

Drawn by and return to:  
Calder and McWilliam, PLLC  
216 Highway 70  
Garner, NC 27529

DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
**MITCHINER HILLS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
is entered into on the date set forth below, between BBS Builders and Development Co., LLC  
(hereinafter called "Declarant") and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant, is the owner of all property within a subdivision in the  
County of Johnston, State of North Carolina, known as **MITCHINER HILLS**; and,

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and  
advantage of every party hereafter acquiring any of the described property that certain covenants,  
conditions, easements, assessments, liens and restrictions governing and regulating the use and  
occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property and for the continued maintenance and operation of such recreational and common area.

NOW THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

ARTICLE 1  
PROPERTIES SUBJECT TO THIS DECLARATION

The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Johnston County and is described as follows:

**Being all of Mitchiner Hills subdivision as depicted in Map  
Book 68, page 61.**

The Declarant hereby subjects the property, described above to this Declaration and the jurisdiction of the Association and to these Declarations.

ARTICLE 2  
DEFINITIONS

Section 1. "Association" shall mean and refer to MITCHINER HILLS Home Owner's Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities other than the Declarant, of a fee simple title to any Unit which is a part of the Properties, including contract sellers, but excluding those having such interest herein as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all property owned by the Association, which shall include property which the Association may hold subject to the provisions of the Declaration including medians in all public and private streets. Common Areas shall be defined and bounded on the plat(s) as "Common Areas" or "Common Space". Common Areas shall be conveyed to the Association free and clear of encumbrances prior to deeding the first Unit. Common Areas shall specifically include, but shall not be limited to, all water lines which serve the properties located outside of public rights-of-way, all sewer lines which serve the properties located outside of public rights and any utility easements (excluding those located in any Unit).

Section 5. "Permanent Open Space " shall mean any area on the recorded plat which has been set aside for the purpose of natural conservation..

Section 6. "Unit" shall mean and refer to any dwelling located on the Properties with the exception of the Common Area.

Section 7. "Declarant" shall mean and refer to **BBS Builders and Developers, LLC**, its successors and assigns if such successors and assigns should acquire more than fifty percent (50%) of the Properties from the Declarant for the purpose of development.

Section 8. "Common Expense" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of the common area and administration, maintenance, repair, or replacement of the Common Areas;
- (c) Expenses declared to be common expenses by the provisions of this Declaration of the Bylaws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration of the Bylaws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against common areas.
- (f) Expenses agreed by the members to be common expenses of the Association.

ARTICLE 3  
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area and over the common area for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.
- (d) the right of the Association to limit the number of guests of Members;
- (e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgage in said Properties shall be subordinate to the rights of the homeowners hereunder;
- (f) the right of the Association to adopt, publish and enforce rules and regulations as provided in Article 8.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to property to members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Conveyance. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area and Permanent Open Space to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Unit, except for possible utility or storm drainage easements.

Section 4. Parking. The Association may regulate the parking of boats, trailers and other such items on the Common Areas.

Section 5. TV Antennas and Cable vision. The Association may provide one (1) or more central television antennas for the convenience of the Members and may supply Cable vision and the cost of these may be included in annual or special assessments. The Association may prohibit the erection of satellite dishes on individual Units.

#### ARTICLE 4 MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separate from ownership of any Unit which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

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

- (b) Class B. The Class B member shall be the Declarant and such member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
- (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional lands are annexed to the Properties without the assent of Class A Members on account of development of such additional lands by the Declarant, as provided for in Article VII, Section Two, below, or;
  - (2) May 1, 2009

Section 3. At no time or under any circumstances shall fractional voting be permitted or allowed.

#### ARTICLE 5 COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvement, 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 charged 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 pass to Successors in title. All assessments relating to common areas and maintenance of the exterior shall be shared equally by the owners of each Lot.

Section 2. Purpose of Assessments. The assessments 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, improvements maintenance of the Common Areas, including the maintenance, repair and reconstruction of private streets, driveways, walks and parking areas situated on the 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, fees for 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 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, roofs, paving, and any other major expense for which the Association is responsible, and such other needs as may arise.



Section 3. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and use other portions of the Properties which the Association may be obligated to maintain. Such reserve funds to establish out of regular assessments for common expense.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$30.00.

- (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 five percent (5%) 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 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.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized below, 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 fixture 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 days (30) more than 60 days in advance of the meeting setting forth the purpose of the meeting.

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.

Section 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, 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 assessment for other Units.

Section 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 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 whether the assessment on a specified Unit has been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 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 rate of six percent (6%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same or foreclosure the lien against the property and in either event interest, costs and reasonable attorney'S fees of any such action shall be added to the assessment. Membership is mandatory; no Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his

Unit. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 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 shall not effect the assessment lien. However, the 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.

Section 11. Working Capital Fund. At the time of closing of the sale after construction of each unit, the sum of \$100.00 shall be collected and transferred to the Association to be held as a working capital fund. The Board of Directors shall have the discretion to require a \$100 working capital upon each subsequent transfer of the property. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

#### ARTICLE 6 ARCHITECTURAL COMMITTEE

An Architectural Committee shall initially be composed of Taylor Greene and James V. McLamb. Thereafter, the Board of Directors of the Association shall appoint an architectural committee composed of three (3) or more representatives.

## ARTICLE 7

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Architectural committee. In the event Architectural Committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE 8

## LAND USE AND BUILDING TYPE.

No lot shall be used except for single family residential purposes. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one, built on site, detached single family dwelling not to exceed three (3) stories in height, a private garage for not more than three (3) cars, and (with the approval of the Architectural Committee) an accessory building or structure for storage or other appropriate residential uses. No metal buildings or metal carports shall be allowed. No mobile or modular homes are permitted.

ARTICLE 9  
BUILDING DESIGN.

No building (including an accessory building or structure and a garage) shall be erected, placed or altered on any premises in said development until the building plans, specifications and plot showing the location of every such building, have been approved in writing as to conformity and harmony of external design with existing structures in the development, including without limitation, proposed exterior materials and colors, and as to location of the building with respect to topography and finished ground elevation by the Architectural Committee. In the event the Committee fails to approve or disapprove the design or location within thirty days after the plans and specifications have been submitted to it, or, in any event, if no suit to enjoin the erection of any such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. In the event that the Architectural Committee disapproves of the design or location of a building and if in such event the owner refuses to revise such design or change such location in order that it will be approved by the Architectural Committee, the Declarant will purchase such owner's lot within thirty (30) days after demand is made on the Declarant by such owner in writing. The purchase price shall be the same price as the price which the Declarant received upon the sale of the lot. Members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant.

Mobile homes, modular home, log homes, earthen or underground home, shell homes, pre-cut, pre-assemble and packaged homes or similar type buildings are prohibited, except that

the Declarant, its successors or assigns, may in its complete discretion, approve a dwelling or appurtenant structure with some of its components being pre-cut or pre-assembled

In the event of a total loss of the structure, the owner may elect not to replace it; however, the site shall be cleared of all debris, graded level with the contour of the land and grassed or strawed.

All telephone, electrical and other utility lines and connections between the main utility lines and the dwelling or other structures shall be located underground so as not to be visible. No one-story dwelling shall be permitted on any building unit which dwelling has a ground floor area of the main structure, exclusive of basement, porches and garages, of less than 1000 square feet of finished living area. No two story or story and one-half dwelling shall be permitted on any building unit which dwelling has a total floor area of the main structure, exclusive of basement, porches and garages, of less than 1150 square feet.

#### ARTICLE 10 BUILDING LOCATION

All buildings must be located on any building lot in compliance with Johnston County Planning set-back requirements. For the purpose of this covenant, eaves and steps shall not be considered a part of the building, provided that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. When any permitted detached accessory building is located at least 125 feet from the front property line, if the lot abuts two or more streets, then it shall be located at least 35 feet from the right-of-way line of the side street. The Declarant reserves the right to waive minor violations (up to 10 percent) of the setback and side

line requirements set forth in this Article. Nothing herein shall mean that the Architectural Committee cannot withhold its approval of the location of a building regardless of the fact that such building meets the requirements of this paragraph.

#### ARTICLE 11 LOT AREA AND WIDTH

All lots as shown on the recorded map hereinbefore referred to are hereby approved. Adjustments may be made, however, in the line between any two lots so long as the area of any lot is not reduced by more than ten percent (10 percent) and so long as all other restrictions herein set forth are observed. Upon any recombination of lots, the setbacks and side line clearances from new lot lines shall be applicable and setbacks from former lot lines shall no longer be required. No recombination of lots may be made in a manner which results in any increase in the number of lots above those existing when these covenants became effective.

#### ARTICLE 12 EASEMENTS

The Declarant reserves the right to subject the real property in this subdivision to a contract with the local supplier of electrical power for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the power company by the owner of each building unit. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear 10 feet of each lot unless shown in excess of such distances on recorded plat, in which case the plat shall control. Within these



easements, no structures, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

### ARTICLE 13 BUSINESS ACTIVITIES

No part of the said property shall be used for business, manufacturing, commercial or professional purposes. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No signs or billboard shall be erected or maintained on the premises other than temporary "for sale" signs. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a trade or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop, gift shop or automobile repair shop shall be carried on upon any lot. No trade materials or inventories may be stored or regularly parked on the premises. In-house businesses may be conducted so long as (1) the business is conducted solely by the homeowners or occupants, (2) no outside signs or other advertisement is done and (3) the business is not visited by customers or suppliers.

ARTICLE 14  
TEMPORARY STRUCTURES

No trailer, tent, shack, barn or other outbuilding, except a private garage for not more than three (3) cars and an accessory building or structure as authorized by the provisions of ARTICLE 3 shall be erected or placed on any lot covered by these covenants. Except with the prior consent of the Architectural Committee, no detached garage shall at any time be used for human habitation either temporarily or permanently.

No mail receptacle shall be erected unless approved by the Declarant. No fuel tanks or similar storage receptacles shall be exposed to view; i.e., they must be installed only within the main dwelling house, within another approved structure or buried underground in a safe and approved container.

ARTICLE 15  
TRUCKS, BOATS, TRAILERS

No trucks, pickups, boats, trailers or motor homes shall be parked on public streets of the subdivision. No tractor-trailer trucks, either with or without the trailer, shall be parked overnight anywhere in the subdivision. Any boats or recreational vehicle must be parked in the back yard and stored and screened in such a manner as to not be visible from the street. No cars which are not in working condition, regularly used, licensed and insured shall be parked overnight anywhere in subdivision.

ARTICLE 16  
GENERAL APPEARANCE

The owners of all lots shall be responsible for keeping such lot mowed, trimmed, and cleaned. Should any lot owner fail to maintain his or her property in a neat, clean, well-mowed manner, then the Architectural Committee shall have such lot maintained and the owner of such lot shall be responsible for the costs incurred by the Architectural Committee. Garbage cans shall be kept in the back yard and shall not be visible from the street. No satellite dishes of more than 24 inches in diameter shall be allowed. No satellite dish unit shall be install on any lot so as to be visible from the street, unless approved by the Architectural Committee. Window air conditioning units shall be installed so as to be visible from any street or recreational area.

ARTICLE 17  
CONSTRUCTION REQUIREMENTS

Each lot shall have one driveway leading from the street which shall be constructed with gravel or paved with concrete or asphalt or other material approved by the Declarant. Such pavings shall be completed simultaneously with the completion of the dwelling. The location of such driveway shall be approved in writing by the Declarant and shall not be installed without having obtained a permit from the Department of Transportation, if required.

During construction, Builders shall keep the building site free of trash and debris and shall provide their employees and agents with portable toilet facilities. If, in the opinion of the Declarant, a lot is being maintained in violation of the above standard, Declarant or its designees may, at the expense of the owner, have such conditions corrected. During construction of driveways or other land disturbing activities undertaken for landscaping purposes on any lot or street right of way in front of a lot, the lot owner undertaking such activity shall be responsible for installing erosion control

devices, if needed to control water pollution from sedimentation and to prevent accelerated erosion and sedimentation of lakes and natural water courses. These devices shall be constructed and maintained in accordance with the then current county erosion and sediment control ordinances. No construction debris, including concrete washout, shall be placed on any street right of way. Ditches or slopes of streets destroyed during construction activity shall be replaced by the lot owner responsible for such activity. No lot shall be cleared of naturally occurring trees or other vegetation without prior written approval of the Declarant.

#### ARTICLE 18 FENCES

No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum front building setback line established herein, except upon approval of the Architectural Committee. No metal fences shall be installed on any lot. No fence shall extend any closer to the street than rear corner of the house unless approved by the Architectural Committee.

#### ARTICLE 19 ANIMALS

No animals or poultry of any kind, other than house pets, shall be kept or maintained on any part of said property. No more than two dogs shall be allowed and all dogs kept outside must be securely fenced in. Any dog that is outside its fence must be leashed or held by its owner.

ARTICLE 20  
WAIVER OF VIOLATION

Declarant shall have the discretion to waive up to a 10% violation of these covenants as it pertains to building size or set back requirements. Any violation of these covenants, as it pertains to building size and set back requirements may be waived by agreement of the Declarant and the owners of the lots immediately adjoining the lot wherein the violation exists.

ARTICLE 21  
ROAD MAINTENANCE

The Declarant shall construct the roads within the subdivision to meet specification required by the North Carolina Department of Transportation for State maintenance of the roads, and Declarant shall maintain the roads in a condition acceptable to the Department until the State agrees to accept the roads for state maintenance. The owners of each lot shall be responsible for maintaining their property and the right of way in front of their property in compliance with DOT regulations, including, but not limited to the following:

1. Clean out the inverts of all driveway pipes that are more than 1/3 clogged and insure positive drainage.
2. Clean out the inverts of all cross line culverts that are not 100% open and insure positive drainage.
3. Replace all plastic and/or metal driveway pipes and culverts with reinforced concrete pipes or provide a minimum of 12" of cover.
4. Remove any sign which has not been approved by DOT.

5. Remove any debris, trees, large shrubs, large decorative stones, bricks, stakes, brick mailboxes, vehicles, basketball goals, etc. from with the right-of-way.
6. Clear drainage easements of any debris, fences and structures.
7. Insure that all driveway pipes have adequate cover.

ARTICLE 22  
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided herein in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the class a membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which 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 presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat. Provided, however, that all annexations of additional properties to the original development described in Exhibit A must contain a minimum of three (3) acres and be contiguous to the Properties.

Section 2. Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, duly executed by the Association if pursuant to Section I above, 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 the Town of if required by its ordinances.

Section 3. Prior to the conveyance of the first Unit in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Common Area within the lands annexed free and clear of all encumbrances and liens except utility, storm drainage and green way easements.

#### ARTICLE 23 INSURANCE

Section 1. Insurance coverage on the Property shall be governed by the following Provisions:

- (a) Ownership of Policies. All insurance policies upon the Common areas shall be purchased by the Association for the benefit of all the Association and the owners.
- (b) Coverage. All buildings and improvements and all personal property included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by

the Association with the assistance of the insurance company providing coverage.

Such coverage shall provide protection against:

- (1) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and
  - (2) Such other risks as from time to time shall be customarily covered with respect to buildings on the land.
  - (3) Such policies shall contain clauses providing for waiver of subrogation.
- (c) **Liability.** Public liability insurance shall be secured by the Association with limits of liability of no less than one Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- (d) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by Association and charged to the owners as an assessment according to the provisions of Article V above.
- (e) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the owners and their mortgages in the following shares:



- (1) Proceeds on account of damage to Common Areas and facilities held for the Association.
- (2) In the event a mortgagee endorsement has been issued for any Lot, the share of the owner shall be held in trust for the mortgagee and owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (a) Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made therefor.
- (b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their the Owner as their interests may appear duties in an amount equal to six (6) months, assessments plus reserves accumulated.

ARTICLE 24  
USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, 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 and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto. Nothing contained in this Article or elsewhere in this Declaration shall be construed to prohibit Declarant from the use of any lot, dwelling or improvement, or the recreational center, for promotional or display purposes or as a "model home", a sales center, or the like.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Permanent Open Space Use. No portion of the Permanent Open Space shall be used for any purpose other than foot traffic. That is, no building, walk-way or any type of structure shall be constructed in or left upon the permanent open space. The Association shall maintain the Permanent Open Space in a safe and clean condition. Landscaping, such as grass cutting and pruning of vegetation shall be permitted, but not required. No excavation of any soils shall be permitted. No portion of the Permanent Open Space may be used for storage of any

item of personal property. No portion of the Permanent Open Space shall be converted to Common Area or any other use without the express written consent of the County of Wake.

## ARTICLE 25 EASEMENTS

Section 1. All of the Properties, including Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessor in title, prior to the subjection of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, 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 and its agents and employees an easement and right of ingress, egress and regress across all Common Areas, now or hereafter owned by the Association, for the purposes of construction of improvements within the Properties.

Section 2. 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.

Section 3. There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to CATV, water, sewer, drainage, gas, cable television, telephones and electricity and a master television antennae system. By virtue of this easement, it will be expressly permissible to erect and maintain the necessary poles and other equipment on the properties and to affix and maintain electrical and television wires and conduits, sewer and water lines on, above or below any residence or lot owned by any owner.

Section 4. An easement is hereby reserved to Declarant to enter the Common Area during the period of construction and sale on the Properties and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale or rental of residences, including, without limitation, a business office, sales office, rental office, management office, storage area, construction yards, signs, displays and model units.

Section 5. Declarant also reserves the right to enter into the Common Area for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship of materials in the Properties or the improvements thereon.

Section 6. For a period of ten (10) years from the date of conveyance of the first Unit, the Declarant reserves a blanket easement and right on, over and under the Properties to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary following which the Declarant shall restore the affected property to its original condition as near

as practicable. The Declarant shall give reasonable notice of intent to take such action to the Association and all affected owners, unless in the opinion of the Declarant an emergency exists which precludes such notice.

## ARTICLE 26 GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions Of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or the right to do so thereafter.

Section 2. Membership in the Association as defined hereinabove shall be mandatory for each original purchaser and each successive purchaser of a dwelling unit or Lot.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. 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 during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Unit Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Unit

Section 5. 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 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 Units to be examined.)
- (b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF WEDGEWOOD

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

Section 6. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by Declarant to the Association.

Section 7. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Areas, and amendment of this Declaration or Covenants, Conditions and Restrictions.

Section 8. Rights of Note holders. Any institutional holder of a first mortgage on a Unit will, upon request, be entitled to:

- (a) inspect the books and records of the Association during normal business hours
- (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year
- (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings
- (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage
- (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage
- (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners, Association
- (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders
- (h) be furnished with a copy of the master insurance policy.

ARTICLE 27  
ELECTRICAL AND GAS SERVICE

Declarant reserves the right to subject the above-described Property to a contract with the local property of electric service, or such other utility as it sees fit, for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such utility company by the Owner of each Lot within said Property. Declarant further reserves the right to subject the above described Property to a contract with the local provider of natural gas service, for the installment of underground gas lines which may require an initial payment or continuing monthly payment to said gas service by the owner of each Unit within said Property.

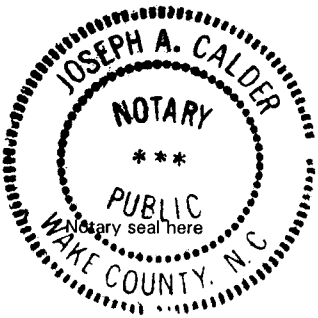
IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its company name by its duly authorized manager on this the 10<sup>th</sup> of April, 2006

**BBS Builders and Development Co., LLC**

By James V. McLamb  
Manager

State of North Carolina, County of Wake

I, a Notary Public of the County and State aforesaid, certify that James V. McLamb personally came before me this day and acknowledged that he is the manager of **BBS Builders and Development Co., LLC**, a North Carolina limited liability company, and that by authority duly given and as the act of the company, he signed the foregoing instrument on behalf of the company in such capacity. Witness my hand and official stamp or seal on this the 10 of April, 2006.



Joseph A. Calder  
Notary Public

My Commission Expires: 7-28-07