

**DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR SOUTHPOINTE**

Prepared by and return to: \_\_\_\_\_

THIS DECLARATION, made on the date hereinafter set forth by SOUTHPOINTE CAPITAL, INC, a North Carolina corporation, with its principal office located at 3301 Nash Street, Wilson, 27896, Wilson County, North Carolina, hereinafter referred to as "Declarant",

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property near the City of Wilson, County of Wilson, State of North Carolina, commonly referred to as "SouthPointe" or the "Property, which is more particularly described on Exhibit "A" attached hereto; and,

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on the Property restrictions, conditions, easements, covenants, charges, liens and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof; and,

WHEREAS, the Property and any additional property added hereto, shall be comprised of tracts for all uses as permitted herein; and,

WHEREAS, SouthPointe is a cluster and open space development pursuant to the Wilson County Code of Ordinances, consisting of the SouthPointe Home Owners Association of Wilson, Inc. and other sub-associations as may be established by the Declarant from time to time for any group of Lots in the development of the Property; and,

WHEREAS, this Declaration and the protective covenants, conditions, restrictions and easements, to the extent applicable, shall apply to the owners of all Lots herein:

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit "A" shall be held, used, occupied, leased, mortgaged, sold and conveyed subject to the following easements, restrictions, charges, liens, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Articles" shall mean the Article of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 2. "Association" shall mean and refer to the SouthPointe Home Owners Association of Wilson\, Inc., a North Carolina non-profit corporation, its successors and assigns. Should Sub-Associations be established pursuant to Article XII herein, the Association shall be considered the master owners association of SouthPointe.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Builder" shall mean the person or entity that is professionally employed to construct the initial improvements on any Lot. Builder shall not include a Lot Owner who is not involved in the business of constructing the initial improvements on any lot.

Section 5. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 6. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of all the Owners. Common Elements may include but are not limited to private roads and streets, road and street shoulders, walkways, sidewalks, bike paths, gazebos, gates, fountains, entry walls and features, street lighting, all retaining walls, all entry walls and walls bordering the Property, all signage, the walking trails, pedestrian access ways, a common telecommunication, if established, sewer lines and water lines that serve more than one Lot and are located outside any public street or any water or sanitary sewer easement, and includes Open Space, Common Properties and Common Elements, as may be designated to be a Common Element of the Association on any recorded map of the Property or by the Association; Common Elements also include storm drainage improvements and easements located on the Property serving more than one Lot and are not maintained by any governmental authority, any Sub-Association that may be established, or any Lot Owner. The Common Elements to be owned by the Association is all of that Property other than the Lots and the Common Elements owned by any Sub-Association established by the Declarant. The designation of any land and/or improvements as a Common Element will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Elements are to be devoted to and intended for the common use and enjoyment of the Declarant, Owners, Heirs, Successor, Assigns, and their respective guests, and invitees.

Section 7. "Common Expenses" shall mean and include, as applicable:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses for maintenance, including but not limited to snow removal, of the private roads, rights of way, the landscape islands within the private roads, and Department of Transportation right-of-way easements, and, as determined by the

Association or the Board, maintenance of ditches within the right-of-way easements and any amenities as provided in this Declaration;

(c) Expenses of administration, maintenance, repair, or replacement of the Common Elements and Limited Common Elements including but not limited to the expenses of maintenance of all signage, lighting, irrigation, and landscaping located at all entrances to SouthPointe or the entrance to any specific neighborhood within SouthPointe as shown on any recorded plat of the subdivision, and the expenses of maintenance of any sign, lighting, irrigation and landscaping located on any of the Common Areas within SouthPointe Subdivision as shown on any recorded plat of the subdivision;

(d) Expenses, declared to be Common Expenses by the provisions of this Declaration or the Bylaws, including expenses associated with Common Responsibilities are defined herein below;

(e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;

(f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements owned in fee by the Association.

(g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Elements of the Property and serve both the Property and lands adjacent thereto;

(h) The expense of maintenance of any roads, streets, street islands, easements, amenities, taxes or any other expense item associated with any Common Element not located on the Property but permitted to be used by the Members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;

(i) Expenses for maintenance of security devices or personnel, should the Association determine that it is in its best interest to obtain security devices or personnel, including but not limited to the construction, maintenance and repair of a gate and/or gatehouse if provided by the Declarant;

(j) The charges for utilities used in connection with maintenance and use of the Common Elements;

(k) Expenses for maintenance, repair and replacements of all retaining walls and maintenance, repair and replacement of all entry walls and signage;

(l) The expense of the maintenance, repair and replacement of all specialty paving on any public or private road on the Property;

- (m) The expense of the maintenance of all easements and landscaping and improvements thereon, conveyed to the Association;
- (n) The expense of the construction, maintenance and repair of a common telecommunication system, if established by the Declarant or the Association.
- (o) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association.

Section 8. “Common Responsibility” shall mean and refer to the Association’s duties and responsibilities for insuring, maintaining, repairing, replacing and managing portions of the Property not otherwise designated as a Common Element and over which it has an easement, or other lands and properties which may be the subject matter of a use and access agreement, or a license agreement, or, which, pursuant to a Sub-Association Declaration, the Association is obligated to undertake such activities for the benefit of a Sub-Association’s Owners, and the Lots or Units therein.

Section 9. “Consumer-Occupant Lot Owner” referred to herein is a Lot Owner who purchases a lot from the Declarant or a Builder with the intent to ultimately occupy the residence constructed on the Lot. A Lot Owner who purchases a Lot directly from the Declarant or a Builder, or any previous Lot Owner, on which no improvements have been constructed, shall also be considered a Consumer-Occupant Lot Owner.

Section 10. “County” shall mean Wilson County, North Carolina.

Section 11. “Declarant” shall mean and refer to SouthPointe Capital, Inc., a North Carolina corporation, its successors and assigns, to whom the right of Declarant hereunder are expressly transferred, in writing in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure when held by Declarant or the successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 12. “Declarant Development Period” shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Wilson County, North Carolina, and continuing until the later of (i) such time as Declarant shall no longer have the right to annex any additional property pursuant to the provisions of Article V, Section 2 hereof; or (ii) such time as Declarant shall no longer own any portion of the Properties for the purpose of Development or sale.

Section 13. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, Easements and Restrictions for SouthPointe and all amendments thereto.

Section 14. “Limited Common Elements” shall mean those portions of the Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, brick retaining walls located on or adjacent to any part of a Lot, private roads or streets

located behind a security gate, and such other similar areas as may be designated by a subdivision map of the Property or by the Association.

Section 15. "Lot" shall mean and refer to any separately numbered portion of the Properties shown on any now or subsequently recorded subdivision plat of the properties intended for use or used as a site for any single-family attached or detached dwelling for use or used as a site for any single-family attached or detached dwelling, patio, (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon, and "Lots" shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or Common Elements or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. Upon the recording by Declarant of such, a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 16. "Master Plan" shall mean and refer to the plan(s) for the properties and any additional property now or hereafter approved by the appropriate local governmental authority, as such plan(s) may be from time to time amended and approved.

Section 17. "Master Plan Lot" shall mean and refer to any separately numbered portion of the Properties shown from time to time on the Master Plan intended for use or used as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome, or condominium unit and shall include any improvements constructed thereon and "Master Plan Lots" shall refer to all such lots collectively.

Section 18. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 19. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 20. "Person" shall mean and refer to any individual, corporation, limited liability company, partnership, association, trustee or other legal entity.

Section 21. "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 22. "Sub-Association" and "Sub Association Declaration" shall mean and refer to those entities as described in Article X herein below.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights and the right to use the recreational or other Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot, remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (b) The right of the Association pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer, provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;
- (c) The right of the Association to limit the number of guests of Members;
- (d) The right of the Association, with the assent of two-thirds (2/3) of each class of Members to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, provided that the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Members and the Association hereunder;
- (e) The right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements and to create Limited Common Elements.
- (f) The right of Owners of Lots on additional lands annexed to the property initially, or subsequently, to the easements of use and enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Elements and Common Elements established on all lands included in subsequent phases.

(g) The right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common elements for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the provisions of this Declaration and the By-Laws, his right of use and enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property, but may not delegate or assign responsibility for the actions of those to whom such right is delegated.

Section 3. Title to the Common Elements. While reserving the rights to build and own facilities on the Common elements and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Properties for ownership and maintenance as necessary.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot which is subject to assessment shall be a Member of the Association, Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, during any period of Declarant Control. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. 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. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members

Class B. The Class B Member shall be the Declarant and shall be entitled to the (6) votes for each Master Plan Lot that is owned by Declarant, and/or any Affiliate or for which

Declarant or any Affiliate holds a contract right to purchase. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in Class A membership equal or exceed the total votes outstanding in Class B membership, but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, the Master Plan is amended to add additional Master Plan Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to (6) votes for each Master Plan Lot that is owned by a Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase) greater than those of the Class A membership, or
- (b) Twenty (20) years from the date of recordation of this Declaration

Section 3. During the Declarant Development Period, Declarant shall have the right to designate and select all of the Members of each Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any members or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Properties, except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Section 4. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1 (b) therein.

Section 5. It is recognized that with tracts for which the subdivision of Master plan Lots has not been accomplished or the Master Plan Lots designated, in view of that assessment provided in Article IV, Section 1, it would be inappropriate for Declarant, or its successor in interest to such tracts, to be limited to one vote per lot (or tract); therefore, notwithstanding the provision of Section 2 above, Declarant, or its successor in interest to any such Master Plan tract, shall be entitled to six (6) votes for each unit or lot, as the case may be, which is permitted to be constructed or subdivided thereon by the Master Plan. Such voting rights shall continue as to each lot until the same shall be constructed or subdivided, as the case may be, at which time Declarant shall have six (6) votes for each dwelling unit constructed or lot subdivided, if owned by Declarant, and if not owned by Declarant then the Owner shall have voting rights as a Class A Member.



## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed transfer therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements. (3) special assessments for purchase, construction or reconstruction of improvements, and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Properties and public or private roads if the Association shall default in payment thereof. The annual, individual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs, late payment charges, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy an individual special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair of remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of each assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, the acquisition, improvement and maintenance of the Common Elements, the establishment, maintenance and repair of a common telecommunication system (if established), services, amenities and facilities, street islands, and for the use and enjoyment of the Common elements, including but not limited to, the cost of repairs, replacements and additions to the Common Elements, the cost of maintenance, repairs and snow removal on the private roads, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Declaration and Bylaws or as deemed appropriate by the Board, the payment of cable service, the employment counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment

(a) Initial Maximum Assessment. To and including December 31, 2008, the maximum annual assessment shall not exceed \$1500.00 per lot.

(b) Increase by Association. From and after January 1, 2009, the maximum annual assessment effective for any year, initially \$1500.00, per year (including 2008) may be increased from and after January 1 of the succeeding year by the Board of Directors without a vote of the membership by a percentage which may not exceed the greater of twelve (12%) percent or the percentage increase reflected in the U.S. City Average, Consumer Price Index-United States and selected areas for urban wage earners and clerical workers, all items, most recent index and percentage changes from selected dates, (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other index as may succeed the Consumer Price Index, for that twelve-month period ending the immediately preceding October 1. The percentage increase shall be based on the maximum annual assessment for the prior year, or if the Association has not chosen to implement an increase for one or more years, or to charge the full amount of the maximum annual assessment, then increase provided in this Section 3 (b) may, at the option of the Association, be based on the maximum annual assessment that would be effective had the increase been implemented each year prior to the year of the actual increase, based on the maximum annual assessment, and not based on the actual annual increase, based on the prior year or years. The Board of Directors, at its option may declare that a special "Refurbishment Assessment" be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied no more than once every five (5) years from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing refurbishing or repairing portions of the Common Elements, such as, but not limited to entryway features, lighting and landscaping and the like.

(c) Increase by Members. From and after January 1, 2009, the maximum annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the maximum annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the maximum annual assessment in an amount in excess of the amounts provided in Subsection (b) of this Section 3 without the consent of Members required by Subsection (c) of this Section 3. The Annual Assessment may be set at an amount less than the maximum annual assessment for any assessment year, in the sole discretion of the Declarant, or at the end of the Declarant Development Period, in the

sole discretion of the Board. Should the Annual Assessment be set at an amount less than the maximum annual assessment permitted, increases in subsequent years shall be in the manner stated within this Section 3 (b) of Article IV.

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

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, in its sole discretion Declarant may either make a loan to the Association for funds to cover the expenses not otherwise covered by the assessment hereunder, or it may pay any Association expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members, and the Declarant, during the Declarant Development Period, prior to making a special assessment for the attorney's fees or prior to incorporation attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment hereunder.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of capital improvements upon the Common Properties. This assessment may not be used for any other purposes including litigation involving the Association.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board may elect to create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required

quorum at the subsequent meeting shall be on-half (1/2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half of the required quorum is not met then in a subsequent meeting the requirement shall be one-fourth (1/4) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other periodic basis established by the Board. Notwithstanding the foregoing, any Common Expense associated with the construction, maintenance, repair or replacement of a Limited Common Element shall be assessed against the Lots to which that Limited Common element is assigned in such proportion as determined by the Declarant, or after the Declarant Development Period., the Board.

Section 8. Date of Commencement of Annual Assessments, Due Dates; Initial Working Capital. The Annual Assessments provided for herein shall commence as to any Lot on the date determined by Declarant, in its sole discretion. Following commencement of the Annual Assessments, a Builder will not have to pay the Annual Assessment until the improvements have been made and the home is occupied. All Consumer-Occupant Lot Owners shall be responsible for payment of one hundred percent (100%) of the Annual Assessment for a Lot, regardless of whether the improvements have been constructed on that Lot. All Lots in subsequently annexed properties, similarly, shall be subject to assessment. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, the initial Consumer Occupant Lot Owner shall, at the time of the initial sale of each Lot from the Declarant or Builder to the initial Consumer-Occupant Lot Owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorney's fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of the Common Elements or abandonment of his Lot. The lien herein granted unto the Association shall be enforceable pursuant to the provisions of Chapter 47 of the North Carolina General Statutes.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any such institutional first mortgage and ad valorem taxes and public assessments levied on said Lot. Sale or transfer by any mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Foreclosure of liens for unpaid assessments. The Board, acting on behalf of all Lot Owners, or on behalf on any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale to acquire, hold, lease, mortgage, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid assessments may be maintainable without foreclosing or waiving the lien securing the same.

Section 12. Assessments upon sale or transfer of a Lot. No Lot Owner shall be liable for the payment of any part of the Assessments assessed against his Lot subsequent to a consummated sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Lot. A purchaser of a Lot shall be jointly and severally liable with the seller for the payment of the Assessments assessed against such Lot prior to the acquisition by the purchaser of such Lot, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefore. Provided, that a first-lien mortgage or other purchaser of a Lot at a foreclosure sale of such Lot shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Assessments assessed prior to such foreclosure sale, and such unpaid assessed Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners, including such purchaser, his successors and assigns.

## ARTICLE V

### ANNEXATION OF ADDITIONAL PROPERTIES AND CLUSTER UNIT AND OPEN SPACE DEVELOPMENT RIGHTS AND OBLIGATIONS

Section 1. Annexation of additional property, except as provided in Section 2 of this Article V, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast forty percent (40%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum shall be on-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

Section 2. If within twenty (20) years of the date of conveyance by Declarant of the first Lot, the Declarant or a shareholder or member of Declarant should develop additional land which Declarant or a shareholder or member of Declarant owns or may hereafter acquire, which land is contiguous to the boundaries of the Property, or such other land as Declarant or shareholder or member of Declarant may hereinafter acquire contiguous to the additional land, which additional land has been subjected to this Declaration, such land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property.

Declarant may amend this Declaration at the time of annexation of additional lands as pursuant to the provisions of this Article V, Section 2. Declarant shall have the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration. The addition of property authorized under this paragraph may increase the cumulative maximum number of lots authorized in the properties, and therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

Section 3. Annexation of additional lands shall be accomplished by recording in the Wilson County Register of Deeds office, a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above, (and by the landowner of the annexed tract or the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully

setting out said provisions in this Declaration. The additional lands shall be deemed annexed to the property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

## ARTICLE VI

### ARCHITECTURAL CONTROL

No site preparation (including, but not limited to tree clearing, grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any landscaping, plantings, equipment, swimming pools, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements relative to their existing landscaping or plantings shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, an Architectural Committee composed of no fewer than three (3) persons and no more than seven (7) persons appointed by the Declarant through and until the date that the Declarant shall no longer own any portion of the Properties for the purpose of development or sale, or such earlier date as determined by Declarant in its sole discretion. Initial construction on all Lots shall be reviewed and approved by the Declarant until the sale of the final Lot in the Property by the Declarant. After such date, the Architectural Committee shall be composed of no fewer than three (3) persons and no more than seven (7) persons, and shall be appointed by the Board. In the event the Architectural Committee fails to approve in writing, such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Committee, approval will be deemed to have been denied.

Upon request, the Association, on behalf of the Architectural Committee, shall provide any Owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and the letter may be relied upon by third parties.

Approval or disapproval by the Architectural Committee of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, which is the sole discretion of the Committee, it shall deem sufficient. Neither the Association, Board nor the Architectural Committee shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made on any lot.

The Board and the Architectural Committee, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications.

The Architectural Committee shall have the power to grant or deny, and may allow or refuse, variances of, and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, pursuant to the terms herein, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards. Notwithstanding the foregoing, Declarant shall have the power to grant or deny the above variances and adjustments so long as Declarant has the authority to appoint members to the Architectural Committee.

In the event of the grant of any variance in the restrictions established herein, the Declarant for so long as the Declarant has the authority to appoint members to the Architectural Committee, and thereafter the Association on behalf of the Architectural Committee shall execute a document acceptable in substance to the Association attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record the document in the Wilson County Registry. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Declarant, the Association, its successors and assigns, and other Lot Owners and may be relied upon by third parties to evidence the variance approval.

Any purchase of a lot or institution financing a lot shall rely on the foregoing statement.

The Association, so long as Declarant has authority to appoint members to the Architectural Committee, shall defer architectural approvals and grants of variances to Declarant unless Declarant has voluntarily relinquished control of the Association.

## ARTICLE VII

### USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for a temporary office of the Declarant or its agents) shall be used except for residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except that Declarant or its agents may use any unsold Lots for sales or display purposes, Declarant may maintain a sales or rental office on the Property and as may be approved by the Board of Directors in its sole discretion, on a case-by-case basis after petition by an Owner. Provided however, that



any such approved business must be conducted entirely, within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

Section 3. Restrictions on Rentals. Leasing of dwellings for any of the following purposes is hereby prohibited:

(a) By an Owner who has not regularly occupied the dwelling as the Owner's primary residence and had no future intent to do so;

(b) By an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of the term of the lease;

(c) By an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

Notwithstanding the foregoing, the Declarant, or affiliate may lease any Dwelling owned by Declarant in connection with the sale of a Lot or marketing of the Property. Further, a Lot Owner shall be permitted to lease a Dwelling to the Declarant or affiliate of the Declarant for purposes of the sale of Lots and marketing of the Property.

Section 4. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 5. Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds and aquarium or pond fish may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. There shall be no other type of pets unless approval is granted by the Board of Directors. There shall be a maximum limit of 2 dogs and/or 2 cats and these pets may be kept inside or outside of the dwelling. If kept outside the dwelling, the Owner must install an approved privacy fence or an underground, invisible, electric fence. Pets shall be under leash at all times when walked or exercised in any portion of the Common Elements, and the owner of such pet shall clean up after each pet. Upon the written request of any owner, the Board may conclusively determine, in its sole and absolute discretion, whether for purposes of this Section 5, have the right to require the owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right to fine any Owner for the violation of these pet restrictions by such Owner, and the Owner shall be liable to the Association for the cost of repair of any damage to the Common Elements caused by the Owner's pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject.

Section 6. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 7. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 8. Structural Integrity. Nothing shall be done in, to, or upon any of the Common Elements which will impair the structural integrity of any building, or other improvement or portion of the Common elements or which would impair or after the exterior of any building, improvement or portion thereof, except in the manner provided in this declaration.

Section 9. Signs. No Lot Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common elements (including, but not limited to Political Signs, Yard Sale signs, Cars for Sale Signs or ANY sign for the sale of personal property), except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority. All signs advertising the sale of a Lot shall be in such a form and contain such language or logos as allowed by the Association pursuant to its Bylaws, or the Rules and Regulations, or as required by local governmental authority. Notwithstanding the foregoing, during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs on the Lots and Common Elements as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws; such permitted signs shall be placed in the approximate center of a Lot and a minimum of six feet from the road curb or shoulder. No sign shall be nailed to trees.

Section 10. Fences, Walls and Hedges. No fence, wall, hedge or other mass planting shall be erected or permitted in front of a dwelling on any Lot, except as approved by the Architectural Committee pursuant to Article VI herein. In addition, no chain link fence shall be allowed in the side or back of a dwelling. No unsightly dog pens will be allowed, a fence or pen for an outside dog or cat must be approved by the Architectural Committee, unless it is an "invisible fence".

Section 11. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

Section 12. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws. No ATVs or other off-road vehicles are permitted on the public or private roads located on the Property, and no ATVs or other off-road vehicles are permitted on

any Common Property. Golf carts shall not be permitted on any public or private road except as may be permitted by the Declarant.

Section 13. Parking. No boats, trailer, campers, motor homes, trucks (larger than half-ton load capacity pickups), commercial vehicles or tractors shall be parked on any Lot, on the Common elements, or on any right of way of any roads or streets within the Property or adjoining the Property by an Lot Owner, its family members, tenants or contract purchasers, except inside an enclosed garage located on a Lot or in a specified storage area established by the Association or except as otherwise may be permitted by the Rules and Regulations of the Association. Delivery and maintenance vehicles, which are not owned by a Lot Owner, are permitted. Notwithstanding the foregoing, this prohibition shall not apply to contractor's trucks and vehicles during the construction of any dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Property until completion of any dwelling, garage or accessory building.

No Cars or other vehicles are to be parked on the grass on any lot or of the common area; they must be parked on paved surface areas. There is a limit of one motor vehicle per lot that may be parked consistently outside of an enclosed garage or building and this vehicle must be in operable condition, must not have any damage to the body of the vehicle and must have a valid license plate.

Section 14. Trailers, etc. No trailer, tent, mobile home, modular home, shack, barn, detached garage, recreational vehicle, camper or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units or in the Common elements used by the contractor during the construction of a dwelling, garage or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 15. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Declarant or Association from erecting, placing or permitting the placing of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 16. Guest Facility. A guest apartment or guest facility may be included as part of a main detached single family dwelling or accessory building, upon receipt of necessary governmental approvals.

Section 17. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery or mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Board or the Architectural Committee of a Sub-Association.

Section 18. Antennae. With exception to the Federal Communications Commissions Restrictions identified in the Telecommunications Act of 1996, the following applies: Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts and other aerials, disks and dishes (for example, without limitation, amateur short

wave or ship to shore) shall not be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to the Rules and Regulations issued for that purpose.

Section 19. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the Board so as not to damage unnecessarily trees, street paving and curbs. During construction, builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris will not be dumped in any area of the Property.

Section 20. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 21. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

Section 22. Unsightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels. No stockpiled topsoil or fill material shall remain on any portion of the Property, without prior written consent of the Declarant, and following the period of Declarant control, the Board.

Section 23. Maintenance. Subject to any other applicable terms of this Declaration, and unless specifically stated to be an obligation of the Association pursuant to this Declaration, the Owner of each portion of the Property, at such Owner's sole cost and expense, shall maintain its portion of the Property, including improvements thereon, in a safe, clean and attractive condition at all times, including but not limited to the following thereon:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Lawn Maintenance on a regular basis, including Landscape Easements, Sign Easements and Landscaped Rights-of-Way unless otherwise provided for according to the terms of any recorded easement agreements should they exist;
- (c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material;
- (d) Maintenance of flower and plant gardens;
- (e) Maintenance of exterior lighting and mechanical facilities;
- (f) Maintenance of parking areas and driveways;
- (g) Maintenance of all Improvements thereon;
- (h) Maintaining adequate soil erosion controls.

(i) Maintenance of storm water drainage easements and portion of the properties served by storm water drainage easements, as required by this Declaration; and

(j) To the extent not adequately maintained by the applicable governmental authority, the Association or a public utility provider, maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each Owner's portion of the Property, even if located in the Common Property. Each Owner shall provide snow and ice removal for any sidewalks located on or adjacent to such Owner's portion of the Property.

Each Owner shall perform the foregoing responsibilities in a manner that does not reasonably disturb or interfere with the reasonable enjoyment by the other Owners of their portions of the Property.

If any Owner fails to perform any of the foregoing Maintenance Responsibilities, then the Association may give such Owner written notice, of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's portion of the Property and perform such maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefore. If the Owner fails to reimburse the Association as required, the Association shall have the same rights and remedies for collection of the amounts as provided in Article IV, Section 9 herein for collection of Assessments.

Section 24. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 25. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

Section 26. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Class B Membership or to any successor to which Declarant makes a specific assignment of this right, the right to replat any two (2) or more Lots and/or common properties (so long as replatting of the common properties conforms with applicable governmental regulations and upon approval by the appropriate governmental authority) shown on the plat of any subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots and /or common properties to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise

buildable or Lots and/or common properties that are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are reasonable necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots. If any of the common properties are recombined with a Lot, the Association shall execute all necessary documents to effect the recombination.

Section 27. Private Wells. Individual private wells are strictly prohibited on the Property, except as permitted by the Declarant.

Section 28. Drainage. No Owner shall channel or direct drainage water onto a neighboring Lot or Common Element except in accordance with a drainage plan approved by Declarant. No Owner shall make any change to or modification of the originally established grades, swales and slopes of his or her lot in any way that changes or impedes the originally established flow of storm water drainage.

Section 29. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, flags, and similar items are subject to Declarant's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of an American Flag, of a size not greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sec. 5-10.

Section 30. Nuisances. No rubbish or debris of any kind will be dumped, placed or permitted to accumulate upon any portion of the Property, nor will any nuisance or odors be permitted to exist or operate upon or arise from the Property, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Property. Further, no activities or situations which result in storm water runoff which interfere with the use and enjoyment of any portion of the Property shall be permitted. Noxious or offensive activities will not be carried on in any part of the Property, and the Association and each Owner and Occupant will refrain from any act or use which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Property, or which could result in a cancellation of any insurance for any portion of the Property, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used, or placed within the Property, except as may be permitted pursuant to terms, condition, rules and regulations adopted therefore by the Board of Directors. (For example, Outdoor patio speakers may be allowed). Any Owner or Occupant who dumps or places any trash or debris upon any portion of the Property will be liable to the Association for the actual costs of removal thereof plus an administrative fee of \$100.00, or such other sum set therefore by the Board as recoupment of administrative costs in administering the cleanup and notices to the Owner and Occupant, and such sum will be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his property is subject.

ARTICLE VIII

BUILDING RESTRICTIONS

Section 1. Estate Lot Restrictions: For those Lots designated on Exhibit B attached hereto and made a part hereof, or designated on any recorded plat as an "Estate Lot" or designated as an Estate Lot within a recorded amendment or supplemental declaration to this Declaration, the following restrictions shall apply as to square footage of the dwelling erected on such lot and the setback lines:

(a) Square Footage. Any dwelling on an Estate Lot (Lots 30-34) shall contain a minimum enclosed dwelling area of three thousand two hundred (3,200) square feet. The term "enclosed dwelling area" as used in this Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling; provided however, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. Variances of the square footage requirements up to twenty percent (20%) may be granted by Declarant or the Board of Directors of the Association in their sole discretion pursuant to Article VI hereof. In no case shall the size be less than that required by the governmental agency having jurisdiction over the Property. At the sole discretion of the Architectural Committee, a portion of the basement square footage may be considered part of the enclosed dwelling area.

(b) Setback Lines. No dwelling erected on an Estate Lot (including garage) shall be constructed nearer than sixty (60') feet to the front Lot line, twenty (20') feet to any side Lot line, fifty (50') feet from the side lot line for any corner lot, or fifty (50') feet to the rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements may be granted by Declarant or the Board of Directors of the Association pursuant to Article VI hereof, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property.

Section 2. Manor Lot Restrictions: For those Lots designated on Exhibit C attached hereto and made a part hereof, or designated on any recorded plat as a "Manor Lot" or designated as a Manor Lot within a recorded amendment or supplemental declaration to this Declaration, the following restrictions shall apply as to square footage of the dwelling erected on such lot and the setback lines:

(a) Square Footage. There are 2 Sections for Manor Lots. Any dwelling erected on a Manor Lot shall contain a minimum enclosed dwelling area of two thousand five hundred (2,500) square feet if located on lots 1-25 and lots 39-42. For Manor Lots located on lots 26-29 and 35-38, two thousand eight hundred (2,800) square feet will be the required minimum. In addition thereto, and unless a variance is granted therefore as provided herein, all dwellings shall have an enclosed two car garage attached to the main dwelling. The term "enclosed dwelling area" as used in this Section 2 shall mean the total enclosed area within a dwelling subject to heating and cooling; provided however, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. At the sole discretion of the Architectural committee, a portion of the basement square footage may be considered part of the enclosed dwelling area.

(b) Setback Lines. No dwelling erected on a Manor Lot (including garage) shall be constructed nearer than sixty (60') feet to the front Lot line, fifteen (15') feet to any side Lot line, forty (40') feet from the side Lot line for any corner lot, or fifty (50') feet to the rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements may be granted by Declarant or the Board of Directors of the Association pursuant to Article VI hereof, but in no will the setback be less than that required by the governmental agency having jurisdiction over the property.

Section 3. Height and accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single family dwelling not to exceed two and one half (2 ½) stories in height exclusive of the basement, a garage and small accessory building (which may include a pool house, servants' quarters, or guest facilities), provided, the use of such dwelling or accessory building does not in the opinion of the Board or Architectural Committee overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Board, Declarant or the Architectural Committee pursuant to Article VI hereof, approves in writing a variance permitting a detached garage. The Board, Declarant, or the Architectural Committee, pursuant to Article VI hereof, may approve in writing a variance permitting a single-family dwelling of more than two and one half (2 ½) stories.

Section 4. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected or placed on or allowed to occupy, any detached single-family residential Lots, and no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 5. Remedies. If the finished dwelling, garage, accessory building or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina law as described in Article IV. Section 9, herein, a notice of liens for any cost incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorney's fees. Any changes in plans or specifications must first be reapproved by the Architectural Committee.

Section 6. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area not generally visible from the road or neighboring Lots, or provide underground receptacles or similar facilities in accordance with standards established by the Association.

Section 7. Parking Spaces. Each Lot Owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said Lot in accordance with standards established by the Association.

Section 8. Storm Drainage. Each Lot Owner shall maintain the drainage devices on its Lot at its own expense. Furthermore, each Lot Owner shall not allow the diversion or



concentration of storm water runoff without the prior written approval of the Architectural Committee, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation.

## ARTICLE IX

### RULEMAKING

Section 1. Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Elements, and facilities located thereon. In particular, but without limitation, the Board of Directors may promulgate, from time to time, rules and regulations that will govern activities that may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. The Association will furnish copies of such rules and regulations, and amendments thereto, to all Owners prior to the effective date of such rules and regulations of such rules and regulations and amendments thereto. Such rules and regulations will be binding upon the Owners and Occupants until and unless any such rule or regulation is disapproved by a majority or more of the votes of the entire Association at a special meeting of Members called therefore and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Any action by the Board to adopt, overrule, cancel or modify any rule or regulation, or any vote of Members disapproving any rule or regulation, will not be effective and binding upon the Owners and Occupants until and unless the same is approved by the Declarant during the Declarant Development Period.

Section 2. Authority and Enforcement. Subject to the provisions of Section 3 herein, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment; (ii) to suspend an Owner-Member's right to vote in the Association; or (iii) to suspend an Owner's or Occupant's right to vote in the Association; or (iii) to suspend an Owner's or Occupant's right to use any of the Common Elements. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over private roads and streets constituting Common Elements will not be terminated hereunder. An Owner or Occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

Section 3. Procedure. Except with respect to the failure to pay Assessments, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other

rights of an Owner or other Occupant of the Property for violations of the Declaration, Bylaws or any rules and regulations of the Association, unless and until the following procedure is followed.

- (a) Demand to Cease and Desist. Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:
  - (h) The alleged violation
  - (II) The action required to abate the violation; and
  - (iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws, or the rules and regulations of the Association may result in the imposition of the sanctions after notice and hearing.
- (b) Notice and Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice will contain:
  - (i) The nature of the alleged violation;
  - (ii) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;
  - (iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf, and
  - (iv) The proposed sanction to be imposed
- (c) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE X  
SUB-ASSOCIATIONS

Section 1. Establishment of Sub-Associations. Notwithstanding anything to the contrary set forth in this Declaration, Declarant hereby reserves the exclusive, unrestricted and unconditional right to cause to be created one or more North Carolina non-profit corporations (the "Sub-Association") to administer another declaration of protective covenants with respect to certain portions of the Property, as designated by the Declarant. A Sub-Association, if it is formed, shall co-exist with the Association; and

(a) It shall have the sole and exclusive right, power and authority and obligation to implement a declaration of protective covenants ("the Sub-Association Declaration") as to the designated portion or portions of the Property and the Association shall have no such right, power, authority or obligation.

(b) It shall have the sole and exclusive right, power and authority and obligation to implement as necessary an assessment structure for the maintenance and repair of common elements which serve the designated property only.

(c) The Owner of a Lot in the designated portion of the Property shall automatically become a member of the Sub-Association and shall remain a Member of the Association.

(d) The Sub-Association shall have all of the rights and powers as are conferred upon it in its articles of incorporation, in the Sub-Association Declaration, and such additional rights and powers as are reserved unto Declarant in the Sub-Association Declaration, or are otherwise possessed by Declarant and assigned by Declarant to the Sub-Association, which Declarant may do at any time or times.

(e) The Sub-Association shall be managed by its board of directors in accordance with its bylaws and the provisions of North Carolina General Statute Sections 55A and 47F.

(f) Matters pertaining to membership in the Sub-Association, including the classes of members, quorum requirements, voting rights and notices, shall be as set forth in the Sub-Association's articles of incorporation or bylaws.

(g) All of the functions of the Architectural Committee relative to the designated portion or portions of the Property shall, at the discretion of the Declarant, be assigned to an architectural control committee of the Sub-Association and approval by the architectural control committee of the Sub-Association shall also be considered to be approval by the Committee.

(h) Notwithstanding anything contrary in the Declaration, cross-access and parking easements, and other easements as necessary for the development of the

designated property shall be permitted to be established in the Sub-Association Declaration without the approval of Members.

(i) Notwithstanding anything contrary in the Declaration, the Sub-Association shall be permitted to have and enforce a separate set of development standards, including but not limited to setbacks and square footage requirements, which may differ from the development standards of the Association.

(j) Appropriate amendments to this Declaration in order to establish the Sub-Association shall be adopted by the Declarant without the need for approval of the Members.

## ARTICLE XI

### EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Common Elements, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer lines, storm drainage, gas lines, cablevision lines, telecommunications facilities, telephone and electric power lines and other private or public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration. There is hereby reserved a fifteen foot (15') easement around the boundary of all Lots for purposes of installation of any utility to serve such property and for such reasons as deemed necessary by the Declarant in its sole discretion.

Section 2. Easement for the Benefit of Governmental and Quasi-governmental Authorities. An easement is hereby established for the benefit of any governmental and quasi-governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Elements for the setting, removing and reading of water meters (which shall be separate for each Lot), maintaining and replacing drainage, water, and sanitary sewer facilities, for police protection, fire fighting and garbage collection, postal services, and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the governmental authority or other responsible agency, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authority's responsibilities.

Section 3. Easements Reserved by Declarant. Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for:

- (i) The exercise by Declarant or any assignee of Declarant of any right herein reserved, including without limitation, Declarant's right to annex any additional property pursuant to Article V, Section 2 of this Declaration; and
- (ii) The development by Declarant or any assignee of Declarant, their respective successors and assigns, of any additional property owned by Declarant or assignee of Declarant, whether or not Declarant elects to annex such additional property;

Including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for drainage and for the use of all utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing drainage, water, light, power, telephone, sewage and sanitary service to any additional properties described in subsections (i) and (ii) of this Section 3.

Section 4. Easement for Benefit of Utility Company. The Declarant reserves the right to subject the Property, including the Common Elements, to a contract with The City of Wilson, as applicable, for the installation of underground electric lines, cables and connector posts or for the installation of street lighting, either or both of which, may require an initial payment or a continuing monthly payment to the utility by the owner of each Lot or the Association, as determined by the Association. Further, Declarant reserves the right to subject the Property, including Common elements, to a contract with a private provider of water and sewer services for the installation, maintenance, repair and replacement of facilities in connection thereof.

Section 5. Easements for Repairs. Each Lot Owner shall have perpetual access easement over the adjoining Lot and Common Elements to the extent reasonably necessary to perform repair, maintenance, or reconstruction of his dwelling. No fence, wall, outbuilding, storage shed or similar structure, or any other kind of obstruction, shall be installed or maintained within the easement area which will obstruct access to the residential unit. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining Lot and Common Elements to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

The Association shall have an easement for access and maintenance as necessary to maintain the retaining walls located on any Lot, which retaining walls are designated as the responsibility of the Association, and not a responsibility of a Sub-Association or other entity.

Section 6. Landscape and Access Easements. In addition to, and not in substitution of, the reservation of easements by the Declarant elsewhere in this Declaration, there is hereby specifically reserved Landscape Easements on Lots 1, 2, 3, 11, 12, 13, 14, 15, 16, 17, 40 and 41 and Access Easements on Lots 1, 2, 3, 10, and 11, all as shown on the plat of the subdivision recorded in Plat Book 37, Page 102, in the Wilson County Registry. Further, the Declarant hereby reserves unto itself, its successors and assigns, the exclusive right to control and maintain the landscape easement areas and the access easement areas as shown on said plat. The Owners of the Lots that are subject to said easements shall not place, or allow to be placed, anything in said areas, shall not plant, or allow to be planted, anything in said areas.,

and shall not otherwise go upon, or allow anyone to go upon, said areas without the prior written consent of the Declarant, its successors and assigns. The Declarant will in the future turn over the control and maintenance of these areas to the Association and it will then be the responsibility of the Association to maintain and control these areas, and the cost thereof shall be paid out of the annual assessments.

Section 7. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Elements, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 8. Encroachments. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same.

Section 9. Recorded Easements. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Section 10. Drainage Easement. In addition to the foregoing reserved specific easements, the Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot.

Section 11. Ground Disturbance. These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 12. Declarant Easement. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 13. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Elements.

Section 14. Easements Deemed Granted and Reserved. All conveyances of a Lot hereunder, whether by the Declarant or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Declaration.

Section 15. Access, Ingress and Egress; Roadways. All Owners, by accepting title to property conveyed subject to this Declaration, waive all rights of uncontrolled, unlimited access, ingress and egress to and from such property and acknowledge and agree that such access, ingress and egress will be limited to roads, sidewalks, walkways and paths located within

the Property from time to time, provided that pedestrian and vehicular access to and from such property will be provided at all times. Subject to the right of the Declarant to dedicate any roadways within the Property, there is reserved unto Declarant, the Association and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Property, provided that access to the Property may be granted to any person who gives reasonable evidence satisfactory to entry guards, if there are any, that entry is with the specific permission of the Owner, or his duly authorized agent. Neither the Declarant nor the Association will be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Property in accordance with the foregoing,

Neither the Declarant nor the Association shall in any way be considered insurers or guarantors of any gate or controlled access to the Property or safety measures undertaken with respect thereto by failure to provide controlled access of safety measures, or from leaving any gate open, or from a failure or ineffectiveness of any such controlled access or safety measures undertaken by either or both of them. No representation, warranty or covenant is given to any owner of occupant by either or both of the Declarant and the Association that any controlled access or safety measures installed or undertaken cannot be bypassed or compromised, or that they would, in fact, avert damage or loss resulting from that which they are designed to prevent, and each owner, by acceptance of a deed to a Lot or Dwelling and each occupant thereof shall indemnify and hold the Declarant and the Association harmless from any damage and costs and expenses, including attorney fees, incurred by either or both of them as a result of any such assertion or determination.

(a) Post Sign; Towing. The Declarant or the Association after title to any private streets and roadways has passed to it from the Declarant, may post "no parking" signs along such private streets and roadways within the Property where it, in its sole discretion, determines it to be appropriate to do so. Violators of said "no parking" signs are subject to having their vehicles towed away and will be required to pay the cost of such towing and storage before their vehicle may be recovered. The act of towing said vehicles will not be deemed a trespass or a violation of the Owner's property rights, because the Owner will be deemed to have consented to such action by accepting the right to use the private roads and streets with the Property.

(b) Public Roadways Within the Property. During the Declarant Development Period, the Declarant and thereafter, the Association, shall have the right to dedicate any portion of the roadways within the Property to the State of North Carolina or any political subdivision thereof for the purpose of granting public access thereto and over said roadway and for the purpose of having said political subdivision assume responsibility and maintenance of such roadways. Furthermore, during the Declarant Development Period, the Declarant, and thereafter the Association, shall have the right to impose upon the Association the requirement of maintaining any such dedicated roadway until such time as the roadway is brought up to standards acceptable to such public body and maintenance thereof is assumed by such public body; provided, however, Declarant may, in its sole discretion, reserve an easement over any such public roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights of way thereof, and thereafter

to denominate in a recorded Plat or Supplemental Declaration that said easement will constitute a Common Element of the Property to be maintained by the Association. The Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote in an amount sufficient to provide funds required to bring any roadway up to standards acceptable to any public body for the assumption by it or maintenance of a said roadway.

(c) Declarant's Right to maintain Open Gate. Notwithstanding anything herein contained to the contrary, the Declarant hereby reserves unto itself, its successors and assigns, the right and option to control any gate to a Private Road within the Property and to leave the gate in an open position for the unobstructed and uncontrolled passage of construction vehicles for persons engaged in both infrastructure and building construction activities. The within right, if exercised, will be limited to the hours of 6 a.m. to 6 p.m. and will terminate upon expiration of the Declarant Development Period.

Section 16. Easements over Private Roadways. Public and Service Vehicles, Police, fire, water, health and other authorized municipal officials, employees and their vehicles, paramedic, rescue and other emergency personnel and their vehicles; private delivery or courier service personnel and their vehicles and equipment will each have perpetual, non-exclusive easement for access, ingress and egress over the private roadways constituting a portion of the Common Elements, solely for the performance of their official duties.

## ARTICLE XII

### INSURANCE

Section 1. Insurance to be Maintained by the Association. The following Insurance coverage shall be maintained in full force and effect by the Association:

- (a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, but public liability shall be an amount of at least One Million and no/100 Dollars (\$1,000,000.00) for each occurrence.
- (b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- (c) Such other Insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all improvements, including improvements located in the Common Elements.
- (d) Fidelity bonds for those officers or employees having control over Association funds.
- (e) Other insurance required by law.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged as a Common Expense ratably to Owners as an annual assessment according to the applicable provisions of this Declaration.



Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. Insurance to be Maintained by the Owners. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of the dwelling and other improvements constructed on that Owner's Lot except that the amount shall not be required to exceed the replacement cost of the dwelling and other improvements. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

### ARTICLE XIII

#### RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Authority, Federal national Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15th of each calendar year.
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- (c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Leader or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Leaders, or to the place which it or they may designate in writing to the Association.
- (d) To inspect the books and records of the Association and Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.
- (e) To be given notice by the Association of any substantial damage to any part of the Common Elements.

- (f) To be given notice by the Association if any portion of the Common Elements, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by then, or any of them, together with sufficient pertinent facts to identify and mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

## ARTICLE XIV

### GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. No Rights in Other Lands. Nothing herein, nor any deed of conveyance of a Lot or Tract of land in SouthPointe, shall give any Lot Owner any rights in and to any property within said subdivision as planned, projected or schematically presented, including, but not limited to, roads, streets, access ways, Common Elements and reserved lands, except those Lots and roads abutting any Lots made subject to this Declaration as amended and any Common Elements conveyed to the Association; and specifically, until such time as any property is made subject to this Declaration, no Lot Owner shall have any rights in any properties described, or depicted, on that Exhibit.

Section 4. Option to Repurchase: In the event no improvements have been constructed on a Lot, and an Owner wishes to sell a Lot within twenty-four (24) months from the date of recording of a Deed from the Declarant to a Builder or a Consumer-Occupant, Declarant shall have the unrestricted right and option (but not the obligation), which Declarant may exercise at any time upon thirty (30) days prior notice, to repurchase the entirety of the Lot in the manner herein provided. The Lot Owner shall be required to give the Declarant written notice of its intent to sell the Lot, and option to repurchase by the giving of a written "exercise notice" to the Owner in which Declarant states that it has affirmatively exercised its option to

repurchase the Lot. The cost to repurchase shall be at the original Lot purchase price from the Declarant, plus any actual construction costs incurred. All conveyances of Lots by Declarant shall be deemed made and accepted subject to the aforesaid option, and on the condition that the Owner convey the Lot to Declarant upon the timely exercise by Declarant of its option to repurchase.

Section 5. General Amendments. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of then (10) years unless terminated as hereinafter provided. This Declaration may be terminated only with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. This Declaration may be amended with the consent of the Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association. The foregoing notwithstanding, however, during Declarant's Development Period, this Declaration may not be amended or terminated without Declarant's consent; and no termination and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. In addition, no alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Declarant or of the obligations imposed herein on Declarant shall be made without the written consent of Declarant being first had and obtained and no alteration, amendment, or modification of any easement rights established in favor of any property not a part of the Properties shall be effective without the written consent of the owner(s) of such property. Any notice of termination or amendment must: (1) be executed on behalf of the Association by its duly authorized officers. (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite Owner and Declarant approval has been obtained and is evidenced by written acknowledgement(s) signed by the Owners approving the termination or amendment and, as the case may be, if required, Declarant, and that such acknowledgments have been made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Wilson County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 2 of Article V shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds. Notwithstanding the foregoing, Declarant may at any time unilaterally amend this Declaration to terminate or restrict any right reserved hereunder by Declarant, and the Declarant during Declarant's Development Period, and thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, to correct obvious errors and omissions herein.

Section 6. Landscaping of Islands. Landscaping of islands within the rights-of-way of private and public streets shall be the responsibility of the Association. Such areas shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants must be removed by the Association. Neither the County nor the State will be liable for any accidents or damage caused by such encroachment within the rights-of way and the Association shall hold harmless

the public and indemnify the County and State from such liability. The cost of maintaining landscape islands is a Common Expense.

Section 7. Gender. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and feminine, and vice versa. The terms "heirs, executors, administrators and assigns" shall include "successors, legal representative and assigns".

Section 8. Captions. Captions are solely for the purpose of facilitating reference, and terms such as "herein", "hereof" and "hereunder", or other terms of similar import shall be deemed to refer to this Contract as a whole and not to any particular section.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

SouthPointe Capital, Inc., a North Carolina corporation

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

STATE OF NORTH CAROLINA

COUNTY OF WILSON

I, the undersigned Notary Public, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is President of SouthPointe Capital, Inc, a North Carolina corporation, and that he as President, being so authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and Notarial Stamp/Seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public –  
My Commission Expires \_\_\_\_\_

**EXHIBIT "A"**

**Legal Description of the Property**

BEING all of that 78.8 acre tract show on those plats entitled, "Subdivision Plat of SouthPointe Community Phase 1" Dated January 2008 by Bartlett Engineering and Surveying, PC and recorded in Book of Plats on August 19, 2008, Book #37, pages 102 and 103 Wilson County Registry.

**EXHIBIT "B"**

Legal Description of Estate Lots

BEING all of Lots 30, 31, 32, 33, and 34, as shown on that map entitled "Subdivision Plat of SouthPointe Community – Phase 1" dated January 2008 by Bartlett Engineering and Surveying, PC and recorded in Book of Plats on August 19, 2008, Book #37 , pages 102 and 103 Wilson County Registry.

## **EXHIBIT "C"**

### **Legal Description of Manor Lots**

Section 1 – Manor Lots - Being all of Lots, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 39, 40, 41, and 42 will require a minimum of Two Thousand Five Hundred (2500) square feet.

Section 2 – Manor Lots – Being all of Lots 26, 27, 28, 29, 35, 36, 37 and 38 will require a minimum of Two Thousand Eight Hundred (2800) square feet.

All of these lots in both sections 1 and 2 are shown on that map entitled "Subdivision Plat of SouthPointe Community – Phase 1" dated January 2008 by Bartlett Engineering and Surveying PC and recorded in Book of Plats on August 19, 2008, Book #37, pages 102 and 103 Wilson County Registry.