant submits only that portion of the land described in Article I as the Townhome Property (and more particularly described and shown on a plat dated June 23, entitled Phase One, Mid-State Development, LLC, Cypress Creek Townhomes and thereof recorded in Plat Cabinet _____ at Slide _____ in the Office of the Register of Deeds of Moore County) upon which Phase 1 of Cypress Creek Townhome subdivision is to be constructed. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions (whether in one phase or additional phases) of the land described in that deed recorded in Deed Book 3479 at page 300 to the coverage of this Declaration. Said Townhome Property is a portion of that property described in the deed recorded in Deed Book 3479 at page 300. Further, the Declarant also retains the right to add contiguous, or nearly contiguous, tracts to the project at its sole discretion, in which case the maximum number of units would be increased. The Properties shall be owned, held, leased, transferred, sold, mortgage and/or conveyed by Declarant, the Association and each Unit Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and lies set forth in this Declaration.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary plats as required by law. Each amendment to the Declaration shall be called a "Supplemental Declaration" or "Amended Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner.

The real property that is, and shall be submitted to this Declaration is that real property shown on that plat recorded in Plat Cabinet _____, at Slide _____ of the Moore County Registry.

B. Additional Properties may be annexed to and made a part of the properties by the Declarant and subjected to this declaration in multiple additions.

Annexation of additional property shall require approval from the Town of Southern Pines, and shall be required to occur within fifteen (15) years from the date of this instrument, provided, however, that all annexations of additional properties to the original development described in Article I hereof must be contiguous to the property described in Article I hereof or property previously annexed, or property of the Declarant. Provided further, that no annexation of additional property shall have the effect of placing the original development in violation of the Town of Southern Pines Zoning Ordinances.

Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation, except approval by the Town of Southern Pines.

The Declarant will dedicate and convey any Common Area in annexed property to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other easement, mineral rights and the terms and conditions of the Declaration and any applicable supplemental Declaration.

The Declarant reserves the following Development Rights: (i) to add real estate to the Properties in accordance with this Article; (ii) to create Units; (iii) to add Common Area; (iv) to modify or change Unit types; (v) to withdraw undeveloped real estate from the Properties.

C. The Common Areas, Common Elements, and facilities, if any, are shown and referenced in that deed from Declarant to the Association and also shown on that recorded plat in Plat Cabinet 15 at slide 109 of the Moore County Registry. All private roads and streets are Common Area.

D. Each Unit shall be conveyed and treated as an individual Property capable of independent use and fee simple ownership, and the Unit Owners of each Unit shall also own, as an appurtenance to the ownership of each said Unit conveyed, an equal pro rata undivided interest in the Common Areas. Each Unit Owner shall also be allocated the limited common space directly in front of each unit and extending to Cypress Circle for the use by the respective Unit Owner for driveway and walkway purposes and that provide access to such Unit. Said areas are delineated specifically by metes and bounds description on the recorded plat(s) and are part of that shared limited common space with the adjoining unit. For clarification purposes, the physical driveways service two units (i.e. shared limited common space), but each Unit Owner will have their own limited common space which shall convey with the Unit.

E. Mergers. Upon a merger or consolidation of the Association with another organization as provided by its By-Laws, its properties, rights and obligations may be transferred to another surviving or consolidated homeowner's association or, alternatively, the properties, rights and obligations of another homeowner's corporation may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowner's association may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

ARTICLE III

USE RESTRICTIONS

The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the common areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants, conditions or restrictions contained in this Declaration. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Unit Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorney's fees. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the properties.

The use of the Property shall be in accordance with the following provisions:

A. Each of the Units shall be occupied only for residential purposes. No Unit may be divided or subdivided into a smaller Units nor any portion thereof sold or otherwise transferred without the consent of all Unit Owners and compliance with the Act.

B. No Unit owner or resident, including tenants, guests and invitees, may keep or store a golf cart on the premises or Common Area.

C. No Unit Owner or resident, including tenants, guests and invitees, may use any portion of the golf course adjacent to the development solely because of the ownership of said Unit. This shall not prevent anyone from using said golf course when in full compliance with the applicable membership requirements, fees, rules and regulation for that golf course.

D. The Common Areas and facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit.

E. No use or practice shall be permitted in the Townhome Development that reasonably could be considered the source of annoyance or nuisance to residents or interfering with the peaceful possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No Owner shall permit any use of his/her Unit or of the Common Elements that will increase the rate of insurance upon the Townhome Development Property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Rental of less than the whole unit is prohibited.

F. No use or practice shall be permitted in the Townhome Development that reasonably could be considered the source of annoyance to players on any golf course adjacent to the development.

G. Reasonable regulations concerning the use of the Townhome Development Property may be made and amended from time to time by the Association.

H. Each Unit Owner shall maintain, repair and replace, at is or her own expense, all portions of his or her Unit, except as may be otherwise provided in this Declaration.

I. No Unit Owner shall alter any Common Elements without the prior written consent of all members of the Association. Except as allowed herein, no Unit Owner shall fix any object to the Common Elements or in any manner change the appearance of the Common Elements without first obtaining the written consent of the Association. There shall be no obstruction of the Common Area, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Area, or removed therefrom, without the prior consent of Declarant or the Association. Provided, however, Declarant and the Association shall have the right to install, place, repair, replace and maintain signs in the Common Area and to install, maintain, repair and replace in the Common Area such materials, equipment and other apparatus as may be necessary to enable the Association to carry out its power and duties under this Declaration.

In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner, or by any member of a Unit Owner's family, guests, invitees, licensees, agents, occupants, users, or tenants, then the expenses

incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner. If the Unit Owner fails to repay the expenses incurred by the Association within 30 days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner under the provisions of this Section.

J. Converting any Unit to timeshare unit ownerships, per Chapter 93A of the North Carolina General Statutes or any successor statute, or other forms of fractional ownership, is expressly prohibited within the Townhome Development.

K. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Unit or in any dwelling except certain domestic household pets, such as may be otherwise provided by rules and regulations approved for all members of the Association. The rules and regulations may regulate, permit or prohibit the kind and number of domestic household pets. Domestic household pets may not be raised, bred, kept or maintained for any commercial purposes. All household pets shall be kept on a leash at all times when outside the Unit, unless in a fenced in area, and animal waste must be immediately removed. Such pets may not be permitted to run at large at any time. Owners of pets on the Property shall control excessive barking or other disturbances caused by the pets.

L. Unit Owners shall not park or store any camper, trailer, boat trailer, trailer vehicle, or similar vehicle anywhere on the Property. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized trucks. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No stripped, wrecked or partially wrecked, or junk motor vehicle or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on the Property. Nothing herein shall be deemed to prohibit temporary parking of vehicles involved in deliveries to a Unit or Unit Owner.

The Board of Directors shall have the right and authority to make, amend, implement and enforce such additional parking rules and regulations as it deem necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the Unit Owner, or the guest(s) or invitee(s) of a Unit Owner, to which such vehicle is registered.

No rule or action by the Association or Board shall unreasonably impede the Declaration's right to develop the Properties.

M. No burning of wood, leaves, trash, garbage or household refuse or burning as a means of clearing brush shall be permitted on the Property.

N. Garbage and trash shall be disposed by Unit Owners in accordance with rules and regulations approved for all members of the Association.

O. No laundry or wash shall be dried or hung outside any Unit, unless within fenced in areas.

P. There shall be no obstruction of the Common Elements that prohibits maintenance of any utilities located therein.

Q. There shall be no parking of any vehicle, trailer, or similar, in the streets, rights-of-way or easement areas. All parking shall be limited to garages and driveways. No vehicle, trailer, or similar, may be parked so as to block any sidewalk, if any.

R. The Declarant, and after the period of Declarant control, the Association, shall have exclusive control over any yard decorations in any front or side yards. No such decorations shall be allowed without the approval of the Declarant, and after the period of Declarant control, the Association.

S. No sign of any kind shall be displayed to the public view on any Unit except for signs that are allowed by law and approved by the Declarant, and which are for one or more of the following purposes: (i)

advertising the Unit for sale or rent, (ii) advertising the building contractor constructing improvements at the Unit during initial construction and sales period, (iii) identifying the rental or sales office and/or model home of Declarant, (iv) identifying the subdivision or phase name and/or identifying the Unit number of a Unit, and (v) any other purpose approved by the Declarant or the Board of Directors; provided however, the foregoing limitations shall not act to restrict or prohibit Declarant or the Association or any applicable governmental entity from erecting, maintaining, repairing and replacing (and Declarant hereby reserves for itself, the Association and such governmental entities the right to erect, maintain, repair and replace) on a Unit or on the Common Area, landscaped rights-of-way, roadway medians and any easement reserved or granted for such purposes, signs and billboards advertising the Properties or portions of the Properties, or signs identifying various subdivisions or phases of the project, or regulatory street and directional signs.

ARTICLE IV

EASEMENTS

A. All of the Properties, including Common Areas, shall be subject to such easements for walkways, parking areas, water lines, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over and under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant unto itself, its invitees, licensees, guests, customers, agents, employees, contractors, heirs, successors and/or assigns from this conveyance, the following:

i. A perpetual and unlimited access easement for ingress, egress and regress over the conveyed property.

ii. A perpetual and non-exclusive easement for construction, installation, maintenance and replacement of any and all utilities on, over, under, and across the property conveyed.

iii. A perpetual and non-exclusive easement for the excavation and removal of surface and subsurface materials for parking area or amenity installation and/or any other use in the Declarant's sole discretion, so long as the excavated materials are used within the properties of Cypress Creek Townhomes.

B. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the Common Area.

C. All easements and rights described herein are easements appurtenant, and shall run with the land by whomsoever owned, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

D. The Declarant reserves the right to subject the real property in this subdivision to a contract with Progress Energy, or similar Utility provider, for the installation of street lighting, which contract requires a continuing monthly payment to Progress Energy, or similar Utility provider, by each residential customer.

E. An easement is hereby granted to all police, fire protection, ambulance and similar persons, companies or agencies performing emergency services, to enter upon the Common Areas in the performance of their duties.

F. Each Unit Owner is hereby declared to have an easement and the same is hereby granted by the Declarant over all adjoining parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original constructions, settlement or shifting of a building, or any other cause. There shall be valid easement for the maintenance of said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Unit Owner if said encroachment occurred due to the willful misconduct of said Unit Owner.

G. In the event that any Unit shall encroach upon any Common Area or upon any other Unit for any reason not caused by the purposeful or negligent act of the Unit Owner, then an easement appurtenant to such Unit shall exist for the continuance and maintenance of said encroachment upon the Common Area or other Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Area shall encroach upon any Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Area onto any such unit for so long as such encroachment shall naturally exist.

H. Each Unit within the Properties and the Unit Owner thereof, is hereby declared to have an easement and the same is hereby granted by the Declarant, over each joining Unit and/or Common Area, as the case may be, for overhanging roofs and eaves and the maintenance thereof.

I. An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

J. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Units, and the Common Area, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Properties or any portion thereof.

K. All Members of the Association, their invitees, licensees, guests, customers, agents, employees, contractors, are granted herein the non-exclusive and unrestricted perpetual right of access, ingress and regress, on and over "Cypress Circle (Private Drive)", together with the non-exclusive perpetual right of use and enjoyment of all Common Areas and Amenities, now or as later created, as are shown and delineated in that certain plat recorded in Plat Cabinet 15, Slide 109, Moore County Registry, and also referenced and shown in that deed from Declarant to Association and recorded in Book 3766 at Page 392, and as later created on said Common Areas.

ARTICLE V

NOTICE

The name and address of the initial process agent to receive service of process in any matters affecting the Property is as follows:

Mid-State Development, LLC
Attn: William Warren Dabbs
P. O. Box 2032
Wilmington, New Hanover County, NC 28402

The process agent may be changed through the signing of a memorandum of change by the then acting process agent, which shall be delivered to the President of the Association for their records and for access by its Members.

ARTICLE VI

INSURANCE

Each Unit Owner shall purchase, maintain in force and administer homeowners insurance coverage for their Unit and associated interests.

There shall also be obtained in the Association name master policies of insurance coverage for the Common Areas as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association. Property damage insurance must be maintained at one hundred percent (100%) of the current replacement cost of the Common Areas, excluding those areas that are normally excluded from coverage such as land, earthen dams, foundation, excavations, etc. The property damage policy must protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard 'all-risk' endorsement. In addition, public liability insurance covering all Common Areas and any other areas that are under the Associations' control and supervision in an amount of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. All liability insurance shall contain cross liability endorsements to cover liability of the owners as a group to an individual owner.

Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to Unit owners as an assessment according to applicable provisions of this Declaration.

All contracts of property insurance purchased by the Association shall be for the benefit of all of the Unit Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each Unit Owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the Unit Owner's undivided interest in the Townhome Development whether or not stated therein. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Proceeds of master insurance received by the insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

- (i) Proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;
- (ii) Proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and
- (iii) Any remaining proceeds shall then be distributed to the beneficiary or beneficiaries of the trust, as their interests may appear.

ARTICLE VII

ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments. Assessments against Unit Owners by the Board of Directors made pursuant to this Declaration shall, if not paid when due, create a lien in favor of the Association against the Unit of the defaulting owner as provided in Chapter 47F, both of the North Carolina General Statutes, and shall be collectable as provided therein.

The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit 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; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, 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 fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Unit.

2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Area, including the improvement, maintenance and repair of any Common Area, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area, the procurement and maintenance of insurance in accordance with this Declaration, the By-Laws, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, signs, paving, grading, landscaping and any other major expense for which the Association is responsible, and such other needs as may arise.

3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to a Unit Owner, the maximum annual assessment shall be \$1,020.00 per Unit. Said amount shall be collected monthly at a rate of \$85.00 per month, due on the first day of each month.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to ten percent (10%) of the previous year's assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

6. Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written Notice of any

meeting called for the purpose of taking any action authorized under Section 3 or 4 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.

7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Units and shall be collected on a monthly basis, provided, however, that the assessment for Units owned by Declarant which are not occupied as a residence, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty-five percent (25%) of the regular assessments for other Units.

8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the Common Area. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Unit Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the assessments on a specified Unit have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein.

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 lesser rate of twelve percent (12%) per annum or the maximum allowable rate under North Carolina law. The Association may bring an action at law against the Unit Owner personally obligated to pay the same or foreclose the lien against the property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, 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 Unit from liability for any assessments thereafter becoming due or from the lien thereof.

11. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

12. Working Capital Fund. At the time of closing of the sale of each unit a sum equal Two Hundred Dollars (\$200.00) for each unit shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is (i) establish a new account for initial Unit Owners, (ii) issue estoppel certificates, and (iii) other administrative duties in the creation and management of new accounts. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VIII

ARCHITECTURAL CONTROL

The Declarant, and after the period of Declarant Control, the Association, shall have the right and obligation to control the development and appearance in the Planned Community.

ARTICLE IX**AMENDMENT**

The covenants and restrictions of 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 ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Unit Owners, so long as any amendment which requires Town of Southern Pines compliance is first approved by the Town of Southern Pines. Amendments shall not become effective until approved by the Town of Southern Pines, if applicable, or if the Town, in the interest of lack of discrimination, after twenty (20) days' notice, fails to comment on the amendment. The Declarant may amend this Declaration in order to add additional phases to the development as it is anticipated that there will be several phases of Cypress Creek Townhomes with an anticipated . Any such amendments shall be effective upon the recording of such Amendment(s) in the Office of the Register of Deeds for Moore County.

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

(a) Reasonably assure itself that the amendment has been executed by the Unit Owners of the required number of Units. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Unit to be examined.)

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

CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
CYPRESS CREEK TOWNHOMES, PHASE I

CYPRESS CREEK TOWNHOMES ASSOCIATION, INC.

BY: _____ (SEAL)
Its: President

ARTICLE X**THE ASSOCIATION**

A. **Common Elements.** Except as otherwise specified herein, the Association will maintain, repair and replace all sidewalks, driveways, trails, roads and streets, and all improvements and utilities within the Common Area. The costs of such maintenance repair and replacement shall be a Common Expense. All damage done to the Common Areas by or for the Association shall be repaired by the Association and the cost thereof shall be a part of the Common Expenses.

B. **Membership.** Every Unit Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. No Unit Owner, whether one or more persons, will have more than one membership per Unit owned, but all of the persons owning each Unit will be entitled to rights of membership and use and enjoyment appurtenant to such ownership. Ownership of such Unit shall be the sole qualification for membership. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Every member shall have a right and easement

of enjoyment in and to the Common Areas, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the dries, walkways and parking areas of the Common Areas, all of which shall be appurtenant to and shall pass with the title to every Unit, subject to these covenants and restrictions and the right of the Association, in accordance with its Articles of Incorporation and By-Laws to impose rules and regulations for the use and enjoyment of the Common Areas and improvements thereon, which rules and regulations may restrict the use of the Common Areas.

C. Transfer of Membership. A Unit Owner shall not transfer, pledge or alienate his Membership in the Association in any way, except upon the sale or encumbrance of the Unit, and then only to the purchaser of his Unit.

D. Class of Membership. The Association shall have two classes of voting memberships

Class "A". Class A members shall be all Unit Owners with the exception of the Declarant and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in the Unit, all such persons shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Fractional voting shall be prohibited.

2. Class "B". The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall automatically terminate upon the happening of either of the two following events, which ever occurs earliest:

- (a) Upon the closing of the sale of 75% of all units in all phases, on an overall basis in the development, or
- (b) ten years following the date of incorporation of the Association.

E. Voting Rights. Except as otherwise provided herein or in the By-Laws, each member shall be entitled to vote in Association matters. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by one person or alternative persons as the Unit Owners among themselves determine. If more than one of the multiple owners is present at a meeting in person or by proxy, the vote allocated to their Unit may be cast only in accordance with the agreement of a majority in interest of the owners as evidenced by a written designation filed with the secretary of the Association. There is a majority agreement if any of the multiple owners casts the vote allocated to his Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.

F. Officers. The initial officers of the Association shall be: Dale Lee Kidder, President , William Warren Dabbs, Secretary, and Brandon D. Dabbs, Treasurer/Vice President.

ARTICLE XI

EXTERIOR MAINTENANCE

1. Maintenance of the Units. In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, driveways, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, awnings and if permitted, approved additions to dwellings made after completion of the initial dwelling (unless maintaining of such addition is affirmatively assumed by the Association) or the repair or reconstruction of any improvements, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Unit Owner, his family, or guests or invitees, the cost of such shall be added to and become a part of the assessment to which said Unit is subject.

ARTICLE XII

PARTY WALLS

1. General Rules of Law to Apply. Each wall which is built as part of the original construction upon the Properties and placed on the dividing line between the Units and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provision of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Unit Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Unit Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Easement and Right of Entry for Repair, Maintenance and Reconstruction. The Unit Owner of any Unit may construct, reconstruct, repair or extend a party wall in any direction (subject to and within the limitations of these covenants) with the right to go upon the adjoining Unit property to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Unit property to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

5. Weatherproofing. Notwithstanding any other provision of this Article, a Unit Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6. Right to Contribution Runs with Land. The right of any Unit Owner to contribution from any other Unit Owner under this Article shall be appurtenant to the land and shall pass to such Unit Owner's successors in title.

7. Certification by Adjoining Property Owner That No Contribution is Due. If any Unit Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article X, request of adjoining property approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE XIII

GENERAL PROVISIONS

1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

2. The Association, or any Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

3. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

4. Compliance with Wetlands Regulations. In the event a portion of the Property is determined to meet the requirements for designation as a regulatory wetland, then any subsequent modification, construction, fill or alteration of any kind of such wetland shall conform to the requirements of state and federal wetland rules in force at the time of the proposed alteration.

5. The titles, headings and captions that have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

6. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

7. No Unit Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Unit(s) or the Common Area.

8. Whenever there exists a conflict between the provisions of This Declarant and the Articles or Incorporation or Bylaws of the Association, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles of Incorporation and Bylaws, the provisions of the Articles of Incorporation shall control. In the event of a conflict between the Act and this Declaration, the Act shall control.

9. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

10. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any Supplemental Declaration.

IN TESTIMONY WHEREOF, the Declarant has caused this document to be executed this the 26 day of August 2010.

DECLARANT: MID-STATE DEVELOPMENT, LLC

BY: Brandon Dabbs (SEAL)
Brandon D. Dabbs,

ITS: Member/Manager

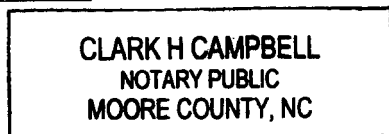
STATE OF NORTH CAROLINA ,
COUNTY OF Moore , to wit:

I, Clark H. Campbell, a Notary Public for the State and, County aforesaid, do hereby certify that **Brandon D. Dabbs**, Member/Manager of **Mid-state Development, LLC**, personally appeared before me, as proven by photographic identification, this day and acknowledged the execution of the foregoing instrument as a duly authorized act of the said Company.

This the 26 day August 2010.

Clark H. Campbell
Notary Public

(OFFICIAL SEAL)



my commission expires 8/27/12

Name: Clark H. Campbell

My Commission Expires: 8/27/12

CERTIFICATION OF VALIDITY OF AMENDMENT
TO COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CYPRESS CREEK TOWNHOMES, PHASE 1

Cypress Creek Townhomes Association, Inc.

Deleted: ASSOCIATION:¶

BY: *Dale L. Kidder* (SEAL)
Dale L. Kidder
President

NORTH CAROLINA
COUNTY of Avery, to wit:

I certify that the following person(s) personally appeared before me this day, and each acknowledged to me that he or she signed the foregoing document: Dale L. Kidder, President of Cypress Creek Townhomes Association, Inc., a North Carolina corporation, being so authorized.

Deleted: _____

Date: August, 2010

Deleted: June

Angela M. Banner
_____, Notary Public

(OFFICIAL SEAL)
My commission expires Jan 15th 2015



BY: Renee M. Anderson (SEAL)
Renee M. Anderson

NORTH CAROLINA
COUNTY of Moore, to wit:

I certify that the following person(s) personally appeared before me this day, and each acknowledged to me that he or she signed the foregoing document: **Renee M. Anderson.**

Date: August 27, 2010

Clark H Campbell
Clark H Campbell, Notary Public

(OFFICIAL SEAL)

CLARK H CAMPBELL
NOTARY PUBLIC
MOORE COUNTY, NC

My commission expires: 8/27/12