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STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
MALLARD CREEK SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Mallard Creek Subdivision (as may be amended or supplemented as set forth herein, hereinafter referred to as "Declaration") is made this 2nd day of October, 2009 by Bridge Creek Properties, Inc., a North Carolina corporation, whose address is 213-B East Cronly Street, Laurinburg, North Carolina 28352 (hereinafter the "Declarant").

WITNESSETH:

A. Declarant is the owner and developer of certain real estate in Scotland County, North Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof (hereinafter the "Property" or "Subdivision"); and

B. Declarant is developing the Property known as "Mallard Creek Subdivision" by subdividing it into "Lots" that are to be used for residential purposes as well as common real estate and improvements that are to be owned by a homeowners association to which the Owner of a Lot must belong and pay lien-supported maintenance assessments; and

C. At the time of the conveyance of a Lot to an Owner, the Declarant intends to make available the common amenities on the Property, if any, as they are built, and, at such time after final platting of all Lots in the Subdivision as Declarant shall elect, the entire Property, excluding the Lots and dedicated streets, if any, shall be conveyed without cost or charge to the Association.

THEREFORE, the Declarant hereby declares that all of the Lots and Common Areas (defined below) located within the Subdivision are held and shall be held, conveyed, encumbered, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of

said Lots. All of these restrictions shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any of the Property.

ARTICLE I DEFINITIONS

Section 1.1. "Articles" or "Articles of Incorporation" shall mean those articles filed with the Secretary of State of North Carolina, incorporating Mallard Creek Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina law, as the same may be amended from time to time.

Section 1.2. "Assessments" means Regular Assessments, Special Assessments, Individual Assessments and Fine Assessments.

Section 1.3. "Association" shall mean and refer to Mallard Creek Homeowners Association, Inc., to be formed as a non-profit corporation, its successors and assigns.

Section 1.4. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.5. "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.6. "Class A Members" shall mean as defined in Section 4.5.1 below.

Section 1.7. "Class B Members" shall mean as defined in Section 4.5.2 below.

Section 1.8. "Constituent Documents" shall mean the Declaration, the Bylaws, the Articles of Incorporation, the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

Section 1.9. "Common Areas" shall mean all the real estate owned by the Association for the common use and enjoyment of the Owners.

Section 1.10. "Common Expenses" shall mean, refer to, and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefor; the payment of taxes assessed against the Common Areas; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to judicial sale; and all administrative, accounting, legal, and managerial expenses. "Common Expenses" shall also include amounts incurred in

replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision, including, but not limited to private road resurfacing and repair, installation and maintenance of signs, walkways, shelters, landscaping, and any other costs and expenses of in connection with the maintenance, use and enjoyment of the Common Areas. "Common Expenses" shall also include all reserve funds or other funds established by the Association. "Common Expenses" shall be construed broadly.

Section 1.11. "Declarant" shall mean and refer to Bridge Creek Properties, Inc., a North Carolina corporation, its successors and assigns.

Section 1.12. "Default" shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

Section 1.13. "Development Period" means the period commencing on the date on which this Declaration is recorded in the Scotland County Register of Deeds and terminating on the earliest to occur of: (i) the date when Declarant no longer owns a Lot in the Subdivision; (ii) the date that Declarant relinquishes in writing Declarant's right to be the Class B Member; or (iii) the date five (5) years from the date of recording of this Declaration.

Section 1.14. "Dwelling Unit" shall mean and refer to the individual family living unit on an individual Lot.

Section 1.15. "Fine Assessment" means the charge established by Section 5.5.2 of this Declaration.

Section 1.16. "Individual Assessment" means the charge established by Section 5.4 of this Declaration.

Section 1.17. "Lot" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed.

Section 1.18. "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.19. "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of fee simple title to any Lot located within the Subdivision.

Section 1.20. "Plat" shall mean and refer to the recorded plat of the Subdivision recorded by Declarant, as the same may be amended or supplemented by Declarant from time to time.

Section 1.21. "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.22. "Property" or "Subdivision" shall mean and refer to that certain real estate described in Exhibit A attached hereto.

Section 1.23. "Regular Assessment" means the charge established by Article V of this Declaration.

Section 1.24. "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling Unit, including, but not limited to, family members and temporary guests of Owner.

Section 1.25. "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.26. "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.27. "Special Assessment" means the charge established by Section 5.2 of this Declaration.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

ARTICLE III PROPERTY RIGHTS IN COMMON AREAS

Section 3.1. **Owner's Easements of Enjoyment.** Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his or her Lot. Such rights and privileges shall be subject, however, to the following:

3.1.1 The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;

3.1.2 The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use, and Rules and Regulations pertaining to the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time;

3.1.3 All applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas;

3.1.4 The right of the Declarant or the Association to grant permits, licenses and public or private easements over Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or

3.1.5 The right of Declarant or the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities for park or public road purposes.

Section 3.2. **Extension of Use.** Any Owner may extend his right of enjoyment to the Common Areas to the immediate and/or extended members of his family, his guests or contract purchasers of the Owner's Lot.

Section 3.3. **Title to Common Areas.** The Declarant shall convey by deed all Common Areas to the Association in fee simple absolute after the final platting of all Lots in the Subdivision. Any such conveyance shall be subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

Section 3.4. **Use of Common Areas by Declarant.** In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Development Period, and shall have the same right to use Common Areas for promotional, sales and similar purposes until all of the Lots have been sold.

ARTICLE IV **HOMEOWNERS ASSOCIATION**

Section 4.1. **Homeowners Association.** There is to be created, or has been created, a North Carolina non-profit corporation, known as Mallard Creek Homeowners Association, Inc., which shall be responsible for the maintenance, management and control of the Common Areas and the use of each Lot and Dwelling Unit as more specifically set forth in this Declaration.

Section 4.2. **Board of Directors and Officers.** The Board of Directors, and such officers as may be elected or appointed in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board of Directors may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 4.3. **Rules and Regulations.** By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of

the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4.4. Membership of Association. Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration when due, and shall comply with decisions of the Association's governing body. Conveyance of fee simple title to a Lot automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.5. Classes of Membership. The Association shall have two (2) classes of Membership:

4.5.1 Class A Members. Every person, group of persons, or entity which is a record Owner of a fee simple interest in any Lot upon which a Dwelling Unit has been erected within the Property, shall automatically be a Class A Member of the Association, except the Declarant during the Development Period shall not be a Class A member; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.5.2 Class B Member. The Class B Member during the Development Period shall be the Declarant. The Class B Membership shall cease and be converted to Class A membership(s) upon the expiration of the Development Period, but only if and to the extent that the Declarant is then the owner of a Lot or Lots after the expiration of the Development Period.

4.5.3 Voting. Each Member shall have one vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period.

Section 4.6. Maintenance Obligations of the Association. The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all private roadways, driveways, pavement, sidewalks and walkways; (b) all lawns, trees, grass and landscape areas, shrubs, fences and signs, except as

otherwise set forth hereinbelow; (c) the Recreational Facilities, if any; (d) all conduits, ducts, utility pipes, plumbing, wiring and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not for the exclusive use of a single Dwelling Unit.

In order to enhance the attractiveness of the subdivision, and to insure that all lawns and landscaping in the subdivision are consistently and properly maintained and managed, the Association shall be solely responsible for the maintenance, cutting, upkeep, repair and care of all lawn and landscaping on all property within the subdivision, including both the Common Areas and all Lots regardless of the ownership of such Lots. In order to fulfill such responsibility, the Association and its designated agents are hereby granted the right, access and easement to enter upon any Common Area or Lot in the subdivision during reasonable times to perform and accomplish such lawn care and landscaping maintenance responsibilities.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Section 4.7. Maintenance Obligation of the Lot Owners. The responsibilities of each Lot Owner shall include the following obligation:

4.7.1 To clean, maintain, keep in good order, repair and replace all portions of his or her Lot and Dwelling Unit at his or her expense. Any repair, replacement and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony.

4.7.2 To perform his or her responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

4.7.3 Not to paint or otherwise alter, decorate or change the appearance of any exterior portion of his Dwelling Unit, without the written consent of the Association.

4.7.4 Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exist.

4.7.5 Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any Resident, guest or family member of such Owner, including, but not limited to any necessary repairs resulting from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any Resident, guest or family member of such Lot Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with **Section 5.4** and **Section 7.7** below.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 5.1. Regular Assessments. Regular Assessments for the payment of the Common Expenses shall be made in the manner provided herein, and in the manner provided in the Bylaws. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses.

Section 5.2. Special Assessment. In addition to levying Regular Assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may levy Special Assessments to construct, structurally alter, repair or replace improvements which are a part of the Common Areas, or to repair or replace equipment or materials used for lawn care and landscaping. Provided, however, funds shall not be assessed for any capital improvement in excess of Ten Thousand Dollars (\$10,000.00) in any one calendar year ("Capital Expenditure Limit") without the prior written consent of two-thirds (2/3) of the votes of each Class of Members entitled to vote and who are voting either in person or by proxy at a meeting duly called for such purpose. The Board of Directors shall have the authority to adjust the Capital Expenditure Limit annually to account for inflation, which adjustment shall be effective each January commencing January 1 of the next year following the year during which the sale of the first Lot by Declarant occurs. Until the expiration of the Development Period or the date on which Declarant no longer owns a Lot, whichever is earlier, Declarant must be one of the consenting Members, or the capital improvement shall not be made. The Board of Directors shall calculate each Lot's proportionate share of the Special Assessment for the capital improvements, and shall give the Lot Owner(s) written notice of the proportionate share and of the date(s) that the Special Assessment is due and payable. Notwithstanding the foregoing, Declarant shall have no obligations to pay any Special Assessment with respect to any Lot owned by it unless there is a fully completed Dwelling Unit located upon the Lot which is ready for occupancy.

Section 5.3. Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his pet(s), or his Resident, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.4. Date of Commencement of Assessments; Due Dates; Determination of Regular Assessments; Fine Assessments.

5.4.1 Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Regular Assessment shall be One Hundred Twenty-five Dollars (\$125.00) per month per Lot. The Board of Directors shall fix the amount of the monthly Regular Assessment to be assessed against each Lot at the beginning of each calendar year. The amount of the Regular Assessment shall not increase from one year to the next by more than ten percent (10%) without majority

approval of all Lot Owners then subject to such Regular Assessment at a meeting duly called for such purpose. Written notice of the monthly Regular Assessment shall be sent to every Lot Owner subject thereto. The Board of Directors shall establish the due dates.

5.4.2 The monthly Regular Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day of the month following the initial conveyance of the Dwelling Unit to the Owner. The Declarant, its successors and assigns, shall not be required to pay the Regular Assessment for any Lot which it owns until such time as a dwelling unit has been fully constructed on said Lot and is ready for occupancy.

5.4.3 The Board of Directors, or an adjudicatory panel established by the Board of Directors, may levy a reasonable Fine Assessment, as a fine or penalty for violation of this Declaration, all in accordance with the Planned Community Act. A lien may be filed for this Fine Assessment and this Fine Assessment may be enforced by foreclosure and otherwise treated as a Regular Assessment.

5.4.4 Special Assessments for a Lot Owner shall be determined by the Association based upon the proportion that each Lot bears to the aggregate number of Lots located on the Property, except those owned by Declarant which are not assessed in accordance with Section 5.4.2 above. The Association's governing body may, at its discretion, waive the Regular Assessment for any year or part of a year for any Lot not occupied as a residence.

Section 5.5. Billing. The Association shall inform each Lot Owner of the amount of the monthly Regular Assessment due from the Owner of that particular Lot. The Owner of each Lot must pay his Lot's required Regular Assessment in advance on the first calendar day of each month, unless the Association otherwise directs. Payment is to be made to such person at such an address as Association determines. Special Assessments are due thirty (30) days after the bill for the Special Assessment has been mailed or otherwise sent out by the Association, unless the Association otherwise directs. The Owners of the initial Lots in the Subdivision, except Declarant, shall be obligated to begin paying the Regular Assessment as of the first day of the month following the initial conveyance of the Lot from Declarant to the Owner.

Section 5.6. Common Surplus. If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Regular Assessment for the following year; or (c) apply the Common Surplus to the reserve.

Section 5.7. Assessment Certificate. The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid.

Section 5.8. Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds

collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners.

Section 5.9. Non-Payment of Assessment. Any Assessments levied pursuant to these covenants which are not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Lot.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of ten percent (10%) per year or at such other reasonable rate set by Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Lot.

Section 5.10. Priority of Association Lien. The lien provided for in this Article V shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide mortgages or deeds of trust which have been filed of record before a claim of this lien hereunder has been docketed in the office of the clerk of superior court in Scotland County, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the Planned Community Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 5.11. Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association. Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 5.12. Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. When the purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage or first deed of trust or by deed in lieu of foreclosure, such acquirer of title, his, her or its successors and assigns, shall not be liable for the share of the Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by such acquirer, other than Assessments for which a claim of lien has been docketed with the Scotland County clerk of superior court prior to the recordation of the mortgage or deed of trust being foreclosed. Such unpaid Assessments may, in the discretion of the Board of Directors, be deemed by the Association to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Lot from paying future Assessments.

Section 5.13. **Liability for Assessments Upon Voluntary Conveyance.** In a voluntary conveyance of a Lot, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs and reasonable attorneys fees may, in the discretion of the Board of Directors, be deemed by the Association to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its successors or assigns.

Section 5.14. **Late Charge.** The Association may impose a charge against any Lot Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as may be determined by the Association from time to time.

Section 5.15. **Miscellaneous.**

5.15.1 The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Lot owned. Otherwise notice sent by Association to the Lot is sufficient for any notice requirement under this Declaration.

5.15.2 The lien under this Article V arises automatically, and no notice of lien need be recorded to make the lien effective.

5.15.3 The Assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.

5.15.4 No Owner of a Lot may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot.

ARTICLE VI **EASEMENTS AND ENCUMBRANCES**

Section 6.1. **Utility Easements.** Easements are reserved and/or granted hereby in favor of the Declarant and/or the Association through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon any Lot) and the Common Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components throughout the Common Areas. Each Lot Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint

Declarant, or the Association, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 6.1. The easements may be assigned and/or granted by the Declarant and/or the Association to any utility or service company.

Section 6.2. **General Easements.** An easement is hereby reserved and/or granted in favor of the Declarant and/or the Association in, on, over and through the Common Areas, the Lots and/or Dwelling Units for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Areas, Lots and/or Dwelling Units, including all improvements, lawn care and landscaping thereon as required or permitted by the Constituent Documents or applicable law. An easement is hereby reserved in favor of Declarant over the Common Areas for the purpose of advertising or promoting sales of Lots or Dwelling Units in the Subdivision.

Section 6.3. **Access Easement.** Appurtenant to each Lot is an easement over any Common Area for necessary pedestrian and vehicular ingress and egress to and from any such Lot over the Common Areas, to and from a public thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Declarant and/or the Association and shall be subject to the terms of the Constituent Documents.

Section 6.4. **Use of Easement.** Any use of the rights and easements granted and reserved in this Article VI shall be reasonable. All easements reserved hereunder shall be perpetual and non-exclusive.

Section 6.5. **Reservation of Access Easement by Declarant.** Declarant reserves an easement for itself, its grantees, successor and assigns, to enter upon the Subdivision for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. The easement shall be over the streets, sidewalks, bridges and other access ways of the Subdivision. Declarant further reserves the right to connect, at Declarant's expense, to any street, roadway, walkway or other means of access that are located on the Common Areas of the Subdivision. This reservation of access easements and the right of connection should be construed liberally in favor of the Declarant, in order to facilitate the development of all or any portion of Mallard Creek Subdivision.

Section 6.6. **Reservation of Construction Easement by Declarant.** The Declarant reserves the non-exclusive right and easement to temporarily go upon the Subdivision in order to complete the development of the Subdivision and the construction of the improvements to be located therein. The easement should be construed broadly in favor of the Declarant, including giving Declarant the right to store temporarily construction materials, equipment or dirt. After the construction is finished, Declarant must, at Declarant's cost, repair any damage done to the Subdivision including to any landscaping.

Section 6.7. **Easements to Run with Land.** All easements and rights described in this Article VI are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors

and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

ARTICLE VII **INSURANCE**

Section 7.1. **General Insurance.** In the sole discretion of the Board of Directors, the Association shall maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The Association shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Lot Owners, individually and as a group (arising out of their ownership interest in the Common Areas). Association may also maintain any other insurance required by law.

Section 7.2. **Fidelity Insurance.** The Association shall have fidelity coverage against dishonest acts on the part of Officers and employees, Members of the Association, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Lot Owners.

Section 7.3. **Directors' and Officers' Errors and Omissions Insurance.** The Association shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present, against expenses actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and indemnification for Directors and Officers as the law of North Carolina permits. The policy or policies shall be in an amount to be reasonably determined by the Board of Directors.

Section 7.4. **Premiums.** All premiums upon insurance purchased by the Association shall be Common Expenses.

Section 7.5. **Proceeds.** Proceeds of all insurance policies owned by the Association shall be received by the Association for the use of the Association, the Board of Directors, the Lot Owners and their mortgagees, as their interests may appear; provided, however, the proceeds of any insurance received by the Association because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise be permitted by this Declaration.

Section 7.6. **Power of Attorney.** Each Lot Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters

concerning the maintenance of the master policy or any other insurance policy obtained by the Association. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds and to distribute the same to the Association, the Board of Directors, the Lot Owners and their respective mortgagees, as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Lot Owners and the Subdivision as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

Section 7.7. **Responsibility of Lot Owner.** The Association shall not be responsible for procurement or maintenance of any insurance covering any Lot or Dwelling Unit, or the contents of any Lot or Dwelling Unit nor the liability of any Lot Owner for injuries not caused by or connected with the Association's operation, maintenance or use of the Common Areas or other property located in the Subdivision. Each Lot Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his Lot or Dwelling Unit. In addition, each Lot Owner shall maintain fire and extended coverage insurance on his Dwelling Unit, and the contents of his Dwelling Unit. The Association may request the Lot Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time.

Each Lot Owner agrees that if any Owner(s) damages a building or other improvements now or at any time hereafter constituting a part of the Common Areas of the Subdivision which is covered under the Association's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to a structure or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs to the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event a Lot Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner as an Individual Assessment, which shall be due and payable following seven (7) days written notice.

Section 7.8. **Approximate Coverage.** If any of the required insurance coverage under this Article VII becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Association shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

ARTICLE VIII ASSOCIATION

Section 8.1. **Association.** The administration of the Subdivision shall be vested in the Association. The Owner of any Lot, upon acquiring title, shall automatically become a

Member of the Association and shall remain a Member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall automatically cease. The Association shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Subdivision including but not limited to, the powers and responsibilities to make prudent investments of funds held by it; to make reasonable Rules and Regulations; to borrow money; to make Assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the Bylaws and any other documents or instruments relating to the establishment, existence, operation, alternation of the Subdivision. The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in the Planned Community Act.

Section 8.2. **Board of Directors.** Unless otherwise specifically stated in this Declaration, the Association shall act exclusively through its Board of Directors (the "Board"). The Association, in accordance with the Bylaws, shall choose the Board. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

ARTICLE IX HARMONY, ENVIRONMENTAL CONTROLS

Section 9.1. **Architectural Control Committee.** Except for original construction performed by or on behalf of Declarant or as otherwise in these covenants provided, no building, fence, electric pet fence, sidewalk, drive, mailbox, or other structure, or improvement or anything attached thereto visible from the outside of the structure or improvement (including, without limitation, storm doors, windows, drapes or window coverings) shall be erected, placed, altered, or maintained within the Subdivision nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), general contractor and all subcontractors, and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any architectural control committee appointed by said Board of Directors. Refusal of approval of plans, location or specification by said Board of Directors or architectural control committee may be based upon any reasonable ground, including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography and purely aesthetic considerations which said Board of Directors or architectural control committee, in its discretion, shall deem sufficient. After approval by the Board of Directors or architectural control committee is given, no alterations may be made in such plans except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished the Board of Directors or architectural control committee for its records.

Section 9.2. **Landscaping and Decorating of Lots.** The Owner of any Lot may plant grass, shrubs and other vegetation on his Lot so long as it is in keeping with the overall appearance of the Subdivision. The Board of Directors, or its appointed architectural control committee, shall have the authority to regulate any such landscaping or decorating of any Lot, except any Lot owned by the Declarant. Should the Board, or its architectural control

committee, object to any such landscaping, or receive a complaint regarding such, it shall make a decision as to whether or not the landscaping or decorating done by the Owner is in keeping with the aesthetics of the Subdivision, and its decision shall be final. Any landscaping or decorating found to be objectionable shall be removed within a reasonable time as determined by the Board or its delegated committee.

ARTICLE X USE RESTRICTIONS

Section 10.1. Use and Occupancy. The Association shall make Rules and Regulations to govern the use and occupancy of the Subdivision. In addition, the following covenants, conditions, and restrictions, as to use and occupancy shall run with the land and shall be binding upon each Lot Owner, his heirs, successors and assigns.

Section 10.2. Purpose of Subdivision. Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for other than housing and the common purposes for which the property was designed, and each Lot shall be used only for residential purposes, unless the Board of Directors authorizes some other use. Except for the construction, sales and management activities (including, without limitation, the right of Declarant to maintain one or more model Dwelling Units, or sales offices) of the Declarant, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Subdivision property. To the extent permitted by law, an Owner may use a portion of his or her Dwelling Unit for a home office, provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of said Owner's Lot.

Section 10.3. Obstruction of Common Areas. There shall be no storage or parking of any items, including baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in any part of the Common Areas, except as permitted by the Rules and Regulations. Patios, porches and decks may be used only for their intended purposes.

Section 10.4. Parking. Except for vehicles being used by persons providing services to the Declarant or the Association, or providing temporary services to Lot Owners, or otherwise used or authorized to be used at the Subdivision by the Declarant, no part of the Subdivision may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, camp car, recreational vehicle, camper, truck which exceeds 3/4 ton, boat, boat trailer, or any vehicle with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "Special Vehicles"), unless such Special Vehicles are parked in the garage of the Lot Owner who owns such Special Vehicle and the garage door of such Lot Owner is completely closed at all times when a Special Vehicle is parked therein. Operative vehicles, other than Special Vehicles, used by a resident of a Lot as a primary source of transportation may be parked in the driveway of such Lot Owner or in any garage space owned by the Owner of such Lot, but at no time shall any such vehicles be parked in or on a

street in the Subdivision. The residents of any one Lot may not collectively park more than four (4) operative vehicles other than Special Vehicles in the Subdivision. Inoperative vehicles may not be parked within the Subdivision unless these inoperative vehicles are parked in the garage and the garage door is completely closed. No auto maintenance and/or repairs may be performed in the Subdivision except if performed inside the garage of a Lot Owner. Vehicles, whether owned by a Lot Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking in the Project, the Owner of the vehicle or other vehicle user hereby waives any claim against the Association resulting directly or indirectly from any such towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Association. The Association is not obliged to try to determine the owner of a vehicle and first give notice, before towing the vehicle. If a Lot Owner is not sure about the right to park at any particular area or space, the Lot Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Lot Owner or if the Board does not answer the written request by the Board, the Lot Owner may park in the space until further written notice to the contrary from the Board. The Association's right to tow a vehicle includes the right to immobilize it.

Section 10.5. **Compliance With Insurance Policies and Waste.** Nothing shall be done or kept in any Dwelling Unit, in the Common Areas or on a Lot which will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Lot Owner shall permit anything to be done or kept in his or her Dwelling Unit, in the Common Areas or on a Lot which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas. All laws shall be obeyed.

Section 10.6. **Exterior Surfaces of Buildings.** Lot Owners shall not cause or permit anything to be hung or displayed on the inside or outside of windows (except as provided herein) or hung on the outside of the Dwelling Unit doors (including but not limited to decorative door arrangements) or placed on the exterior walls of a building, and no sign (other than those described in Section 10.11 hereof and directional signs or signs concerning the use of the Common Areas), awning, canopy, flag (except the American flag), shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part of any building, or the Common Areas, without the prior written consent of the Association. Unless otherwise approved in writing by the Association, Lot Owners shall not cause or permit any curtains, shades or other window coverings to be hung inside or outside any windows, doorways, and/or patio doors which will show any color on the outside other than white or beige tones.

Section 10.7. **Animals and Pets.** No animals of any kind shall be raised, bred, or kept on any Lot or in any Dwelling Unit or in the Common Areas, except that two dogs, two cats or one of each, or two other household pets may be kept in a Dwelling Unit, subject to the Rules and Regulations, provided that it is not kept, bred or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations of the Association. Dogs, cats or other household pets must be kept within the confines of the Owner's Dwelling Unit except when being held on hand leash by the pet owner of the animal. No Lot Owner shall install a fence and/or electric fence on any portion of the Common Area without the prior written consent of the Board. No pet may be "staked", housed, tied up or otherwise left in any Common Area. A Lot

Owner shall be responsible for cleaning up after his household pet and shall not allow any bodily excrement to remain on the Common Area or any other Lot in the Subdivision. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Dwelling Unit shall be subject to termination if the Board in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Areas.

Section 10.8. **Nuisances.** No noxious or offensive activity shall be carried on in any Dwelling Unit or in the Common Areas or on the Lot of an Owner, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.

Section 10.9. **Impairment of Structural Integrity of Building.** Nothing shall be done in any Dwelling Unit, or on any Lot, or in, on or to the Common Areas which will impair the structural integrity of any building or structure or which, absent the prior written approval of the Board, would structurally change any building or structure.

Section 10.10. **Laundry or Rubbish and Open Fires in Common Areas and Facilities.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas, or on any Lot in a manner visible from any Common Area, neighboring Lot or street. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage or other rubbish shall be deposited only in covered sanitary containers as provided in Section 10.14 below. No open fires shall be permitted on any part of the Subdivision other than fires in charcoal grills or other similar cooking devices located upon Lots or grills or similar devices (if any), owned by the Association and constituting a portion of the Recreational Facilities, provided the use of such devices does not violate any local governmental rules or regulations.

Section 10.11. **Prohibited Activities.** Except as otherwise provided in this Declaration, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, shall be conducted, maintained or permitted on any part of the Subdivision. No Lot Owner shall be permitted to lease or rent his Dwelling Unit, and each Dwelling Unit may be used and occupied only by the Lot Owner, his family, his Residents and guests. A Lot Owner is permitted to place and maintain a standard "For Sale" sign only in the window or front yard of his Dwelling Unit; provided, however it is of a typical size within the industry or within an area expressly permitted by the Board of Directors. No other sign that is visible from the outside of Dwelling Units may be placed on any part of the Subdivision except as expressly permitted by the Board of Directors. Declarant and/or the Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. A Lot Owner must obtain the prior written consent of the Board of Directors in the event a Lot Owner desires to maintain a "For Sale" sign which is not of a typical size within the industry, or desires to maintain other displays or advertising, unless otherwise provided for under the Rules and Regulations. The right is reserved by the Declarant to use any such unsold or unoccupied Dwelling Units or other

structures in the Subdivision as models and/or offices in connection with the construction, sale or rental of Dwelling Units.

So long as the Declarant owns a Lot no action may be taken nor may any Rule or Regulation be adopted or amended that would (a) directly or indirectly alter the exterior appearance of any part of the Subdivision; (b) reduce or discontinue any maintenance standard or practice in effect as of the date when the Declarant no longer controls the Board; (c) adversely affect the Declarant's sale or leasing of any Lots; or (d) otherwise adversely affect the Declarant, any of its rights, or any Lot owned by it without, in each case, first obtaining the Declarant's written consent.

Section 10.12. **Alteration of Common Areas.** Nothing shall be altered or constructed in or removed from the Common Areas except as otherwise provided in this Declaration and except upon the written consent of the Association. In addition, a Lot Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables, on any portion of the Subdivision (including any Lot).

Section 10.13. **Prohibition of Rental of Dwelling Units and Lots.** In order to protect the equity of the Lot Owners and to carry out the purpose for which the Association was formed by preserving the character of the Property as a homogeneous owner-occupied residential community and to avoid the character of a renter-occupied apartment complex, no Dwelling Unit in the Subdivision may be leased or rented by the respective Owners at any time.

Section 10.14. **Trash Disposal.** Each Lot Owner shall deposit all trash, garbage, or other rubbish by as directed and instructed by the Board. Lot Owners shall keep trash containers at all times in each Lot Owner's garage (if applicable), or in such other location as designated by the Board, except on the days when trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Lot Owners in the location designated for collection by the local waste removal authorities shall only remain in such location for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Lot Owner in violation of this Article X, and may assess the Lot Owner for the cost of such removal, which amount shall be payable on the date the next installment of the regular assessment is due.

ARTICLE XI **ENFORCEMENT**

Section 11.1. **Enforcement.**

11.1.1 The Association or any Lot Owner may enforce these covenants, conditions and restrictions. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties

enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any lawsuit filed to enforce this Declaration by injunction or restraint, there shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or by recovery of damages.

11.1.2 In addition to all other remedies of the Association, the Association shall have the right to assess the maximum fine or penalty allowed by law per violation against any Owner who violates any provision of this Declaration or the Articles, Bylaws or Rules and Regulations of the Association after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Directors or as may be set forth in the Bylaws.

11.1.3 In addition to the above rights, the Association may also enter upon a Lot or any land upon which a violation exists to remove any violation, perform maintenance or make repairs thereon which is the responsibility of a Lot Owner who has failed to remove said violation or to perform such maintenance or make such repairs (i) after having given such owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

11.1.4 Any action brought by the Association hereunder may be brought in its own name, in the name of its Board or in the name of its managing agent. In any case of flagrant or repeated violation by a Lot Owner, he or she may be required by the Association to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

Section 11.2. **Severability.** Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 11.3. **Restrictions Run With Land.** The easements or other permanent rights or interests which are herein created, as well as the covenants and restrictions of this Declaration, shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 11.4. **Amendment.** The Association (the Declarant controlling the Association until the expiration of the Development Period) may amend this Declaration at any time, as long as consistent with the design, scheme and purposes of this Declaration, by the affirmative vote or written agreement of the Owners to whom not less than seventy-five percent (75%) of all of the votes in the Association are allocated in accordance with Section 4.4 and Section 4.5 above. Any amendment must be recorded in the Scotland County Register of Deeds. Following the end of the Development Period, no such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed amendment is sent to every Member at

least thirty (30) days in advance of any action taken, and no such amendment shall be effective with respect to any permanent easements or other permanent rights or interests relating to the Common Areas herein created (unless such amendment is consented to in writing by Declarant and all other beneficiaries of such permanent easements, rights of interests).

Section 11.5. **Reservation of Special Declarant Rights.** Declarant reserves the right to maintain sales and management offices, model units, construction trailers, storage or staging areas, and advertising signs upon Lots or the Common Areas and upon Lots owned by it until the expiration of the Development Period and to exercise all other "Special Declarant Rights" as defined in the Planned Community Act.

Section 11.6. **Management and Service Contracts.** Any agreement for the professional management of the Subdivision or the Common Areas may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

Section 11.7. **Binding Determination.** In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Association, the determination thereof (i) by Declarant for so long as Declarant retains control of the Association; and (ii) thereafter by the Board of Directors of the Association shall be final and binding on each and all such Owners; providing that any determination which directly or indirectly affects Declarant shall require Declarant's consent prior to become binding upon Declarant.

Section 11.8. **Captions and Titles.** All captions, titles or headings in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 11.9. **Notices.** Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of (i) the date when received by such Owner, or (ii) the date which is three days after mailing (postage prepaid) to the last address of such Owner set forth in the books of the Association. The address of an Owner shall be at his Lot (or any of them if more than one) unless otherwise specified in writing to the Association. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

Section 11.10. **Governing Law.** This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of North Carolina, and suit to enforce any provision hereof or to obtain any remedy with respect hereto shall be brought in state court in Scotland County, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

ARTICLE XII
MORTGAGEE'S RIGHTS

Section 12.1. **Notice of Rights of Mortgagee of a Lot.** As used herein, the term "Mortgagee" shall mean the holder of a first lien mortgage or deed of trust on a Lot who provides notice to the Association with its name and address with a request to receive any notices and other rights provided to "Mortgagees" under this Article XII. A Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot with respect to any obligation of the Owner under the Declaration, the Bylaws of the Association, the Articles of Incorporation of the Association or the Rules and Regulations. Any Mortgagee of a Lot can make the request for notification. The notification shall be sent not later than the 65th day after the occurrence of an uncured Default.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

BRIDGE CREEK PROPERTIES, INC.,
a North Carolina Corporation

BY: Gregory B. Baines
Gregory B. Baines
President

STATE OF NORTH CAROLINA
COUNTY OF SCOTLAND

I, Frankie W. Maddox, Notary Public of Scotland County, State of North Carolina, do hereby certify that Gregory B. Baines personally appeared before me this day and acknowledged that he is President of Bridge Creek Properties, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him as its President.

Witness my hand and official stamp or seal this 2nd day of October, 2009.

Frankie W. Maddox
Notary Public

My commission expires: 12-20-2011

[NOTARIAL SEAL]

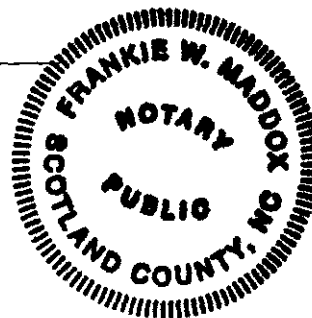


EXHIBIT A

Legal Description

All those certain tracts or parcels of land lying and being in Stewartsville Township, Scotland County, North Carolina, and being more particularly described as follows:

FIRST TRACT:

BEGINNING at a concrete monument in the northern line of State Road No. 1177 South of Blue's Farm Road, said concrete monument being located South 3 degrees 55 minutes West 10 feet from the intersection of the western line of State Road No. 1177 and the run of Spring Branch, and runs thence from said concrete monument South 3 degrees 55 minutes West 580 feet to an iron stake; thence North 86 degrees 05 minutes West 412 feet to an iron stake; thence North 28 degrees 50 minutes West 334 feet to an iron stake; thence North 43 degrees 05 minutes East 235 feet to a concrete monument; thence North 79 degrees 11 minutes East 459.3 feet to the **BEGINNING** corner, as surveyed by Samuel N. Cribb, Registered Surveyor, September 9, 1964, containing about 6 acres, more or less.

SECOND TRACT:

BEGINNING at a concrete monument in the northern line of State Road No. 1177, south of Blue's Farm Road, said concrete monument being located South 3 degrees 55 minutes West 590 feet from the intersection of the western line of State Road No. 1177 and the run of Spring Branch, said concrete monument being the southeast corner of a tract of land conveyed to James P. Pridgen and wife, Ann F. Pridgen, by J. Gilchrist Purcell and wife, Edna B. Rudd Purcell, by deed dated September 10, 1964, and recorded in Book 4-1, at Page 121 of the Scotland County Registry, and runs thence as the right-of-way of State Road No. 1177, South 3 degrees 59 minutes West 209.4 feet to a concrete monument; thence North 87 degrees 36 minutes West 606.8 feet to a concrete monument; thence North 5 degrees 30 minutes East 506.8 feet to a concrete monument, another corner of Pridgen's land; thence as Pridgen's line South 28 degrees 50 minutes East 334.0 feet to a concrete monument; thence continuing as Pridgen's line South 86 degrees 05 minutes East 412 feet to the **BEGINNING** corner, containing about 3.6 acres, more or less, all as surveyed by Ralph S. Johnson, Registered Surveyor, on March 4, 1967.