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JUDY G. PRICE, Register of Deeds  
Union County, Monroe, North Carolina

## WOODHALL

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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STATE OF NORTH CAROLINA

COUNTY OF UNION

**WOODHALL  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

Drawn by and mail to:  
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Woodhall LLC  
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**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** made this the 16<sup>th</sup> day of Aug 2001 by Woodhall Development Group, LLC which is seised of the fee simple estate in that real property located in Union County, North Carolina described in the following Article II, Section I;

**WITNESSETH THAT**

In order to (1) create a restricted, structured and high quality residential environment; (2) provide for high quality design of homes, site arrangements, and amenities; (3) assure a satisfactory integration of the Subdivision into the surrounding area; (4) enhance general development within the Subdivision; (5) enhance the value, marketability, and quality of all property within the Subdivision; (6) prevent construction of inappropriate Improvements; (7) provide for compliance with Applicable Laws concerning zoning, construction, safety, the public welfare and environment; (8) provide for an association of home owners within the Subdivision (which will own and maintain Common Area including Private Roads); and (9) provide the owners of Lots with the best possible value for their investment and to protect that investment; Woodhall Development Group, LLC, does hereby, for the use and benefit of itself and its successors and assigns, **DECLARE, RESERVE AND IMPOSE** upon the property described in the following Article II, Section I, the following conditions, covenants, reservations, easements and restrictions.

**ARTICLE I  
Definitions**

Words or phrases defined in this Article I shall be interpreted in accordance with that defined meaning whenever those words or phrases are used in this Declaration.

- (a) **Additional Property** - Any real property subjected to this Declaration in addition to that 139.770 acres (approximately) described in Article II, Section 1. The procedure for adding Additional Property is described in Article II, Section 3.
- (b) **Amenity Area** - Any area within the Property which Declarant may hereafter designate as Common Area for the purpose of erecting, at Declarant's cost, facilities or amenities for the common use of Owners, Occupants, their invitees and guests.
- (c) **Applicable Laws** - All enforceable laws, regulations and ordinances effective in the County of Union, the State of North Carolina, and the United States of America including all zoning

regulations as well as sign, street, tree and floodway ordinances; land use, environmental resources, hazardous materials laws; and such other laws of all appropriate jurisdictions as may effect the Subdivision.

- (d) **Architectural and Site Guidelines** - Those rules, regulations and guidelines promulgated from time to time by the Architectural Review Committee pursuant to the power set forth in Article VIII. All Architectural and Site Guidelines, whenever promulgated shall have the same force and effect as if they were originally set forth in this Declaration as Restrictions.
- (e) **Association** - Woodhall Home Owners Association, Inc., a North Carolina not-for-profit corporation which will be formed by Declarant.
- (f) **Buffers** - Berming or vegetative screening erected to obscure the line of vision, or the flow of sound or wind.
- (g) **Bylaws** - Bylaws shall mean the Bylaws for the Association as adopted by the initial Board of Directors of the Association and thereafter amended from time to time.
- (h) **Committee** - The Architectural Review Committee established pursuant to Article VIII.
- (i) **Common Area or Common Areas** - Common Area or Common Areas shall mean any Amenity Area, Entrance Monument, Entrance Gate, Private Roads, Private Road Easement, Pond and any other property designated on the Map as "Common Area", "Common Open Space", "COS", or like designation, and any other property designated as Common Area in this Declaration, any amendment or supplement hereto or deed from the Declarant (**the preceding listing and description of possible components of the Common Area is illustrative only**). Both before and after those dates when Declarant conveys Common Area to the Association, all Common Areas shall be maintained by the Association (subject to the rights of the Declarant provided for in this Declaration) for the common use, benefit and enjoyment of the Owners, or of only certain Owners to the exclusion of other Owners as designated in this Declaration. The Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision. Lots owned by Declarant may be converted to Common Areas at Declarant's election by the Filing of an amended Map indicating such conversion or the conveyance of the Lot to the Association by deed, reciting that the Lot is thereby made Common Area. The term "Common Area" as used in this Declaration includes all real estate that would be defined as "common elements" in the Planned Community Act at the time this Declaration is Filed.
- (j) **Declarant** - Woodhall Development Group, LLC, a North Carolina limited liability company, or an assignee of the powers granted herein to Woodhall Development Group, LLC. Matters which are listed in this Declaration as requiring the "approval", "consent" or similar affirmation by the Declarant, shall not require such affirmation after Declarant no longer owns any Lot in the Subdivision.
- (k) **Declaration** - This Declaration of Covenants, Conditions and Restrictions (and any future amendments or supplements) as executed by the Declarant and Filed.
- (l) **Entrance Gate** - Entrance Gate shall mean and refer to the gate system which is used to limit access to the Subdivision to Owners, invitees, Declarant, emergency vehicles and those other persons reasonably requiring access to the Subdivision. The Entrance Gate may be controlled by keypad, card, sensor device or any other mechanism or means reasonably determined to be appropriate by the Declarant or the Association. It is the Declarant's intention to maintain the

Entrance Gate closed 24 hours per day in order to limit access to the Subdivision. The requirements of Applicable Laws and the necessity of providing access to postal employees, delivery persons, trash service, and emergency service personnel may, however, limit the hours that the Entrance Gate may be kept closed. Hours will be determined in the discretion of the Declarant and the Association. The Entrance Gate will be installed, and thereafter operated, in compliance with the requirements of the Union County Emergency Services Director or any successor official with authority over such gates.

- (m) **Entrance Monument** - Entrance Monument shall mean and refer to any monument, decorated entrance walls or entrance signage, together with lighting, irrigation system, landscaping and other improvements which may be constructed as an entryway for the Subdivision.
- (n) **File** - Recording in the Office of the Register of Deeds for Union County, North Carolina.
- (o) **Improvements** - All buildings, out buildings, underground installations, roads, driveways, parking areas, fences, screens, retaining walls, stairs, decks, windbreaks, plantings, poles, signs, cuts and fills, and all other structures or landscaping improvements of every variety and nature.
- (p) **Lot** - Lot or Lots shall mean the separately numbered single-family lots depicted on the Map but not including any Common Areas.
- (q) **Map** - Map shall mean (i) the plats of Woodhall Filed in Plat Cabinet G, Files 600 and 601 in the Office of the Union County Register of Deeds, North Carolina; (ii) any Filed plats of other portions of the Property described in Article II, Section 1, for the purpose of subdividing those lands into Lots, dedicating roadways, Common Area, or any other purpose; (iii) any Filed plats of Additional Property subjected to this Declaration, and (iv) any revisions of such Filed map or maps.
- (r) **Mortgage** - Any deed of trust, security interest, lien or other encumbrance resulting from a monetary obligation of an Owner or other party in interest, which attaches to any Lot and is perfected or Filed.
- (s) **Occupant** - Any party, whether or not an Owner, who is regularly present upon a Lot pursuant to either express or implied license or right.
- (t) **Owner** - Any person or entity other than Declarant who holds the fee simple title to any Lot individually or as a co-owner.
- (u) **Parking Area** - Parking Area shall mean any parking lot which may be constructed for the common use, benefit and enjoyment of some or all Owners, their families, guests and invitees.
- (v) **Planned Community Act** - The North Carolina Planned Community Act, North Carolina General Statutes Chapter 47E.
- (w) **Pond** - refers to any naturally occurring or man-made pond or reservoir of water located within any Common Area.
- (x) **Private Road(s)** - Private Road(s) shall mean all roads, streets, cul-de-sacs and turnaround circles in the Subdivision, specifically including Woodhall Lake Drive, Cutter Court, and Deervalley Court. It is the intent of Declarant that the Private Roads shall not be offered to any municipality or the DOT for public maintenance and that after initial construction, the Private Roads shall be

maintained by the Association. Private Roads shall not include any common driveways which are employed solely for the use of a limited number of lots pursuant to a driveway easement and maintenance agreement whether such agreement is set forth in this Declaration or in a separate instrument.

- (y) **Private Road Easement** - Private Road Easement shall mean the non-exclusive perpetual easements over and upon those areas now or hereafter identified on the Map as "Private Road", "Private Rd.", or like description, which are granted to all Lots for the purpose of vehicular and pedestrian access, ingress and egress to and from all Lots. The Private Road Easements are also reserved unto the Declarant and the Association, their successors and assigns, for access, ingress and egress to the Lots and Common Area, for the installation of the Private Roads, and for the installation and maintenance of any utilities and drainage facilities. Declarant may, at Declarant's cost, modify or add to the Private Road Easements including the creation of one or more new roads over portions of the Property owned by Declarant.
- (z) **Property** - All that real estate described in Article II, Section 1, plus such other real estate which may be additionally made subject to this Declaration as provided in Article II, Section 3.
- (aa) **Rear Setback** - The Setback Distance from a rear (opposite the street side) boundary line of a Lot which shall be at least forty feet (40') on all Lots, subject to increase by the Committee. Approved Piers, Gazebos and irrigation systems are exempt from the Rear Setback.
- (bb) **Setback Distance** - The distance between either a Lot boundary line or the edge of a Private Road Easement right of way, to a line within the Lot and parallel to the boundary line or the right of way, and within which distance no improvements, as more specifically described in Article X, Section 5, are permitted. Setback distances shall be the larger of the setbacks (rear, side, street or waterfront) defined in this Declaration, or as noted on the Map for any specific Lot.
- (cc) **Side Setback** - The Setback Distance from a side boundary line of a Lot which shall be not less than fifteen feet (15'), subject to increase by the Committee.
- (dd) **Street Setback** - The Setback Distance from the edge of a street right of way (whether a public right of way or a Private Road) which shall be not less than forty feet (40'), subject to increase by the Committee. Any lot which is bisected by a Private Road will have a Street Setback on both sides of the Private Road.
- (ee) **Subdivision** - All property described in Article II, Section 1, any Additional Property added and made subject to this Declaration as provided in Article II, Section 3, and such residential lots, streets, Amenities, and Improvements as shall come to be constructed therein, also known as "Woodhall".
- (ff) **Utilities** - Those lines and services in the nature of electric, telephone, catv, water, sewer and natural gas which may be laid or distributed throughout the Subdivision.
- (gg) **Waterfront Setback** - The Waterfront Setback shall be 35' from the normal springtime water edge of a Pond. This is at the five hundred eighty nine foot elevation (589') contour line. Approved piers, gazebos and irrigation systems are exempt from the Waterfront Setback.

## ARTICLE II Property

**Section 1. Description.** The real property initially subjected to this Declaration is that 139.770 acres (more or less) shown on a plat entitled "Final Plat - Woodhall Subdivision" dated July 17, 2001, and recorded in Plat Cabinet G, Files 600 and 601 in the Office of the Register of Deeds for Union County, and being the same lands conveyed to Woodhall Development Group, LLC, by general warranty deed of Crane Road Venture, a North Carolina General Partnership Filed in Book 1376, Page 88 of the Union County Registry.

**Section 2. Subdivision Name.** The Property, the homes constructed therein and the amenities and infrastructure of the Subdivision shall henceforth, collectively, be known as "Woodhall".

**Section 3. Additions.** At any time hereafter, Declarant may add additional real estate to the Property, which additional real estate shall be subject to this Declaration upon the Filing of amended or supplementary declarations. Upon the Filing of such amended or supplementary declaration, the real estate added to the Property shall be subject to and entitled to the benefit of this Declaration and all terms of the subsequent supplementary or amended declarations.

**Section 4. Form of Amendment.** Each amendment or supplementary declaration as referred to immediately above shall contain the following provisions:

- (a) Reference to this Declaration and the date, book and page of its Filing in Union County, North Carolina;
- (b) A precise legal description of the additional real estate (if any);
- (c) Language subjecting the additional real estate (if any) to this Declaration and its subsequent amendments or supplementary declarations; and
- (d) Such other covenants, restrictions or easements as Declarant shall, in its discretion, additionally impose upon the subject real estate.

**Section 5. Adjacent Property Not Specifically Described.** From time to time, Declarant, its predecessors or successors, may hold title or other interests in real estate adjacent to the Property. Unless such adjacent property is specifically described or included in Article II, Section 1 or the legal description of future supplementary or amended declarations, such adjacent real estate shall not be deemed a part of the Property or the Subdivision.

## ARTICLE III Declaration

The Property shall hereafter be held, sold, leased, transferred, conveyed and encumbered subject to the herein contained covenants, conditions, restrictions, reservations, and easements which: (1) are made for the direct, mutual and reciprocal benefit of each and every portion of the Property and shall create mutual, equitable servitudes upon each part of the Property in favor of every other part of the Property; (2) create reciprocal rights and obligations between the respective Owners and privity of estate between all grantees

of portions of the Property, their successors and assigns; (3) shall operate as covenants running with the land; and (4) shall inure to the benefit of Declarant and each Owner. By acceptance of any deed conveying title to a portion of the Property, execution of a contract of purchase or acceptance of a lease or license concerning any portion of the Property or by taking possession of any portion of the Property; whether from Declarant or a subsequent owner or lessee, any future owner, lessee, licensee or occupant shall accept such deed, contract, lease, license or possession upon and subject to each and all of the covenants, conditions, restrictions, reservations and easements set forth herein. Each person or entity who hereafter owns or acquires any right, title or interest in or to any portion of the Property shall be conclusively deemed to have consented and agreed to the covenants, conditions, restrictions, reservations and easements set forth herein, and in all future supplementary or amended Declarations, whether or not any reference thereto is contained in the instrument by which such person or entity acquires an interest in the Property.

#### ARTICLE IV Common Area

**Section 1. Ownership of Common Areas.** Declarant shall, not later than the date when seventy five percent (75%) of all Lots have been sold to Owners, convey to the Association by Special Warranty Deed any Common Areas which are to be owned and maintained by the Association. The Declarant reserves the right to construct: (i) an Entrance Monument to be located at the entrance to the Subdivision; (ii) Private Roads, (iii) an Entrance Gate, and (iv) one or more Amenity Areas for the use and enjoyment of the Owners. All Common Areas shall remain private property and shall not be dedicated to the use and enjoyment of the general public. Maintenance (as opposed to initial construction) of Common Area shall at all times, including any periods before the Association makes an assessment, be the financial responsibility of the Association.

**Section 2. Owner's Rights to Use and Enjoy Common Areas.** Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) The Association shall have the right to promulgate and enforce reasonable rules and regulations concerning the Common Area for the convenience and the safety of Owners;
- (b) The Association shall have the right to suspend the voting rights of an Owner in the Association and to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against the Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The Declarant or the Association shall have the right to grant utility, drainage, and other easements across the Common Areas;
- (d) The Declarant shall have the right to bury stumps in the Common Area during initial construction of the Subdivision provided all such activity is done in compliance with Applicable Laws; and
- (e) The Declarant or the Association shall have the right to restrict the use of certain Common Areas to specific designated Owners as described in this Declaration.



**Section 3. Delegation of Use.** Any Owner may delegate, subject to the rules promulgated by the Association, the Owner's right of enjoyment to certain Common Areas and facilities located thereon to the members of the Owner's family, guests or invitees.

**Section 4. Rights in the Private Roads.** Each Owner, the Declarant, and the Association, their successors and assigns, are hereby granted the perpetual, non-exclusive right to use the Private Roads within the Private Road Easements for the purpose of pedestrian and vehicular access, ingress, egress and regress to and from each Lot and the Common Areas. The Private Road Easements created herein shall terminate to the extent that a portion of the Private Roads are accepted for maintenance by state or municipal authorities, at which time that portion of the Private Roads shall become publicly maintained roads and shall no longer be maintained by the Association. **It is expressly noted that: (i) neither the North Carolina Department of Transportation nor any other public road authority will accept maintenance of any roadways within a Subdivision which has a gated entrance in the nature of the Entrance Gate, and (ii) it is not the intention of Declarant to either dedicate the Private Roads for public use or offer the Private Roads for public maintenance. After construction by the Declarant, the Association will be responsible for cleaning, maintaining, repairing, and reconstructing the Private Roads.**

Declarant or the Association may, without notice, remove any obstructions of any nature located within the Private Road Easements (including but not limited to building materials, trees, shrubs, and mailboxes) which, in the opinion of the Declarant or Association, create a safety hazard.

**Section 5. Prohibited Activities in Common Areas or entire Subdivision.** Common Area shall not be used for off-road motorized vehicles including motorcycles, "four-wheelers", ATV's, or the like. No hunting or trapping of any wild life, including but not limited to ducks, geese, other birds, small game, or deer shall be permitted within the Common Area except by governmental wildlife officers for public safety or other public purpose.

The discharge of firearms is strictly prohibited within the Subdivision.

The Association shall have authority to create and implement reasonable rules from time to time concerning the use and enjoyment of all Common Areas.

**Section 6. Piers and use of Ponds.** The Owner of a Lot with a least seventy five feet (75') of frontage upon a Pond, may construct one pier extending into the Pond, which may include a roofed gazebo or deck. Plans and specifications for such Improvements must be submitted to the Committee and the construction must strictly comply with the approved plans and specifications with regard to size, location, materials and design. The Committee may adopt rules concerning piers including, but not limited to, the maximum permitted square footage of decking area and the maximum length a pier may extend into a Pond. Any private pier must begin on a Lot and not on Common Property.

Any waterfront Improvement shall have a reasonably low profile and open design to minimize obstruction of neighbors' views. Enclosed or multi-level decks will not be allowed.

Owners with Lots abutting a Pond may withdraw water from the Pond for reasonable irrigation purposes on their Lot, but such use will be immediately discontinued at any time the Declarant or Association determines that: [i] the Owner is withdrawing unreasonable amounts of water; or [ii] the Pond level is below that level desired for aesthetic purposes, fishing or any other reasonable Common Area purpose. Any pumps employed for drawing water must be quiet and not constitute a nuisance to other Owners.

Fishing by Owners and their household guests is permitted in any Pond, but: [i] live minnows shall not be used as bait, [ii] fishing shall be permitted only from sun up to sundown, [iii] seining, trapping and over-fishing of the Pond shall not be permitted, [iv] gasoline and other liquid fuel engines or motors are strictly prohibited on the Pond (electric trolling motors are permitted). Those using the Pond for fishing will not trespass upon the private property of other Lot Owners.

## ARTICLE V Home Owner's Association

**Section 1. Membership.** Every Owner shall be a Member of the Association. Membership is appurtenant to the ownership of each Lot and is only available to Declarant and Owners. Membership shall be extinguished upon the complete transfer of all Property held by any Member.

**Section 2. Classes of Membership.**

- (a) **Owners Class Membership.** The Owners Class Members shall consist of all Owners, but will exclude Declarant prior to its termination of its Founders Class Membership. If at any time, Declarant owns one or more Lots subsequent to the termination of its Founders Class Membership, Declarant shall then be an Owners Class Member.
- (b) **Founders Class Membership.** The Declarant or its successor or assign only, shall be the sole Founders Class Member. The Founders Class Membership shall terminate at such time as Declarant has conveyed seventy five percent (75%) of its interest in the Property (including any Additional Property).

**Section 3. Duties.** The Association will maintain in its files up-to-date copies of its organizational documents, the Declaration, rules concerning use of the Common Areas, financial records, records of the current ownership of the Lots, and such other documentation and records as are necessary for its management and oversight functions or as required by the Planned Community Act. All documentation maintained by the Association shall be available to the Owners for inspection during Association business hours upon reasonable notice. The Association may employ an individual or business entity to act as managing agent. The length of engagement and the compensation to be paid to such managing agent shall be determined by the Board of Directors of the Association.

Beginning on a date selected by the Association which shall not be earlier than July 1, 2001, (the "Assessment Start Date") the Association may begin collection of annual assessments from each Owner for maintenance of general Common Areas.

Prior to the Assessment Start Date, the Common Areas shall be maintained by the Declarant, but after such date, the Common Areas shall be maintained by the Association, except that Declarant reserves the right, at Declarant's discretion, to repair or maintain any portion of the Common Areas which Declarant, in good faith, determines is not maintained to acceptable standards and shall be reimbursed for such maintenance by the Association (but see Article VII, Section 11). Subsequent to the Period of Declarant control, any material change in the use of portions of the common Area, shall be made only upon an Eighty Percent (80%) vote of the Members. Additionally, a material change in the use of any Pond area shall be made only with the approval of at least a majority vote of the Lot Owners with frontage on the Pond.

Maintenance of Common Areas, which shall be the duty of the Association, includes (by way of example) the following:

- (a) Maintenance of any Entrance Monument, to include irrigation, plantings of both permanent and seasonal nature, lighting, mowing, weeding, other landscaping, utility charges for irrigation and lighting, maintenance of signage;
- (b) Liability insurance shall be acquired and maintained upon all portions of the Common Areas prior to any Lots within the Subdivision being sold. Such liability insurance will be purchased with such companies and in such coverage amounts as the Board of Directors may deem appropriate;
- (c) The Common Areas, including the Private Roads, open areas, and Amenities (if any), shall be kept in a clean and orderly condition, neatly mowed and landscaped with appropriate irrigation for any flower beds or decorative plantings. The Utility bills for lighting and irrigation and the cost of maintenance and repair of any pathways, facilities, and the like, shall be appropriate expenditures for the Association;
- (d) Private Roads shall be maintained by the Association in a state of good repair and maintenance, with at least eight inches (8") of stonebase and one and one-half inches (1½") of asphalt topping in good pot-hole free condition. The Private Roads shall, at all times, be maintained in compliance with all Applicable Laws specifically including any Union County ordinances concerning communities employing a system of private roads; and
- (e) Erosion and sedimentation controls for all maintenance and other activity on Common Area.

The Association is charged with the duty to establish and maintain adequate reserve funds for periodic repair, reconstruction or replacement of portions of the Common Area, specifically including the Private Roads, which may occur on an irregular basis.

## ARTICLE VI Voting

**Section 1. Owners Class.** The Owners of each Owners Class Lot shall be entitled to one (1) vote for each Lot owned. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be split or cast separately.

**Section 2. Founders Class.** The Declarant shall be entitled to ten (10) votes for each Lot owned by the Declarant.

**Section 3. Actions.** Special Assessments may only be assessed upon receiving fifty-one percent (51%) of a vote.

**Section 4. Period of Declarant Control.** For a period ending not earlier than two years following the recordation of this Declaration, and for so long as the Declarant owns at least two (2) Lots in the Subdivision, the Declarant shall have the authority to designate, appoint and remove members of the Association's Board of Directors and Officers. To the fullest extent permitted by the Planned Community Act, no Director or Officer appointed by the Declarant shall be removed by the Members or Board of Directors. The appointees shall serve until such time as their successors are duly elected and agree to

serve. The Declarant may appoint not less than three (3) but not more than five (5) Directors. If the Declarant chooses to appoint more than three (3), the remaining two (2) directors must be Lot Owners. The time period during which the Declarant holds the exclusive authority to appoint and remove members of the Board of Directors and Officers may be referred to in this Declaration and the Associations Bylaws as the "Period of Declarant Control".

## ARTICLE VII Assessments

**Section 1. Creation of Lien and Personal Obligation of Assessments.** Each Owner of any Lot shall, by acceptance of a conveyance thereof, whether or not it is so expressed in any conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration specifically including the duty to pay to the Association both Annual and Special Assessments ("Annual Assessments" and "Special Assessments") and charges as hereinafter provided. The Annual and Special Assessments and charges, together with such interest thereon and costs of collection as are hereinafter provided, shall be a charge and continuing lien upon the Lot against which assessment is made as of the effective date of said assessment. Each assessment, together with interest thereon and any costs of collection, shall also be the personal obligation of the person or entity who was Owner of such Lot at the time when the assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of any assessment.

**Section 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used for the improvement, maintenance, operation, repair, replacement of and additions to the Common Area, including, but not limited to, the payment of taxes and insurance thereon, the payment of utility charges related thereto (including water for any sprinkler or irrigation systems), maintaining, operating and improving (but not initial construction) of Private Roads and other Common Area facilities and amenities, collection and disposal of garbage, rubbish and the like, employing security service, maintenance personnel, and for the cost of labor, equipment, materials, and the management and supervision thereof. Declarant may employ a related entity or entities to manage the maintenance, operation and repair of the Common Area. In addition, the Association may use Annual Assessments for the purpose of doing any other things necessary or desirable, in the discretion of the Association, to keep Common Area facilities and amenities in neat and good order, to provide for the health, welfare and safety of the Owners and Occupants of the Property, to advance or maintain the general appearance and function of the Subdivision, and to carry out the goals described in the preliminary statement of this Declaration.

Without limiting the general statements set forth in the immediately preceding paragraph, Annual Assessments shall specifically be used as follows:

- (a) to repair, maintain, reconstruct (when necessary), keep clean and free from debris, the Common Areas (see Article V, Section 3 concerning Common Area maintenance) and any amenities and Improvements located thereon, including but not limited to the Private Roads, Entrance Monument, Entrance Gate (including gate opening devices, gate key pads, gate related telecommunication equipment, and any other equipment or utility service related to the use of the Entrance Gate) and to maintain the landscaping (including shrubs, trees and seasonal flowers) thereon in accordance with the highest standards for private parks, including any necessary removal or replacement of landscaping;
- (b) to maintain and repair the Private Roads;

- (c) to pay all costs except initial construction and installation, associated with any street lights, Entrance Monument, or similar Common Area amenities, including but not limited to, lease payments and utility costs;
- (d) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (e) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- (f) to pay all legal, accounting, and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- (g) to maintain contingency reserves as to the amounts described in subsections (a) and (b) above for the purposes set forth in this Section 2 in amounts determined by the Board of Directors of the Association.

By acceptance of any conveyance of any Lot, each Owner acknowledges that neither the precise location, acreage or dimensions of the Common Area, nor the type of amenities, Improvements and structures to be located within the Common Area (if any) will be specifically defined until such are conveyed to the Association.

**Section 3. Maximum Annual Assessment.** The initial maximum Annual Assessment shall be One Thousand Dollars (\$1,000.00) for each Lot, with fractions of the calendar year to be computed and prorated equitably. For each subsequent calendar year, the maximum Annual Assessment may be increased by the Association at the rate of up to twenty percent (20%) of the prior year's assessment. In the event the Annual Assessment is not increased by the maximum amount permitted during any calendar years, the difference between any actual increase in the maximum permitted increase for such years shall be computed, and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase otherwise permitted. The percentage limits on annual increases may be increased for one or more years, but only by a vote of no less than two-thirds (2/3) of the Lot Owners with the approval of the Declarant.

**Section 4. Supplemental Annual Assessment.** In the event the Association fixes the Annual Assessment in an amount less than the permitted maximum Annual Assessment, the Association shall have the right to later increase (the increase being a "Supplemental Annual Assessment") the total Annual Assessment for such calendar year if the Board of Directors determines that the required duties and functions of the Association cannot be funded by the originally determined Annual Assessment. The Association shall set the due date for such Supplemental Annual Assessment which shall not be less than 45 days following after the mailing of notice to the Owners of such Supplemental Annual Assessment. The original Annual Assessment and the Supplemental Annual Assessment shall not, under any circumstance, exceed the permitted maximum Annual Assessment for the subject calendar year.

**Section 5. Special Assessments.** In addition to the Annual Assessments hereinabove authorized, the Association may levy Special Assessments ("Special Assessments") for the purpose of defraying, in whole or in part, the cost of any reconstruction, unexpected repair or replacement of the Common Area, including the Private Roads.

**Section 6. Surplus Funds.** During the Period of Declarant Control, to the fullest extent permitted by the Planned Community Act, the Association shall have no obligation to reimburse any surplus funds to Owners, provided such funds must be retained for future use by the Association.

**Section 7. Declarant Obligation to Pay Assessments.** The assessments, charges and liens provided for by this Declaration shall not apply to the Common Property or any property owned by the Declarant.

**Section 8. Commencement.** Assessments shall commence on the date fixed by the Association, as the Assessment Start Date or upon purchase of a Lot from Declarant, whichever later occurs. Assessments shall be billed on a calendar year basis with appropriate prorations.

**Section 9. Due Date.** Unless otherwise provided herein, assessments shall be due and payable in full within 30 days after they are billed to an Owner.

**Section 10. Effect of Non-Payment of Assessment.** If any assessment is not paid on the date when due, then such assessment shall be delinquent and shall accrue interest thereon at the "prime rate" of interest announced from time to time by The Wall Street Journal, plus two percent (2%) per annum (such rate to change from time to time as The Wall Street Journal prime rate changes) never to exceed a maximum of 18% per annum, unless a lesser rate is required under Applicable Law in which event interest will accrue at the maximum required lesser rate. If such assessment is not paid within ten (10) days after the due date, then the Association may bring an action at law against the Owner directly and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessments all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessments as indicated above.

**Section 11. Right to Borrow.** The Board shall have the right and authority to borrow funds on behalf of the Association, evidenced by one or more promissory notes, for [i] payment of Common Area Maintenance prior to the time that assessments will cover the reasonable cost of such, and [ii] to pay the costs incurred in adding to recreational facilities or Amenities. Such loans shall be at such interest rates and upon such repayment terms as the Board approves, provided the Association at a called-meeting may grant authorization that limits the authority of the Board in these matters. The Board is specifically authorized to borrow from the Declarant for payment of Common Area maintenance.

**Section 12. Declarant's Obligation to Pay Assessments.** Declarant shall have no obligation to pay any annual or special assessments or other costs or expenses with regard to any Lot owned by it or with respect to assessments accrued as to any Lots to which Declarant obtains title, either due to breach of sales contracts, deeds in lieu of foreclosure, or by foreclosure.

## ARTICLE VIII Architectural Review Committee

**Section 1. Membership.** There is hereby established an Architectural Review Committee whose members will be appointed by the Declarant. The Committee will consist of not more than three (3) members. Declarant will select the initial membership of the Committee. These initial members need not have any specific professional certification and may be representatives of the Declarant. In the event of future vacancies upon the committee, Declarant shall appoint successor members. Declarant may also appoint members to terms of limited duration or replace any or all members at intervals. By written notice to the Association, Declarant may delegate its power to appoint members of the Committee to the Association. The power to appoint members of the Committee shall automatically be transferred to the Association immediately following the issuance of a certificate of occupancy for the last remaining undeveloped Lot in the Subdivision. After the power to appoint members of the Committee is transferred to the Association, at least one member of the Committee must be either a licensed architect, engineer, landscape architect or North Carolina licensed residential contractor with an "unlimited" license.

**Section 2. Duties and Powers.** The Committee shall: (1) review and act upon proposals and plans submitted to it by Owners pursuant to the terms of this Declaration, (2) adopt Architectural and Site Guidelines, and (3) perform all other duties delegated to and imposed upon it by this Declaration.

**Section 3. Architectural and Site Guidelines.** The Committee may promulgate certain rules, guidelines and statements of policy which will be known as the "Architectural and Site Guidelines." At all times, the Committee shall maintain copies of the most recently adopted Architectural and Site Guidelines in writing so that copies are available, upon request, to all Owners. Said Guidelines may interpret and implement the provisions of this Declaration by detailing the standards and procedures for review, guidelines for building and site design, landscaping, lighting, parking, exterior materials which may be used, or are required, within the Subdivision. Such guidelines may be interpretations and expansions of, but not in contradiction to, the terms of this Declaration.

Any Architectural and Site Guidelines as well as all such rules, guidelines and statements of policy as may be approved and adopted, from time to time, by the Committee as Architectural and Site Guidelines shall be deemed incorporated as a part of this Declaration.

**Section 4. Right of Inspection.** Members and agents of the Architectural Review Committee, and the Declarant and its agents may, at any reasonable and safe time enter upon the Lot of an Owner for the purpose of inspecting the Improvements and site development and their compliance with the Architectural and Site Guidelines.

**Section 5. Variances.** The Committee is hereby authorized and empowered to grant reasonable variances from the provisions of this Declaration or the Architectural and Site Guidelines in order to overcome specific development problems or hardship caused by strict application of the provisions of either this Declaration or the Architectural and Site Guidelines. Such variances, however, must not materially injure any of the Property, Amenities or Improvements in the Subdivision and must be made in furtherance of the spirit and purpose of this Declaration. The committee is specifically empowered to, at its sole discretion, grant variances of setback requirements up to ten percent (10%) of the total Setback Distance required. The Committee will not, however, grant any variance for setbacks less than those required by applicable zoning ordinances unless the Owner also obtains a variance from the appropriate governmental authority empowered to grant such variances.

**Section 6. Limitation of Scope of Approval.** Approval by the Committee of any Improvement or use for a designated Lot shall not be a waiver of the Committee's right to reject a similar or identical Improvement or use upon another Lot (or the same Lot at another time) if such Improvement or use is of a nature that it may be rejected under the terms of this Declaration or the Architectural and Site Guidelines. Similarly, in light of the purpose of this Declaration, approval by the Committee of any specific set of plans does not bind the Committee to approve an identical set of plans submitted at another time.

## ARTICLE IX Review Procedures

**Section 1. Meeting.** The Committee may meet informally, by meeting, telephone, written communication, facsimile transmissions or such other means as the members may agree upon and as may be sufficient to conscientiously, and fully, perform its duties.

**Section 2. Materials to be Submitted for Site Plan Approval.** Before initiating any construction, alteration of existing Improvements, grading or any site or structural work upon any Lot, the Owner must

first submit construction, site and landscape plans plus such other materials as the Committee may request. At a minimum, the plans shall show in detail:

- (a) The grading work to be performed on the Lot;
- (b) The nature, materials and location of all Improvements including buildings, paving, plantings and screening;
- (c) Setback Distances; and
- (d) The location of Improvements on adjoining Lots.

The plans shall provide specific detailed information concerning (1) landscaping for the Lot, (2) exterior lighting and (3) a building elevation plan showing dimensions, materials and exterior color scheme.

**Section 3. Filing Fee.** In addition to any assessments provided for in this Declaration, a nonrefundable fee of two Hundred Dollars (\$200.00) shall be payable to the Association **at the time of closing** for every Lot purchased from the Declarant (the "Initial Architectural Review Fee"). The Initial Architectural Review Fee is to defray a portion of the cost incurred for the Committee to review the plans for the initial residence and other Improvements to be built upon the Lot. Reasonable fees may be charged by the Association for subsequent review of proposed plans for additions, additional Improvements, or changed plans. If the original Owner of a Lot does not submit any plans for review by the Committee and sells the Lot, the Initial Architectural Review Fee paid by the original Owner will be applied for the benefit of the successor Owner.

**Section 4. Approval Criteria.** The Committee shall have the right to disapprove plans, specifications or details submitted to it for any of the following reasons:

- (a) The submission fails to comply with the terms of this Declaration or the Architectural and Site Guidelines;
- (b) Insufficient information or failure to provide detail reasonably requested by the Committee;
- (c) The submission fails to comply with the appropriate zoning ordinance or other Applicable Laws that may be in effect from time to time;
- (d) Objection to the grading plan for any portion of the Lot;
- (e) Objection to the color scheme, finish, proportions, style, height, bulk or appropriateness of any structures; or
- (f) The plans are not sealed by an engineer.

**Section 5. Time for Review.** Upon submission of all detail reasonably requested by the Committee (received in the office of Declarant or other office as designated by Declarant), the submitting Owner shall receive, in writing, the decision of the Committee within fifteen (15) business days. Failure of the Committee to render a written decision within fifteen (15) business days shall be deemed approval of the submission.



**Section 6. Certification of Approval.** Upon the request of Owner, the Committee shall confirm its approval of the Owner's plans by issuing a written letter or certificate describing the specific Lot and plans which have been approved, or by "stamping" the approved plans.

**Section 7. Approval is not a Warranty.** Approval of the plans submitted by any Owner or other party to the Committee shall not be construed as a certification or warranty, by either Declarant or the Committee, that (1) the plans meet with any minimum standards of suitability for use, (2) are acceptable under any Applicable Laws, (3) conform to any other standards of quality or safety or (4) describe Structures or development which would be safe, prudent or feasible. Neither Declarant, the Committee, nor any member thereof shall be liable for any damage, loss or prejudice suffered or claimed by any person on account of the approval or disapproval of any preliminary plans, plans, drawings or specifications, construction or performance of any work or the development of any Property within the Subdivision.

**Section 8. Commencement of Work.** Beginning with the approval of the Committee as described in this Article IX, the Owner or other parties submitting plans shall, as soon as practical, satisfy all conditions of the Committee and proceed with all approved work described in the plans and such other work as may be necessary for improvement of the Lot in accordance with this Declaration. Commencement of Construction must begin within one hundred eighty (180) days from the date of such approval or, the approval of the Committee shall lapse. The Committee may, at its discretion and upon the request of Owner, extend the one hundred eighty (180) day period for Commencement of Construction in the event that good cause is shown for such extension.

**Section 9. Completion of Work.** All Improvements upon the Lot, including alteration, construction and landscaping shall be completed within twelve (12) months after the Commencement of Construction upon the Lot. This time period may be extended in the event that work or completion is rendered impossible due to strikes, fires, national emergencies, force majeure or other supervening forces beyond the control of Owner, lessee, licensee, Occupant or their agents. Installation of large items of shrubbery or trees may be delayed beyond the 12 month completion period in order to plant during the best seasons for such plantings. Installation of sod and seeding of rear yards shall, however, be completed within the 12 month period.

## ARTICLE X

### Improvements, Uses and Restrictions

**Section 1. Land Use, Building Type and Residential Restrictions.** All Lots in the Subdivision shall be used only for Common Area or private residential and recreational purposes. No structure shall be erected or permitted to remain on any Lot other than a single family residential dwelling, together with outbuildings customarily incidental to the residential use of the Lot and not rented or otherwise used for a commercial purpose, unless otherwise provided herein. No mobile home, modular home or shell home may be erected or permitted to remain on any Lot.

**Section 2. Garages.** All Dwelling Units shall have a private garage accommodating at least three (3) vehicles under roof. The garage exterior shall be of the same materials as the primary residence and shall be constructed at the same time as the primary residence.

**Section 3. Dwelling Size.** The square footage requirements hereinafter set forth refer to enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports and unheated storage areas, decks or patios.

For All Lots: No primary dwelling erected upon any Lot shall contain less than four thousand square feet (4,000 sq. ft) of enclosed heated floor area.

In addition to the primary dwelling, not more than one (1) guest house shall be permitted per Lot. A guest house may not be more than 50% of the size of the primary dwelling upon the Lot.

**Section 4. Building Construction and Quality.** All buildings and outbuildings erected upon any Lot shall be constructed of new material (excepting antique brick and the like) of good grade, quality and appearance and shall be constructed in a high quality, workmanlike manner. No building shall be erected unless it is completely underpinned with a solid brick, or stucco, brick or stone-covered foundation. No exterior surface of any building shall be of asbestos shingle siding, imitation brick or other roll siding, aluminum or vinyl siding, exposed concrete, cement blocks or logs. The exterior surface of any guest house, garage, barn or outbuilding erected on any Lot shall be architecturally compatible with, and of the same materials and general design as the exterior surface of the primary dwelling located on said Lot. All buildings shall have roofs (except for dormers, porches and bay windows) of not less than 8 in 12 pitch and not less than 12 inch overhang, covered with slate, cedar shakes, tile, architectural fiberglass shingles, or high quality metal roofing materials or other materials specifically approved by the Committee.

Notwithstanding the prohibition on the use of vinyl siding for the exterior surface of buildings, soffit and associated boxing may be vinyl clad or of vinyl material.

**Section 5. Temporary Structures.** No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, except that nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto the Lots owned by Declarant, to be used for storage or construction or sales offices.

**Section 6. Building Setback Lines.** No building on any Lot (including any stoops, porches, or decks, whether attached or unattached) shall be erected or permitted to remain within any Side Setback, Street Setback, Rear Setback or Waterfront Setback as defined in this Declaration or as noted on the Map. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements. No masonry mailboxes or other Improvements may be constructed or placed within any Private Road Easement.

Trees and shrubs within the Waterfront Setback are considered to be "protected" vegetation and cutting and clearing generally is not permitted therein without the prior written consent of the Declarant or the Association. Dead or diseased trees may, however, be removed, individual trees may be limbed up, and understory may be thinned to provide better views. See also this Article X, Section 15, concerning the Owners duty to maintain the Waterfront Setback. Declarant and/or the Association shall have the authority, but not the obligation, in their sole discretion, to assess a fine against an Owner who cuts, damages, or removes any trees or shrubs on its Lot, any other Lot, or the Common Area contrary to the above provisions.

**Section 7. Minor Setback Violations.** In the event of the unintentional violation of any of the building setbacks set forth in this Declaration by an amount of ten percent (10%) or less, Declarant reserves the right, which right shall be vested in and may be exercised by the Association after Declarant's Founder's Class Membership in the Association has converted to Owner's Class Membership, but is not obligated, to waive in writing such violation of the setback upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation, or, if in violation, provided that a variance or other similar approval has been received from the appropriate governmental authority.

**Section 8. Combination or Subdivision of Lots.** Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. However, a Lot Owner may combine with a portion or all of another contiguous Lot so long as the parcel or parcels which result from such combination do not violate any zoning ordinance or other Applicable Law. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this Article X, but shall continue to be considered as two Lots for all other purposes (including voting and assessments). Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Owners may not, without the approval of Declarant and a 75% majority of all other Owners, dedicate any portion of a Lot for public access or for use as a private road other than a shared driveway to be used by one adjoining Lot.

**Section 9. Utility Easements.** Declarant hereby reserves easements for the installation and maintenance of utilities (electricity, sewer, water, gas, telephone, catv, street lights, etc.) and drainage facilities (including simple swales) over the front and rear twenty feet (20') of each Lot and fifteen feet (15') in width along each side lot line of each Lot. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the construction and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority, utility company, or the Association.

Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for driveways, road drainage, utility and signage installation purposes by the recording of appropriate instruments and such easements shall not be construed to invalidate any of these covenants.

**Section 10. Entrance Monument Easement.** Declarant hereby grants, establishes and reserves, for the benefit of Declarant and the Association, and their successors and assigns, a non-exclusive perpetual easement (the "Entrance Monument Easement") for the purpose of erecting and maintaining the Entrance Monument for the Subdivision over any portion of the Subdivision identified as "Entrance Monument Easement" on the Map.

Declarant or the Association shall have the right to enter, landscape and maintain the Entrance Monument Easement as an entryway to the Subdivision. Further, Declarant or the Association may erect and maintain one or more monuments, with an entrance sign thereon and may erect and maintain lighting, planters and other Improvements typically used for an entryway.

**Section 11. Stormwater Drainage Easement.** Declarant hereby establishes and reserves over the Common Areas an easement for drainage of stormwater runoff from the Lots and Private Roads within the Subdivision.

**Section 12. Fences and Walls.** No fences or walls may be constructed upon any Lot within the Waterfront Setback (including down the Lot side line within the Waterfront Setback). No fences or walls greater than six (6) feet in height are permitted, but columns, accents, or entranceways in excess of six feet (6') are permitted if approved by the Committee. Chain link fencing is not generally permitted but, if approved by the Committee, coated chain link fencing may be used for enclosing tennis courts or similar recreational areas.

Between the front lot line and the front face of the primary dwelling, walls and fences shall be of brick, stone, decorative wrought iron or high quality aluminum or other metal fencing made with the appearance of wrought iron. To the rear of the primary dwelling, fencing may be wooden, pvc, vinyl-clad, split rail, or other material as approved by the Committee. Welded wire mesh may be installed on split rail and similar fencing to the rear of the primary dwelling.

The restrictions described in this Section 12 shall not apply to any Improvements installed by Declarant on any Common Area. See Article X, Section 20, concerning fencing of horse pasture.

**Section 13. Signs.** No signs may be erected or displayed on any Lot except for the following, which may not exceed five (5) square feet in size: (a) one sign on the Lot only advertising the Lot for sale or rent; (b) one sign on the Lot only used by a builder to advertise the Lot during the construction and sales period (such sign may list subcontractors, suppliers, lenders, architects, engineers and like parties involved in the construction of Improvements on the Lot but all such parties are limited to being listed together on one sign, not separate signs); and (c) political or similar temporary signs. Strictly prohibited are the following: (a) separate signage listing subcontractors; (b) signage advertising services or goods for sale, specifically including construction services; and (c) general advertising in the nature of handbills.

Declarant, or the Association, shall have the right to require that "for sale" signs of Owners or their agents or representatives comply with reasonable size and design criteria for the purpose of making all such signage of a uniform character and appearance throughout the Subdivision. Specifications for such signage may be adopted as part of the Architectural and Site Guidelines and such signage shall thereafter be the exclusive sales signage permitted for use in the Subdivision.

These restrictions do not apply to the Entrance Monument, to temporary entry signs or advertising by Declarant, or "for sale" signs installed by Declarant or its agents prior to the sellout of the Subdivision. Declarant reserves the right to erect and maintain such signs designating streets, Amenity Areas, and such other signs that will aid in the development of the Subdivision.

Use of unapproved signage (specifically including the standard or proprietary signage of realtor or brokerage companies, or generic retail or hardware store "for sale" signs) shall be a violation of this Declaration and the Declarant or the Association may levy a fine of not more than One Hundred Fifty Dollars (\$150.00) per day for such violation. Such fines shall be assessments and shall constitute a lien upon the Owners Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court of Union County. Owners are strictly responsible for all signage erected by their agents (including brokers or realtors), contractors, subcontractors, suppliers, and any other parties employed directly or indirectly by Owner, or who provide services or materials to the Owners Lot. Declarant or the Association may enter onto a Lot at any time to remove signage which is in violation of this Article X, Section 13.

**Section 14. Antennas; Satellite Dishes or Discs.** Except as hereinafter provided, no transmission or reception towers, antenna, dishes or discs shall be erected or maintained on any Lot. The following are specifically permitted:

1. Any antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, of one meter or less in diameter;
2. An antenna designed to receive video programming services via multi-point distribution services, including multi-channel, multi-point distribution services, instructional television fixed services, or local multi-point distribution services, of one meter or less in diameter or diagonal measurement; or

3. An antenna designed to receive television broadcast signals.

A roof-mounted antenna may be mounted on the roof of the house; provided, however, no antenna or related structures may be mounted on masts exceeding twelve (12) feet in height above the highest roof line ridge of the house. Any dish, disc, or antenna (with associated mast if any) shall be reasonably screened from view from the street, and shall not be located in the area between the street right-of-way line and the front of any house or within the setbacks applicable to the Lot. No antenna, discs or like transmission or reception device shall be mounted on a free standing tower without the express consent of the committee.

**Section 15. Maintenance and Trash Disposal.** It shall be the duty of Owner to keep and maintain all of the Lot, except as expressly stated otherwise herein, including those areas within setbacks, utility easements, and the like. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the Improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty.

The Owner shall keep the entire Lot safe, neat, free of hazards and shall comply with all fire, zoning, health, environmental and other Applicable Laws as may apply to the Lot. Owner shall keep the Lot clean and free of all unsightly scrap, rubbish or other materials at all times, including the construction period.

All Owners of Lots which adjoin any Pond shall maintain the thirty foot (30') strip of land adjacent to the normal water's edge of the Pond (notwithstanding Article IV, Section 1, this strip may include a portion of Common Area) reasonably free from debris, brush, vines or bramble.

**Section 16. Off-Road Parking.** The residence on each Lot shall be served by a driveway constructed of concrete, asphalt, brick or other hard finished surface approved by the Committee. If any driveway crosses a drainage ditch or swale, the Owner is required to install, at the Owner's expense, any necessary piping or culverts before the commencement of any other construction or grading on the Lot. Specifications for any such piping or culvert must be approved by the Committee and installed in accordance with the approved specifications.

Owners shall not park any vehicle in the Private Roads or other Common Area. All automobiles must be parked in a carport, enclosed garage, or driveway. From time to time guests, however, may park automobiles in the Private Roads when an Owner conducts social functions and the like. This limited right of street parking may be restricted by reasonable rules adopted by the Committee if such parking creates a bona-fide nuisance or safety hazard.

Unless parked within an enclosed garage, no truck, limousine, or commercial vehicle in excess of one-ton load capacity, any vehicle under repair, or wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot or Common Area, including the Private Roads. Notwithstanding the preceding sentence, vehicles of bona fide contractors engaged in repairs or construction at the Lot may be parked during working hours in driveways (but not in the Private Roads). No trailer, motor home, recreational vehicle or camper shall be used as a residence, either temporarily or permanently, or be parked upon or be permitted to remain on any Lot for a period exceeding 24 hours unless it is parked in an enclosed garage. Any trucks, trailers, campers, motor homes, recreational vehicles, automobiles or other vehicles which do not have a current license plate affixed must be stored in an enclosed garage.

Unless parked within an enclosed garage, no "large" boat and/or boat trailer (over 28 feet in length), shall be kept upon any Lot. Boats or boat trailers less than 28 feet in length, not stored within an enclosed garage, must be stored to the rear of the house, but not within any Side Setback or Rear Setback.

The Committee shall, at its sole discretion, have the right to waive the restrictions of the two preceding paragraphs in this Article X, Section 16, in the event an Owner presents plans for aesthetically appropriate screening which will permanently screen the vehicle or boat from all other Lots and the Private Streets. Such waiver will be expressly conditioned upon the construction and maintenance of the proposed screening.

**Section 17. Individual Wells.** Not more than one well may be maintained on a Lot. All wells must be properly permitted and must comply with all Applicable Laws. Owners will not drill any well within one hundred feet (100') of any sewer trunk line or other sewer line constructed by Declarant.

**Section 18. Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot or in any residential dwelling or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of the surrounding property.

**Section 19. Horses and Pets.** No livestock or poultry of any kind shall be raised, bred or kept on any Lot or in any residential dwelling or outbuilding with the exception of horses and reasonable numbers of dogs, cats and other household pets, which may be kept provided they are not kept, bred or maintained for commercial purposes. All animals must be kept and maintained in compliance with Applicable Laws. Dogs must be kept on leashes when off of the Owner's Lot. Dogs shall not be permitted to roam the Subdivision. Declarant or the Association may have strays or other unleashed dogs not on their Owner's Lots picked up by animal control authorities.

A Lot must contain a minimum of 1.25 acres of fenced pasture for each horse. At least one (1) acre of each Lot will be presumed dedicated to the primary dwelling (and therefore not pasture) for purposes of determining the number of horses that may be kept on a Lot.

**Section 20. Horse Barns.** A barn must be provided for all horses kept on a Lot. The barn's exterior shall be constructed of the same materials as the primary residence and shall have a complimentary design, including but not limited to the same roof pitch, roof materials, and trim color. Each Lot Owner shall have a continuing duty to maintain the area surrounding the barn and the pasture areas free from litter, debris, excessive manure and the like. Manure cleaned from the barn shall be removed off-Lot at least weekly so as to avoid any nuisance or unreasonable odor to the neighborhood.

**Section 21. Horse Pasture and Fencing.** All horse pasture must be fenced. No horse pasture fencing shall be nearer than seven and one half feet (7 ½') to a Lot boundary line.

Sufficient grown-in pasture must be established before any horses may be kept on a Lot. When an Owner believes that his or her pasture is sufficiently grown in, the Owner will notify the Committee in writing (a fax transmission actually received is sufficient). The Committee will have up to seven (7) days to inspect the pasture and notify the Owner if, in the Committee's reasonable opinion, the pasture is not sufficiently established to begin grazing. If the Committee does not consider the pasture to be sufficiently grown in to support grazing, it shall provide the Owner with specific reasons. A failure of the Committee to respond within seven (7) days from receipt of written notice by the Owner shall be deemed to be approval of the pasture. Horses will not be kept in a pasture until that pasture is approved by the Committee.

Once a pasture is established, it shall be the duty of the Owner to maintain the pasture's appearance and function. Horse pasture must be divided into at least two (2) roughly equivalent sections by cross fencing so that the grazing areas may be rotated and no portion of the pasture becomes overgrazed. It is the affirmative obligation of the Owner to prevent overgrazing of Pasture. If an Owner fails to meet this

obligation, the Association, at its sole discretion, may require the Lot Owner to remove horses from the Lot, and board them elsewhere at the Lot Owner's expense, until the pasture has recovered.

**Section 22. Diligent Construction, Construction Site Hygiene.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. No construction materials of any kind may be stored within any Private Road right of way.

Any damage to any street, curb, shoulder, side ditch, street planting, or any part of any Common Area or any utility system caused by Declarant, an Owner or any builder shall be repaired by such responsible party. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its out of pocket expenses in making such repairs.

The Owner of each Lot and any builders shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements on the Lot or Common Area. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. All Owners and builders shall, consistent with standard construction practices: (i) keep all portions of the Lots and Common Areas free of unsightly construction debris; and (ii) shall at all times during construction provide adequate dumpsters for the containment of garbage, trash or other debris occasioned by construction. Each Owner and any Owner's builder shall be responsible for erosion control protection during any earth-disturbing operation. Builders shall provide a porta-john on each Lot job site at all times until a certificate of occupancy is issued. All porta-johns shall be serviced not less frequently than weekly and shall be maintained in a sanitary odor-free condition.

**Section 23. Grading Rights.** Until such time as the Owner's plans have been approved by the Committee, Declarant may make cuts and fills upon any Lot or other portion of the Subdivision and do such grading, panning and earth moving, as in its sole reasonable discretion, may be necessary to improve or maintain the streets within the Subdivision or to drain surface waters therefrom.

**Section 24. Violations.** In the event that any Lot is developed other than in strict conformity with this Declaration and the approval of the Committee, such development must be removed or altered so as to be in compliance. Any unauthorized use of the Lot must be ended so as to extinguish any violations of this Declaration or the approval granted by the Committee. At any time a violation of this Declaration or the approval granted by the Committee may be found to exist, regardless of the length of time of such violation, the Declarant or the Committee may deliver written notice of such violation to the Owner of the Lot in violation and any other responsible parties. If reasonable measures have not been taken by the Owner or other responsible parties to terminate the violation within ten (10) business days, the Declarant or Committee may, through agents or employees, enter onto the Lot and take such measures as may reasonably be necessary to abate the violation. Such entry shall not be deemed a trespass and those parties entering on behalf of Declarant or the Committee shall have no liability to the Owner or other parties having an interest in the Lot for any entry taken in connection with the abatement of a violation. All costs and expenses, including legal fees, permits, mobilization costs and insurance plus a fifteen percent (15%) allowance for general overhead and intangible costs, shall be a binding obligation of the Owner of the Lot in violation. In addition, all costs shall be a lien upon the Lot, enforceable in the same manner as an assessment made upon the Lot.

During the Period of Declarant Control, if any Owner: [i] constructs Improvements in material violation of the plans and specifications approved by the Committee; [ii] constructs Improvements in material violation

of this Declaration; or [iii] conducts activities upon its Lot in material violation of this Declaration; then such violating Owner may be fined by the Association not more than One Hundred Fifty Dollars (\$150.00) per day for each day the violation exists following the tenth (10<sup>th</sup>) day after Declarant or the Association has provided written notice of the violation to the violating Owner. In the event a cure of the violation would reasonably require more than ten (10) days, the Association shall not impose a fine so long as the violating Owner is expeditiously working in good faith toward a cure of the violation, such stay of the fine not to last longer than 30 days. In the event the violating Owner was warned of a potential violation prior to completion of the violating Improvement, but proceeded to install the Improvement notwithstanding the warning, the imposition of fines shall not be stayed and will be effective immediately after the tenth (10<sup>th</sup>) day following written notice.

**Section 25. Construction.** Construction of all Improvements and other development upon the Lot shall be the responsibility of the Owner. Neither Declarant nor the Committee shall have any responsibility whatsoever for monitoring or control of construction.

There shall be no occupancy of any residence until such time as the residence and all other completed Improvements and work upon the Lot (including driveways and required secondary buildings such as garages) are inspected and approved by the Committee as being in accordance with the plans approved by the Committee. Upon written notice of the completion of a residence, the Committee shall have ten (10) days to make such reasonable inspections as it deems necessary. In the event that the Committee discovers that Improvements or other work upon the Lot have been done other than in accordance with the plans approved, the Committee shall give Owner written notice of such violations. Tree and shrub elements of landscaping may be installed subsequent to occupancy if delayed planting would provide a more favorable planting season.

**Section 26. Utility Lines.** No above ground utility service lines shall be constructed within the Subdivision. Only distribution lines supplying service to the entire site of the Subdivision may be located above ground.

**Section 27. Non-Waiver.** No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

**Section 28. Private Road Easement.** Declarant specifically establishes, reserves, and grants to the Owners of the Lots, the Association and Declarant, their heirs, successors and assigns, non-exclusive, perpetual easements over the Private Roads, in the widths and in the locations shown on the Map, for the purpose of pedestrian and vehicular access, including golf carts and bicycles, as well as ingress and egress to the Lots and Common Areas, and for the installation and maintenance of paved roadways and of utilities and drainage facilities. Within the Private Roads, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the roadways located therein or the other utilities or drainage facilities installed therein.

**Section 29. Mailboxes.** Mailboxes shall be of a design, color and material designated by the Declarant or, if the Declarant so delegates, by the Committee, and may not violate North Carolina Department of Transportation standards.

**Section 30. Driveways.** All connections of private driveways to the Woodhall private road system, and all connections of private easements and right-of-ways to that road system shall be constructed and maintained in accordance with the rules, regulations and specifications as approved from time to time by



the Committee. Each driveway shall be fully paved and constructed with either concrete, asphalt or other decorative type of material as approved by the Committee.

**Section 31. House Numbers.** House numbers are to be displayed in compliance with all Union County ordinances.

## ARTICLE XI Environmental Hygiene

With the exception of residential propane tanks, underground storage tanks for petroleum products, chemicals, or other substances having the potential to cause damage by accidental discharge into the soil are prohibited in the Subdivision. Non-portable propane tanks shall be buried.

## ARTICLE XII Duration, Modification and Termination

**Section 1. Amendment.** The covenants, conditions and restrictions of this Declaration may be amended at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Subdivision including any Additional Property. Any such amendment shall not become effective until the instrument evidencing such change has been Filed. The consent of a majority of the Owners of Lots, plus the written consent of Declarant shall be required to withdraw any portion of the Property from the requirements of this Declaration.

Notwithstanding anything in this Article XII, Section 1 to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association, or other similar agency. Declarant, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

**Section 2. Term.** The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is originally Filed; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Owners holding a majority of the votes appurtenant to the Lots, plus Declarant, if Declarant then owns any Lot, has been recorded, agreeing to terminate or modify said covenants and restrictions in whole or in part. Provided, however: [i] the residential use restrictions set forth in Article X Section 1 of this Declaration shall run with the land and shall be binding upon all parties and persons claiming under them in perpetuity, and [ii] this Declaration shall not be terminated except by a Filed instrument signed by Owners holding 100% of the votes appurtenant to the Lots, plus Declarant, if Declarant then owns any Lot, so long as any of the Private Roads are maintained by the Association and have not been accepted for public maintenance.

## ARTICLE XIII Enforcement

Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any party empowered to enforce this Declaration may avail itself of all remedies available under Applicable Laws for the abatement of a nuisance in addition to all other rights and

remedies set forth hereunder or otherwise available at law. This Declaration may be enforced by Declarant, its successors and assigns (including without limitation the Association after the termination of Founders Class Membership), by proceedings at law or in equity against the person or entity violating or attempting to violate any covenant or restriction, either to restrain the violation thereof, abate or remediate damage caused by the violation, or to recover damages, all together with reasonable attorney's fees and court costs. Further, after the termination of Declarant's Founder Class membership in the Association, in the event the Association fails to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these covenants and restrictions as aforesaid against any other Owner.

#### ARTICLE XIV

##### Declarant Retained Rights and Easements

**Section 1. Assignability of Rights.** All rights, powers and reservations of Declarant stated herein may be assigned. If at any time Declarant ceases to exist and has not previously made an assignment of its rights, a successor Declarant may be appointed by the written vote of a majority of the Owners. Any assignment made pursuant to the terms of this section shall be Filed in Union County, North Carolina.

**Section 2. Exoneration of Declarant.** It is agreed by all Owners and by any other party having an interest in any Lot that Declarant has no duty to enforce any of the covenants and restrictions contained herein. Declarant shall not be subject to liability to any party by reason of its failure to enforce any covenant, condition or restriction herein.

**Section 3. Temporary Construction Easements.** Declarant reserves for itself and its agents the right and easement to, from time to time, go over and upon (including trucks, equipment and the like) any Lot for the purpose of installing infrastructure or other work necessary in the Subdivision, whether the work benefits the Lot over which access is made or other Lots. Declarant will repair any material damage to the Lot over which access is made and will exercise care to minimize the time of such work and the damage made by the work or access.

#### ARTICLE XV

##### Partial Taking

In the event that any portion of the Subdivision is taken or purchased in any manner in the nature of a condemnation or other governmental taking, such taking will not render invalid any provision contained in this Declaration.

#### ARTICLE XVI

##### General

**Section 1. Mortgagees' Protection.** Violation of this Declaration shall not defeat the lien of any Mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder shall be subordinate to any such Mortgage unless a lis pendens or notice of the lien shall have been Filed prior to the recordation of such Mortgage; provided, however, that any Mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner.

**Section 2. Chain of Title.** Each grantee, lessee or other person in interest or occupancy accepting a conveyance of a fee or lessor interest, the demise of a leasehold interest, or a license, in any Lot, whether or not the instrument of conveyance refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by

reference in any conveyance, demise of a leasehold estate, or the grant of a license, of all or any portion of his interest in any real property subject hereto.

**Section 3. Ambiguities.** If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all parties or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

**Section 4. No Reversionary Interest.** This Declaration shall not be construed as creating conditions subsequent, or as creating a possibility of reverter.

**Section 5. Zoning Requirements.** This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any other Applicable Laws, or by specific restrictions imposed by any deed or other conveyance. In the event of any conflicts, the most restrictive provision among the conflicting terms shall be taken to govern and control.

**Section 6. Effect of Invalidation.** If any provision of this Declaration is held to be invalid by any court or other body of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration and all remaining restrictions, covenants, reservations, easements and agreements contained herein shall continue in full force and effect.

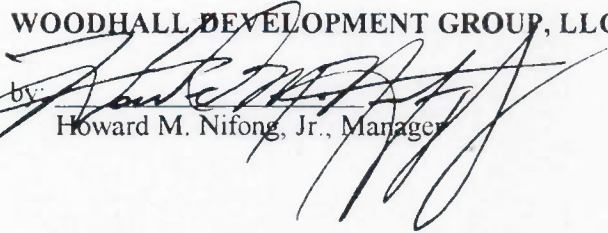
**Section 7. Gender.** All pronouns used herein shall be deemed to be singular, plural, masculine, feminine or neuter as application to specific circumstances may require.

**Section 8. Liability Limitations.** Neither Declarant, nor any Owner nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board, its officers, employees and agents from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for such resulting from the gross negligence or willful misconduct of the person(s) to be indemnified. The Association may maintain liability insurance for members of its Board, its officers, employees and agents.

[Signatures follow on next pages]

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration the day and year first written above.

WOODHALL DEVELOPMENT GROUP, LLC

by:   
Howard M. Nifong, Jr., Manager

STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Catherine Anderson a Notary Public for said County and State, do hereby certify that Howard M. Nifong, Jr., a Manager of Woodhall Development Group, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this the 16 day of Aug., 2001.

  
Notary Public

My Commission Expires: 2/7/05



THIS JOINDER AND CONSENT is made this 14<sup>th</sup> day of August, 2001, by First Indiana Bank., a federal savings bank, ("Beneficiary"); and John W. Beddow, ("Trustee") a resident of North Carolina, Trustee under that certain Deed of Trust and Security Agreement recorded in Book 1376, at page 0096, in the Union County Public Registry (the "Deed of Trust").

The undersigned Beneficiary and the Trustee do hereby consent to, and join in, the conditions, covenants, reservations, easements and restrictions that are herein declared, reserved and imposed upon the Property and additions to the Property. The undersigned Beneficiary and Trustee hereby subordinate the Deed of Trust to this Declaration of Covenants, Conditions and Restrictions (including future amendments and supplementary declarations) so that any foreclosure or other conveyance of the Property subject to this Declaration pursuant to the deed of trust, shall not cut off, invalidate or otherwise affect the covenants, conditions, restrictions, easements and other terms of this Declaration.

IN WITNESS WHEREOF, the Beneficiary and the Trustee have caused this ~~Release~~ to be duly executed under seal, this the 14<sup>th</sup> day of August, 2001.

Joinder and Consent

*JWB*

BENEFICIARY:  
FIRST INDIANA BANK

By: *[Signature]*  
Title: Vice President



TRUSTEE:  
*[Signature]* (SEAL)  
John W. Beddow, Trustee

STATE OF ~~NORTH CAROLINA~~ INDIANA  
COUNTY OF MARION

This 14 day of August, 2001, personally came before me, DAVID S. WISNER, who being by me duly sworn, says that she/he is VICE, President of FIRST INDIANA BANK; and that said writing was signed by her/him on behalf of said bank. And the said DAVID S. WISNER <sup>VICE</sup> President acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 14 day of August, 2001.

Rosalind Koontz  
Notary Public

My commission expires:

(Notarial Seal)



ROSALIND KOONTZ  
Notary Public, Marion County  
My Commission Expires: Sept. 15, 2001

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

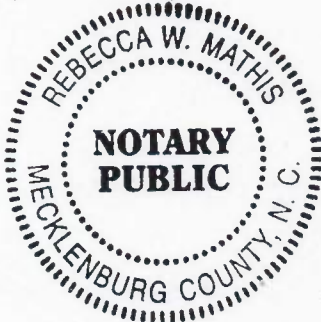
I, Rebecca W. Mathis, a Notary Public for said County and State, do hereby certify that John W. Bedow Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 14th day of August, 2001.

Rebecca W. Mathis  
Notary Public

My commission expires: 6/24/06

(Notarial Seal)



NORTH CAROLINA - UNION COUNTY  
The foregoing certificate(s) of Catherine Anderson,  
Rosalind Koontz  
Rebecca W. Mathis Notary Public  
of \_\_\_\_\_ in are certified  
to be correct. Filed for record this 16th day  
of August 2001 at 4:05 p.m.

JUDY G. PRICE, REGISTER OF DEEDS  
BY: Margaret Hogan  
Asst. Clerk