

TO BE INDEXED IN THE GRANTEE INDEX IN THE NAMES OF "OLD STONE CROSSING AT CALDWELL CREEK" AND "OLD STONE CROSSING AT CALDWELL CREEK PROPERTY OWNERS ASSOCIATION INC." AND IN THE GRANTOR INDEX IN THE NAME OF "FC CALDWELL, LLC"

Drawn by and mail after recording to:
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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR OLD STONE CROSSING AT CALDWELL CREEK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OLD STONE CROSSING AT CALDWELL CREEK is made on the date hereinafter set forth by **FC CALDWELL, LLC**, a North Carolina limited liability company, hereinafter referred to as "Declarant".

PRELIMINARY STATEMENT

Declarant is the owner of the Existing Property (as hereinafter defined). Declarant is developing the Existing Property as an exclusive single family residential community.

The Property (as defined herein), including the Existing Property, is being developed under a common scheme and general plan for the improvement and maintenance of the Property. Declarant wishes to insure the attractiveness of the individual Home Sites and community facilities within Old Stone Crossing at Caldwell Creek and to prevent any future impairment thereof; to prevent nuisances; to preserve, protect and enhance the values and amenities of the Property and to provide for the maintenance and upkeep of the Common Areas, Common Open Spaces, Landscape and Easement Areas, entrances, landscaping of community facilities and utilities located within Old Stone Crossing at Caldwell Creek; to pay a portion of the costs of maintaining landscaping along public streets within and abutting the Property and for other purposes as set forth herein; and, in order to accomplish these objectives, Declarant deems it advisable to subject the Existing Property, together with such additions as may hereafter be made thereto (as provided in Article III, Section 2 hereof), to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

Declarant deems it desirable, in order to insure the efficient preservation, protection and enhancement of the values and amenities of Old Stone Crossing at Caldwell Creek and the residents' enjoyment of the specific rights, privileges and easements in the community properties and facilities, that an organization be created to which will be delegated and assigned the powers of owning and maintaining all Common Areas, administering and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed.

Declarant has formed for the purposes aforesaid or will form, a North Carolina non-profit corporation under the name and style of Old Stone Crossing at Caldwell Creek Property Owners Association, Inc.

DECLARATION

NOW, THEREFORE, the Declarant declares that the Existing Property is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the real property (except as provided in Article IV, Section 9 hereinafter) and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Architectural Review Committee" shall mean a committee of not less than three nor more than five individuals appointed as hereinafter set forth to review plans and specifications as provided in Article IX hereof and to make the determinations provided in said Article IX. Until January 1, 2007, the members of the Architectural Review Committee shall be appointed by the Declarant, unless the Declarant by written recorded document has assigned its rights under this Section 1 to the Association, in which case the Association's Board of Directors shall select the members of the Architectural Review Committee. After January 1, 2007, the members of the Architectural Review Committee shall be appointed by the Association's Board of Directors.

Section 2. "Association" shall mean and refer to Old Stone Crossing at Caldwell Creek Property Owners Association, Inc., a North Carolina non-profit corporation, formed or to be formed, its successors and assigns.

Section 3. "Common Area" or "Common Areas" shall mean all real property now or hereafter owned by the Association for the common use and enjoyment of the Owners and all real property designated as "Common Open Space" or "Common Area" shown on any plat of the Property heretofore or hereafter duly recorded in the Mecklenburg County Public Registry and made subject to the provisions of this Declaration. All real property designated as "Common Open Space" or "Common Area" shown on any such plat of the Property shall be deemed

"Common Area" both prior to its conveyance to the Association and after its conveyance to the Association.

Section 4. "Common Area Access Easement" shall be those areas, if any, designated as Common Area Access Easements on maps of portions of the Property presently or hereinafter recorded.

Section 5. "Common Open Space" shall mean all real property designated as "Common Open Space" shown on any plat of the Property duly recorded in the Mecklenburg County Public Registry and made subject to the provisions of this Declaration.

Section 6. "Declarant" shall mean and refer to FC Caldwell, LLC, a North Carolina limited liability company, and those of its successors and assigns, if any, to whom the rights of Declarant hereunder are specifically transferred by written instrument, subject to such terms and conditions as the Declarant may impose. Upon any transfer by Declarant of any or all of its Declarant rights and obligations hereunder, Declarant shall be relieved of any and all liabilities with respect to the rights and obligations so transferred. In no event shall any of the managers, members or employees of Declarant be held personally liable for the performance of any of the obligations of Declarant hereunder.

Section 7. "Designated Maintenance Items" shall mean any brick or stone wall constructed by Declarant on any portion of the Property, public or private sanitary sewer/water lines located within any portion of the Property, public or private drainage easements located within any portion of the Property, sprinkler and irrigation systems located within any portion of the Property, plants and landscaping within the rights-of-way of public streets located within the Property, and the following items located within any Landscape and Easement Areas, Common Area Access Easement, Common Areas or Common Open Spaces:

- (a) Plants and landscaping (including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass) and including plants and landscaping within the rights-of-way of public streets located within the Property.
- (b) Light poles, fixtures, bulbs, traffic signals, wiring and all equipment related to the use thereof.
- (c) Decorative and screening walls, retaining walls (provided, however, that neither the Declarant nor the Association shall have the obligation to landscape any such retaining wall), benches, steps and walking paths.
- (d) Outdoor furniture and benches.
- (e) Signs, flag poles, flags, banners and seasonal decorations.
- (f) Arbors, trellises, gazebos, pergolas, rose arches and similar structures.

- (g) Fences and brick or stone walls.
- (h) Sprinkler and irrigation systems, if any (including water meter vaults and water meters used in connection with such systems), and including sprinkler and irrigation systems (if any) within the rights-of-way of public streets located within the Property.
- (i) Water lines, sewer lines and stormwater drainage lines and all fixtures related thereto not maintained by the Charlotte Mecklenburg Utility Department or other appropriate governmental authority.
- (j) Public or private drainage easements.
- (k) Public or private sidewalks.
- (l) Jogging or nature trails.
- (m) Lakes, ponds, streams, fountains and other water amenities including, but not limited to, pumps, pipes, drains, drainage, water and electrical lines, fountain parts, fountain lights or other decorative lighting within a water amenity, water jets, filters, chlorinators, nozzles, weirs, switches and related equipment, easements or housings, gravel, stone or concrete beds, walls, dams and other structural housing for water containment or detention and directional control.
- (n) Swimming pools, swimming pool equipment and related apparatus, filters, chlorinators, pumps, drainage, water and electrical lines, outdoor furniture and equipment, and any related locker room and/or cabana facilities and any buildings connected therewith, including clubhouses, if any.
- (o) Recreational facilities, including tennis courts, nets, fencing, children's playground equipment, baseball diamonds, soccer facilities, basketball and volleyball courts and other similar recreation areas.
- (p) Other items as approved by the Board of Directors of the Association.

There shall be excluded from the definition of Designated Maintenance Items any improvements maintained by the appropriate governmental authority, unless the Association has contracted with said governmental authority for the maintenance of the same.

Section 8. "Existing Property" shall have the meaning ascribed thereto in Article III, Section 1 hereof.

Section 9. "Home Site" shall mean and refer to any numbered plot of land, with delineated boundary lines, shown upon any recorded subdivision map of the Property with the exception of any Common Area and Common Open Space. In the event any Home Site is increased or decreased in size by Declarant by resubdivision, through recordation of a new

subdivision plat, any such newly platted Home Site shall thereafter constitute a Home Site for the purposes of this Declaration.

Section 10. "Landscape and Easement Areas" shall be those areas designated as Landscape and Easement Areas on maps of portions of the Property, presently or hereinafter recorded.

Section 11. "Member" shall mean and refer to the Owners, including Declarant, and every person or entity holding membership in the Association.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Home Site which is a part of the Property, including contract sellers and owners of an equity of redemption, but excluding contract purchasers and those having such interest in a Home Site solely as security for the performance of an obligation.

Section 13. "Property" shall mean and refer to the Existing Property and any additions thereto which become subject to the Declaration pursuant to the provisions of Article III, Section 2 hereof.

Section 14. "Utility and Sidewalk Easement" shall be those areas designated Utility and Sidewalk Easement on maps of portions of the Property, presently or hereinafter recorded.

This Declaration imposes no obligation on Declarant to construct or install any of the Designated Maintenance Items.

Declarant reserves the right to relocate the boundary of any Common Area provided that the total acreage of the Common Areas shall not be materially reduced without an amendment of this Declaration in accordance with the provisions of Article XII, Section 2 hereof. Declarant shall effect such boundary change by recordation of a supplemental Declaration setting forth the revised boundaries of any such areas. Such supplemental Declaration may be effected without consent of any other Member of the Association.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Every Owner of a Home Site 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 Home Site. Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Home Sites. The date of recordation in the Office of the Register of Deeds of Mecklenburg County of the conveyance of the Home Site in question shall govern and determine the date of ownership of each particular Home Site. However, in the case of death, the transfer of ownership shall occur on the date of death, in the case of intestacy, or the date of probate of

the will, in the case or testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Home Sites. There shall be two classes of Home Sites with respect to voting rights:

(a) Class A Home Sites. Class A Home Sites shall be all Home Sites except Class B Home Sites as the same are hereinafter described. Each Class A Home Site shall entitle the Owner(s) of said Home Site to one (1) vote. In the event that prior to the development and subdivision of one or more portions of the Existing Property, any portion of the Existing Property is conveyed to persons or entities other than Declarant, the number of Class A Home Sites within such portion of the Existing Property shall initially be determined on the basis of a full build out of such property in accordance with the existing zoning of such portion of the Existing Property, and the number of Home Sites shall thereafter be readjusted to the actual number of Home Sites as depicted on recorded subdivision plat(s) for such portion of the Existing Property. When more than one person owns an interest (other than a leasehold or security interest) in any Home Site, all such persons shall be Members and the voting rights appurtenant to said Home Site shall be exercised as they, among themselves, determine, but in no event shall any Home Site have more than one (1) vote.

(b) Class B Home Sites. Class B Home Sites shall be all Home Sites owned by Declarant which have not been converted to Class A Home Sites as provided in subparagraphs (1) or (2) below. The Declarant shall be entitled to three (3) votes for each Class B Home Site owned by Declarant.

The Class B Home Sites shall cease to exist and shall be converted to Class A Home Sites:

- (1) When the total number of votes appurtenant to the Class A Home Sites equals the total number of votes appurtenant to the Class B Home Sites; or
- (2) On January 1, 2011, whichever event shall first occur.

When the Class B Home Sites cease to exist and are converted to Class A Home Sites, Declarant shall have the same voting rights as other owners of Class A Home Sites.

Section 3. Amendment. Notwithstanding the provisions of Section 2 above, so long as Declarant, or any of the present members of Declarant, own any one (1) Home Site, this Declaration and the Bylaws of the Association may not be amended without its written consent.

Section 4. Board of Directors. The Association shall be governed by a Board of Directors (the "Board of Directors") in accordance with the Bylaws. Notwithstanding the provisions of Section 2 above, the Declarant shall have the right to appoint or remove by written

notice to the Board of Directors any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occurs:

- (a) Class B Home Sites cease to exist and are converted to Class A Home Sites;
- (b) Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant; or
- (c) January 1, 2011.

ARTICLE III PROPERTY SUBJECT TO DECLARATION PROPERTY RIGHTS

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Mecklenburg County, North Carolina and is more particularly described on Exhibit A attached hereto and incorporated herein by this reference. This property is sometimes referred to herein as the "Existing Property."

Section 2. Additions to Existing Property. Additional residential property (and common areas) which is contiguous to the Existing Property may be annexed to the Existing Property by Declarant and brought within the scheme of this Declaration and the jurisdiction of the Association without the consent of the Association or the Members, provided that said annexations must occur prior to January 1, 2011. The additions of such property authorized under this Section shall be made by recording a supplementary Declaration of Covenants, Conditions and Restrictions executed by Declarant with respect to the additional property which shall extend the operation and effect of the covenants, conditions and restrictions in this Declaration to such additional property.

Section 3. Ownership of Common Areas. No later than the date which is the earlier to occur of (i) the date on which 75% of the Home Sites have been conveyed by Declarant to other Owners or (ii) the date required by the Department of Veterans Affairs, Declarant shall convey the Common Areas and Common Open Spaces to the Association. Declarant may, prior to such date, convey all or any part of designated Common Areas and Common Open Spaces to the Association. Notwithstanding the foregoing, in the event that any Owner finances his purchase of a Home Site through a loan guaranteed by the United States Department of Veterans Affairs, Declarant shall convey to the Association the Common Areas and Common Open Spaces designated on any then recorded plat of the Property prior to the conveyance of a Home Site to any such Owner. Notwithstanding the recordation of any map or any other action by Declarant or the Association, the Common Areas and Common Open Spaces shall remain private property and shall not be considered as dedicated to the use and enjoyment of the general public. Notwithstanding the Declarant's ownership of any Common Areas or Common Open Spaces, the Association shall be responsible for the upkeep and maintenance of the same as soon as they are designated as Common Areas or Common Open Spaces by the Declarant or the Association or any Owner has commenced to use or has the right to use the same.

Section 4. Owner's Rights to Use and Enjoy Common Areas. Except as limited by Section 5 of this Article III, every Owner shall have a non-exclusive right and easement to use and enjoy the Common Area and Common Open Spaces, which right and easement shall be appurtenant to and shall pass with the title to every Home Site, subject to the following provisions:

(a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the same to ensure the safety and rights of all Owners;

(b) The right of the Association to limit the use of recreational facilities (if any) situated upon the Common Area to Owners who occupy a residence on the Property, and to their families, tenants, and guests as provided in Section 5 of this Article III;

(c) The right of the Association to suspend the voting rights and rights of an Owner to the use of any Common Areas for any period during which any assessment against its Home Site remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations.

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas, Common Open Spaces or private water/sewer/stormwater drainage lines to any public agency, authority or public or private utility for such purposes and subject to such conditions as may be agreed to by the Members. Except as provided below, no such dedication or transfer shall be effective unless the Members entitled to at least sixty-seven percent (67%) of the votes appurtenant to all the Home Sites agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided, however, that the Association and the Declarant shall have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, telephone, water, gas and sewer upon, over, under and across any Common Area and/or Common Open Space without the assent of the Members when, in the sole opinion of the Board of Directors of the Association, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of the Property and, in the sole opinion of said Board, will not unreasonably interfere with the overall use and enjoyment of the Common Areas and Common Open Spaces; and provided further this paragraph shall not preclude the Board of Directors of the Association from conveying at such purchase price as the Board deems appropriate strips or portions of the Common Areas and Common Open Spaces to any Owner of a Home Site in order to resolve any gap, gore, overlap or other boundary line conflict or to make the Home Site more usable as a home site provided such conveyance does not in the good faith judgment of the Board adversely affect the overall use and enjoyment of the Common Areas and Common Open Spaces.

(e) The right of the Association, with the assent of Members entitled to at least sixty-seven (67%) of the votes appurtenant to the Home Sites, to mortgage, pledge, deed in trust, or otherwise hypothecate or encumber any or all of its real or personal property as security for money borrowed or debts incurred.

(f) The right of the Association to grant easements over, across and under the Common Areas as provided in this Declaration.

(g) Declarant shall have, for its benefit, easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Areas.

Section 5. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 4 of this Article III may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in Mecklenburg County, North Carolina.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 4 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in Mecklenburg County, North Carolina.

(c) Guests. Recreational facilities, if any, located on Common Area situated upon the Property may be utilized by guests of Owners, tenants or contract purchasers subject to such rules and regulations governing said use of the Association as may be established by the Board of Directors.

Section 6. Water and Sewage Systems. Declarant has caused (or will hereafter cause) water and sewage systems to be constructed and installed upon the Property, including the Common Area, Common Open Space and through easements over certain Home Sites for the benefit of Owners and others. Upon completion of said systems, Declarant shall convey to the Association any and all pipes, fixtures, wells, pumps and other equipment comprising that portion of the water and sewer systems which are private, which are not located upon a Home Site (except within a designated easement), and which are not owned, operated and maintained by the Charlotte/Mecklenburg Utility Department. That portion of the water and sewer system not owned, operated and maintained by the Charlotte/Mecklenburg Utility Department and which is conveyed to the Association (the "Private System"), if any, shall be owned, operated and maintained by the Association. The Private System, if any, may connect at various points to the public system maintained by the Charlotte/Mecklenburg Utility Department, and the water usage of the Private System shall be maintained by master meters located at such connection points.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Home Site owned by Declarant within the Property and subject to the provisions of Article IV, Section 11 hereof, hereby covenants and agrees to pay, and each Owner of any Home Site by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is

deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, repairs and maintenance and other purposes. Any such assessment or charge, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such property at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by the successor in title, but such unpaid assessment charges shall continue to be a lien upon the property against which the assessment has been made.

Section 2. Purposes of Assessments and Duties of Association. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Designated Maintenance Items, Common Areas, Common Open Space, Common Area Access Easements, and Landscape and Easement Areas, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against any such property, the procurement and maintenance of insurance in accordance with the Bylaws of the Association, the employment of attorneys to represent the Association when necessary, payments of principal and interest on funds borrowed for Association purposes and such other needs as may arise.

Without limiting the generality of the above-described purposes, the Association shall be responsible for performing the following in a diligent and reasonable manner and the assessments levied by the Association may be used for the following purposes:

- (a) To maintain all trails or paths in the Common Areas and Common Open Spaces in reasonably passable condition, free from fallen trees, undergrowth and other obstructions, and to keep dead, diseased or decaying trees, shrubs and bushes removed from such areas and to replace such items with new trees, shrubs and bushes;
- (b) To maintain all Common Areas and Common Open Spaces in accordance with the highest standards for such private facilities;
- (c) To keep all Common Areas, Common Open Spaces, Common Area Access Easements and Landscape and Easement Areas clean and free from refuse and debris to maintain any other amenities in a clean and orderly condition and to maintain the landscaping therein in good condition and appearance, including any necessary removal and replacement of landscaping;
- (d) To pay all ad valorem taxes levied against the Common Areas, Common Open Spaces and any other property owned by the Association;

(e) To pay the premiums on all hazard insurance, public liability insurance and officers' and directors' liability insurance carried by the Association;

(f) To pay legal, management, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

(g) To maintain the signs and landscaping on any Landscape and Easement Area or Common Area Access Easement shown on the recorded maps or reserved by Declarant in deeds to Home Sites;

(h) To maintain all Designated Maintenance Items, including, without limitation, any brick or stone wall erected by Declarant on any portion of the Property, any retaining wall constructed by Declarant on any portion of the Property (provided, however, that neither the Declarant nor the Association shall have the obligation to landscape any such retaining wall), any private water/sewer lines located on the Property and all other Designated Maintenance Items located on Common Areas, Common Area Access Easements, Common Open Spaces or within Landscape and Easement Areas;

(i) To provide such maintenance in addition to that provided by the applicable governmental authorities with respect to public streets located within the Property as the Association shall deem appropriate, including the clearance of storm drainage inlets to remove debris; and

(j) To pay for the cost of street light lease charges, if any, for street lights located within public right-of-ways within the Property.

Section 3. Maximum Annual Assessments. Until January 1, 2003, the maximum annual assessment for each Home Site shall be \$420.00.

(a) From and after January 1, 2003, the maximum annual assessment for each Home Site may be increased or decreased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for each Home Site for the previous year. In the event the maximum assessment for each Home Site is not increased for any particular year or years, the amount which it might have been increased for such year shall be added to the maximum amount the assessment could be increased for each succeeding year, to the effect that the maximum increase shall be cumulative for the current year and all prior years.

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

(c) From and after January 1 of the year immediately following the conveyance of the first Home Site to an Owner, the maximum annual assessment may be increased in excess of the above maximum assessment set forth in paragraph (a) above without limitation if such increase is

approved by no less than two-thirds (2/3) of the votes appurtenant to each class of Home Sites (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

Section 4: Special Assessments for Capital Improvements and Other Matters. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon any Common Areas or Common Open Spaces including but not limited to fixtures and personal property related thereto, any Designated Maintenance Items or any brick or stone wall erected by Declarant or any private water or sewer or stormwater drainage line owned by Declarant or the Association, repayment of indebtedness and interest thereon, providing funds to pay for unforeseen or unbudgeted expenditures, borrowing the funds to make the Property comply with zoning ordinances, borrowing of money for capital improvement and pledging or mortgaging of Association property as security for loans; provided, however, that (i) any such assessment shall have the same assent of the Members as provided in Subsection 3(c) of this Article, (ii) the Association shall in no event convey or subject to a security interest any portion of the Common Areas or Common Open Spaces except in compliance with Section 47F-3-112 of the North Carolina Planned Community Act and (iii) in no event shall the Association levy special assessments for the initial construction of amenities.

Section 5. Collection. Annual assessments shall be collected annually or semi-annually in two (2) equal installments as determined by the Association (or more frequently by separate agreement with the Owner) and special assessments shall be collected on a semi-annual or yearly basis as determined by the Association.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of the votes which may be cast for election of the Board of Directors shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called subject to the same notice requirement by the affirmative vote of a majority of those present in person or by proxy. The required quorum at the subsequent meetings shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Date; Certificate of Payment. The annual assessment provided for herein shall commence as to all Home Sites on the earlier of January 1, 2002 or the date the first Home Site is conveyed by Declarant and thereafter shall be assessed as of January 1 of each year. From and after January 1, 2003, the maximum annual assessment for each Home Site may be increased or decreased by the Board of Directors as provided in Section 3 of this Article. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each

Home Site and at least fifteen (15) days before January 1 of each year shall send written notice of each assessment to every Owner subject thereto; provided, however, the failure of the Board of Directors to establish such assessment amounts and to give notice thereof by such dates shall not prohibit the establishment of an increase at a later date nor prohibit the Association from collecting such increased assessment. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Home Site have been paid.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall incur a one-time late charge in the amount of \$10.00 and if not paid within thirty (30) days after the due date shall bear interest from the due date at a maximum rate of eighteen (18%) percent per annum or at the rate established by the Board of Directors at the beginning of the fiscal year of the Association, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Owner's property, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. Any foreclosure of the lien may be in such manner as is prescribed by the laws of the State of North Carolina for foreclosure of deeds of trust under powers of sale or may be in any other manner permitted by applicable law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, Common Open Space or other property of the Association or by abandoning his Home Site.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Home Site. Sale or transfer of any Home Site shall not affect any assessment lien. However, the sale or transfer of any Home Site which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Home Site from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All portions of the Property dedicated to, and accepted by, a local public authority and all portions of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. All Common Areas shall also be exempt from the assessments created herein. However, no land or improvements devoted to residential dwelling use shall be exempt from said assessments.

Section 11. Declarant's Obligation to Pay Annual Assessments and Special Assessments. Notwithstanding anything to the contrary set forth herein, Declarant shall not be obligated to pay annual assessments or special assessments with respect to any Home Site until such time as Declarant has begun construction of a building pad on such Home Site.

Section 12. Builders' Obligation to Pay Annual Assessments and Special Assessments.

Notwithstanding anything to the contrary set forth herein, during the period of any Builder's ownership of a Home Site, the Builder shall only be obligated to pay fifty percent (50%) of the annual assessments or special assessments which accrue against such Home Site. For purposes of this paragraph, the term "Builder" shall mean any entity which has contracted with Declarant to purchase Homes Sites and to construct single-family dwellings thereon.

ARTICLE V
EXTERIOR MAINTENANCE

Each Owner shall maintain the grounds and the improvements situated on his, her, its or their Home Site, including, but not limited to, plantings, landscaping, hedges, fencing, walls, roof, windows, siding, lawns, driveway entrances, including driveway bridges and driveways, and any portion of any public drainage easement affecting such Home Site as shown on any recorded map of the Property, at all times in a neat and attractive manner satisfactory to the Board of Directors of the Association. Upon an Owner's failure to do so, the Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner ten (10) days written notice sent to his last known address, or to the Home Site, have the grass, weeds, shrubs and vegetation mowed, cut, cleaned or pruned when and as often as the same is necessary in its judgment; have dead trees, shrubs and plants removed from such Home Site, and replaced; have any portion of the Home Site resodded or landscaped; repair or replace all or any portion of the driveway entrance or any bridge or driveway; and maintain, repair or replace all or any portion of any public drainage easement located on such Home Site. All expenses of the Association under this Article shall be a lien and charge against the Home Site on which the work was done and the personal obligation of the then Owner of such Home Site. The Owner shall remove mud stains and any construction discoloration from the foundation of any improvements upon completion of the improvements. Upon Owner's failure to maintain the exterior of any structure, including, without limitation, the roof, walls, trim and foundation, in good repair and appearance, the Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner thirty (30) days written notice sent to his last known address or to the Home Site, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Home Site and shall constitute an assessment against the Home Site, collectible in a lump sum and secured by the lien against the Home Site as herein provided. The Association or its agents or employees may enter any Home Site between the hours of 8:30 a.m. and 6:00 p.m. (or during other hours in the case of an emergency) to perform the maintenance and repairs set forth herein and such entry shall not be a trespass.

ARTICLE VI
USE RESTRICTIONS

Section 1. Residential Purposes Only. Each Home Site shall be used exclusively for single family, non-transient residential purposes and garages, carports and parking spaces shall be used exclusively for the parking of passenger vehicles or light (i.e., non-commercial) vans or

pick up trucks; provided, however, Declarant (and its designees) shall have the right to use up to fifteen (15) Home Sites designated from time to time by Declarant (or its designees with Declarant's approval) for the purpose of construction and operation of a sales and marketing center and for related uses. No trade or business of any kind shall be conducted upon a Home Site or any part thereof except by Declarant as permitted above. Except as permitted herein, no structure shall be erected, placed, altered, used or permitted to remain on any Home Site other than a single-family private dwelling not exceeding two and one-half (2-1/2) stories or forty (40) feet in height, and one (1) private garage for not more than three (3) vehicles.

Section 2. Obstructions. There shall be no obstruction of the Common Area, Common Open Spaces, Common Area Access Easements or Landscape and Easement Areas, nor shall anything be kept or stored in such areas by any Owner, nor shall anything be altered, or constructed or planted in, or removed from such areas, without the prior written consent of the Association.

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on the Property which will result in the cancellation of or increase in the cost of any insurance carried by the Association or any other Owner, or which would be in violation of any law. No waste shall be permitted in the Common Area, Common Open Spaces, Common Area Access Easements or Landscape and Easement Areas. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable zoning ordinances) and other governmental rules and restrictions applicable to such Owner's Home Site.

Section 4. Signs. No sign of any kind (exclusive of street address identification numbers) shall be displayed on any Home Site; provided, however, that no more than one (1) uniform professional sign, designed and approved by the Architectural Review Committee in accordance with the sign criteria contained within the Design Guidelines (as defined in Article IX, Section 27 hereof) may be displayed on a Home Site if the sign is for the purpose of (i) advertising the Home Site for sale, (ii) advertising the building contractor constructing improvements on the Home Site during the initial construction and sales period or (iii) identifying the sales office and/or model home of a building contractor which owns the Home Site. Notwithstanding the foregoing, (i) nothing herein shall act to restrict or prohibit the Declarant or the Association from erecting and maintaining directional and other signs relating to the use of the Property, including but not limited to signs and billboards advertising the Property or portions thereof, advertising prices for Home Sites or identifying amenities, (ii) all signs erected and maintained on any Home Site, Common Area, Common Area Access Easement, Common Open Spaces or Landscape and Easement Areas must conform with all applicable governmental requirements and (iii) the Association and the Declarant shall have the right to install signs in the Common Area, Common Open Spaces, and Landscape and Easement Areas.

Section 5. Damage to the Common Area. Each Owner shall be liable to the Association and/or the Declarant for damage to property owned by any of them caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, contractors, employees or invitees. Owner will be held responsible for any sums expended by the Association to repair such damage.

Section 6. Rules of the Association. The Board of Directors shall have the power and authority to promulgate rules and regulations to enable the Association to carry out the letter and intent of this Declaration. All Owners shall abide by all rules and regulations so adopted by the Board of Directors from time to time. The Board of Directors shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and any Owner violating such rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees, resulting from such violations. The Board of Directors shall not have the power to impose restrictions, rules or limitations on Declarant.

Section 7. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Home Site or in any dwelling except that dogs (other than Pitbulls, including American Staffordshire Terriers and Rottweilers), cats or other household pets may be kept or maintained provided they are not kept or maintained for commercial purposes. All dogs must be kept contained, tied or on a lead within the Property or on any Home Site. No dog run may be constructed or maintained on any Home Site unless such dog run has been approved in writing by the Architectural Review Committee. Notwithstanding the foregoing, the Association expressly prohibits Pitbulls, including American Staffordshire Terriers and Rottweilers from the Property, and reserves the right to prohibit, or require the removal of, any dog or other animal from the Property which, after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Home Sites and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard. Each Owner shall be responsible for picking up and properly disposing of its pet's waste in any Common Area, Common Open Spaces, Common Area Access Easements, Landscape and Easement Areas and any publicly dedicated right-of-way.

Section 8. Waste. No Home Site shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any Home Site except on a temporary basis in sanitary containers.

Section 9. Vehicles. No recreational vehicles or equipment, including a motorboat, houseboat or other similar water-bourn vehicle, or any motor home or "camper" vehicle, may be maintained, stored or kept on any portion of the Property, except in enclosed garages or in areas specifically designated by the Board of Directors. Trucks with tonnage in excess of three-fourths (3/4ths) ton shall not be permitted to park overnight on any location within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in operating condition may be stored, or situated on any Home Site unless stored in an enclosed garage. The Owner of each Home Site will be responsible for providing on such Home Site sufficient parking area for all vehicles normally parked and/or situated on such Home Site. No parking shall be permitted on the lawn or other grassed areas of any Home Site.

ARTICLE VII EASEMENTS

Easements for construction, installation, maintenance and continued location of driveways, sidewalks, walkways, parking areas, public and private water/sewer lines, gas lines, cable television, telephone, electric power lines, sanitary sewer and storm drainage facilities and for other utility installations and for environmental protection of trees, wetlands or other related areas are reserved for the benefit of the Declarant and the Association as shown on the recorded plats. Further, perpetual easements five feet (5') in width for the installation, repair and maintenance of general service utilities and facilities are reserved for the benefit of Declarant and the Association over, under and through and along the front and rear Home Site lines of all Home Sites shown on recorded plats, and perpetual easements three feet (3') in width for such purposes are reserved over, under and through and along all side lines of all Home Sites shown on recorded plats. A fifteen-foot (15') easement for construction, replacement, maintenance and continued location of a brick or stone wall is reserved by Declarant for its benefit and that of the Association as shown on any recorded plat of the Property. Furthermore, an easement is reserved for the benefit of Declarant and the Association over, under and through any Common Area and along that portion of any Home Site upon which is located any brick or stone wall or any portion thereof for the construction, replacement, maintenance and continued location of such brick or stone wall together with a general right of ingress, egress and regress over and upon any such Home Site for the purpose of accessing such construction and location easement. In the event it is determined that other and further easements are required over any Home Site or Home Sites in locations not shown on the recorded plat and not along rear or side Home Site lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a Home Site or Home Sites to be affected thereby, the written consent of the Owner or Owners of such Home Site or Home Sites and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. The Declarant or the Association may, without consent or approval of any Owner, grant or convey any of the easement rights hereinabove reserved for the purposes set forth herein to any person, public or private utility or service company or any agent of Declarant or the Association. The Association and the Declarant shall have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, telephone, water, gas and sewer upon, over, under and across any Common Area and/or Common Open Spaces without the assent of the Members when, in the sole opinion of the Board of Directors of the Association, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of the Property and, in the sole opinion of said Board, will not unreasonably interfere with the overall use and enjoyment of the Common Areas and Common Open Spaces. Each Owner, by accepting a deed to a Home Site, expressly grants to the Association and to the Declarant, or either of them, an irrevocable power of attorney for the purpose of granting easements in, on, over, through and across the Common Areas and/or Common Open Spaces as provided herein. No structure, planting or other material shall be placed or permitted to remain within any easements provided for above which may interfere with the installation of sewerage disposal facilities and utilities or which may change the direction of flow or drainage channels in the

easements or which may obstruct or retard the flow of water through drainage channels in the easements.

ARTICLE VIII FINANCING

Section 1. Approval of Owners and Holders of First Deed of Trust. Unless at least fifty-one percent (51%) of the owners and holders of the first deeds of trust on Home Sites located within the Property have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes or the transfer to a public agency or governmental unit shall not be deemed a transfer within the meaning of this clause.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

(c) By act or omission change, waive or abandon any plan of regulation, or enforcement thereof pertaining to the architectural design or the exterior appearance of residences located on Home Sites, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings in the subdivision.

(d) Fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value.

(e) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements, provided, however, if after repair or replacement of the damaged improvements, there are excess proceeds remaining, such excess proceeds may be used by the Association to meet its other obligations hereunder.

Section 2. Books and Records. Any owner and holder of a first deed of trust on a Home Site will have the right to examine the books and records of the Association during business hours upon giving the Declarant or the Association at least three (3) days written notice.

Section 3. Payment of Taxes and Insurance Premiums. The Owners and the holders of first deeds of trust on Home Sites may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE IX

CONSTRUCTION OF IMPROVEMENTS AND ARCHITECTURAL CONTROL

Section 1. Construction of Improvements.

(a) Notwithstanding anything contained within this Declaration to the contrary, no Owner shall undertake on any Home Site (i) the location of any completed Improvement(s) (as hereinafter defined) or any construction of any Improvement(s), which shall include, in addition to the actual erection of a dwelling and its appurtenances, any staking, clearing, excavation, grading or other site work, (ii) the initial installation of any landscaping, plantings, trees or shrubs or any material alterations thereto, other than general maintenance of landscaping located pursuant to previously approved landscaping plans, or (iii) any modification, change or alteration of any Home Site or dwelling located thereon, whether functional or decorative, unless and until the type or size thereof, materials to be used in construction, exterior color scheme, exterior lighting plans, specifications and details thereof and site plans showing the proposed location of the dwelling, garage and driveways upon the lot shall have been approved in writing by the Architectural Review Committee and copies of said approved plans, specifications and details shall have been filed with said Architectural Review Committee. Generally, the design, construction materials and roof lines of homes must be consistent with the Design Guidelines. In determining acceptable construction materials, which determination shall be in the Architectural Review Committee's sole discretion, the Architectural Review Committee may take into consideration the desire for high quality aesthetic appeal and long term value both in utility and appearance. The Architectural Review Committee may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons.

(b) The term "Improvement(s)" as used throughout this Declaration shall mean and include all buildings, storage sheds or areas, barns or other freestanding storage areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, arbors, trellises, gazebos, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools and related structures, tree houses, children's playhouses, signs, exterior illumination, exterior antennae, earth satellite stations, microwave dishes, solar panels or other similar receiving, transmission or energy generating equipment, changes in any exterior color or shape, roofing materials or siding and any new exterior constructed or exterior improvement exceeding \$1,000.00 in cost which may not be included in any of the foregoing. The definition of Improvement(s) does not include garden shrub or tree replacement or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes and repairs to Improvements.

(c) The Declarant expressly reserves unto the Architectural Review Committee the sole and exclusive right to approve the grade at which any dwelling shall hereafter be erected, or placed on a Home Site (subject to compliance with the regulations of public authorities having control thereof).

(d) The procedure to be followed by an Owner in obtaining approval from the Architectural Review Committee is set forth in Article IX, Section 22 hereof.

(e) Notwithstanding anything to the contrary set forth herein, in no event shall storage sheds or areas, barns or other freestanding storage areas be constructed or installed on any Home Site.

Section 2. Floor Areas, Stories. The total heated floor area of the main dwelling on each Home Site, exclusive of porches, terraces, decks, breezeways, garages, basements, attics and outbuildings, shall contain not less than (i) 1,300 square feet of heated floor area for Home Sites less than or equal to fifty feet (50') wide, (ii) 1,400 square feet of heated floor area for Home Sites greater than fifty feet (50') and less than seventy feet (70') wide, (iii) 1,750 square feet of heated floor area for Home Sites equal to or greater than seventy feet (70') wide and less than seventy-five feet (75') wide and (iv) 2,500 square feet of heated floor area for Home Sites equal to or greater than seventy-five feet (75') wide.

Section 3. Building Setback Lines. The main building on each Home Site shall not be located on any Home Site nearer to the Home Site boundary line than the setback, sideline and rear yard requirements required by applicable zoning laws and other governmental requirements.

Section 4. New Construction. Construction of new buildings only shall be permitted on a Home Site, it being the intent of this covenant to prohibit the moving of any existing building onto a Home Site and remodeling or converting the same into a dwelling.

Section 5. Diligent Construction. All construction, landscaping or other work which has been commenced on any Home Site must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist on any Home Site, except during such reasonable time period as is necessary for completion. All lawn areas and landscaping located on any Home Site must be installed in accordance with plans therefor approved by the Architectural Review Committee no later than six (6) months after the date on which a Certificate of Occupancy has been issued for the residence on such Home Site. Any damage to the street, curb or sidewalk or to any part of any Common Area or utility system caused by an Owner or Owner's builder shall be repaired by such responsible Owner. The Owner of each Home Site shall at all times keep adjacent public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements. Declarant, upon ten (10) days written notice, may provide for the cleaning of public and private areas due to the activities of the Owner or Owner's builder and may assess the Owner a reasonable charge not to exceed the actual cost for such cleaning. Every builder constructing improvements within the Property shall, consistent with standard construction practices, keep all portions of the Home Site free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of Improvements or take other measures consistent with standard construction practices necessary to keep the Home Site free of garbage, trash or other debris which is occasioned by the construction of Owner's Improvements. All Owners and Owners' builders shall comply with such rules of the Association as are from time to time adopted with

respect to construction of Improvements. All Owners shall be responsible to insure that any contractor employed by it complies with all Builder's rules adopted by the Association from time to time.

Section 6. Location of Improvements. The Architectural Review Committee shall have the right to control absolutely (subject to the provisions of zoning ordinances of the appropriate governmental authorities) the precise site and location of any building or structure on any Home Site for reasons which may in the sole discretion and judgment of the Architectural Review Committee be sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner of the Home Site in question to recommend a specific site.

Section 7. Landscaping.

(a) General. Except for the building pad, driveways and sidewalks on each Home Site, the surface of each Home Site shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times.

(b) Driveways. Intentionally deleted.

(c) Landscape Guidelines. The Architectural Review Committee reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods and procedures for landscape management on the Property and such authorized standards, methods and procedures may be utilized by the Owners without prior written approval by the Architectural Review Committee. The Architectural Review Committee may also adapt one or more typical landscape plans consistent with the Landscape Guidelines which may be selected by an Owner. Except for removal of dead trees, no trees measuring five inches (5") or more in diameter at a point two feet (2') above ground level nor any arbors, trellises or gazebos may be removed without the prior written approval of the Association and the Association may require the replacement, at the Owner's sole cost and expense, of any trees, arbors, trellises or gazebos removed without the permission of the Architectural Review Committee. Approval for the removal of trees located within ten feet (10') of the main dwelling or accessory building or within ten feet (10') of the approved site for such building will be granted unless such removal will substantially decrease the attractiveness of the Property.

Section 8. Sediment Control. Sufficient sediment control measures including, but not limited to, installation and maintenance of silt fences, straw base fences, storm water inlet protection or retention pond and temporary seeding, to the extent deemed reasonably necessary by the Declarant, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Home Site in question. All sediment control measures must be maintained until such Home Site has been permanently stabilized with respect to soil erosion.

Section 9. Swimming Pool. No swimming pool, hot tub, jacuzzi, sauna, spa or pool fence shall be installed or erected on any Home Site until the plans and specifications for same

showing the nature, kind, shape, materials, height and location of the same shall have been approved by the Architectural Review Committee. No swimming pool shall be constructed on a Home Site in front of a dwelling or so that any portion of such pool protrudes above the finish grade of the adjoining ground as found prior to such construction; provided, however, that when the average slope of a Home Site exceeds twenty-five percent (25%), the Architectural Review Committee may approve an exception, subject to the following limitations: (a) the pool shall be located with its longer dimension parallel to the natural contour line; (b) not more than fifty percent (50%) of the pool shall be above the finished level of the adjoining ground; and (c) at no point shall any part of the pool project more than two feet (2') above the finished level of the adjoining ground as found prior to construction. The pool itself and pool equipment shall be screened, housed or stored underground. All governmental requirements and restrictions applicable to swimming pools and similar structures shall be applicable to the construction of swimming pools and similar structures on any Home Site and approval by the Architectural Review Committee shall in no way relieve the Owner of the responsibility and obligation to comply with such governmental requirements.

Section 10. Fences and Walls. No fence, hedge, wall or timber wall shall be erected, placed or altered on any Home Site without written approval from the Architectural Review Committee. All walls shall be constructed of brick, wrought iron, wood (excluding split rail and timber), stone or stucco and, unless approved by the Architectural Review Committee, shall not exceed six feet (6') in height. The Architectural Review Committee may adopt a standard design for approved fences and/or walls.

Section 11. Garages. The Architectural Review Committee shall require that a garage be constructed on all Homes Sites. Each garage must be a 2-car garage and must be consistent in design with the overall architectural design of the dwelling on the Home Site as determined by the Architectural Review Committee. No carports shall be permitted on any Home Site. Detached garages shall be permitted with the written approval of the Architectural Review Committee; provided, however, that the Architectural Review Committee shall require that the detached garage be properly screened and, if the detached garage is located on a corner Home Site, that the back yard be fenced. Notwithstanding the foregoing, a garage shall not be required on Homes Sites less than or equal to fifty feet (50') wide if a storage area of no less than twenty-five (25) square feet, which storage area must be approved in writing by the Architectural Review Committee, is attached to the main dwelling on the Home Site.

Section 12. Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above roadways shall be placed or permitted to remain on any corner Home Site within the triangular area formed by the street property lines and line connecting them at a point thirty-five feet (35') from the intersection of the street line, or in the case of a rounded street property corner, from the intersection of the street property lines, as extended. These sight line limitations shall also be shown on the recorded plat(s) of the Property. The same sight line limitations shall apply on any Home Site within ten feet (10') from the intersection of a street property line with the edge of a driveway pavement. No tree

shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Section 13. Septic Tanks and Wells. No septic tanks shall be installed, used or maintained on any Home Site. No wells shall be installed, used or maintained on any Home Site for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling which shall furnish domestic water from sources beyond the boundary lines of the Home Site. Notwithstanding the foregoing prohibition, the Architectural Review Committee may permit in writing the installation, use and maintenance of septic tanks or wells.

Section 14. Air Conditioning Equipment. No air conditioning or heating apparatus shall be installed on the ground in front of any residence on a Home Site. No air conditioning or heating apparatus shall be attached to any front wall of a residence on a Home Site. No air conditioning or heating apparatus shall be installed on the side wall of a residence on a Home Site unless the same shall be screened from view from the street abutting such Home Site and any adjacent Home Site.

Section 15. Antennae and Solar Panels. Except as hereinafter provided, no exterior antennae, earth satellite station microwave dish, solar panels or other similar receiving, transmission or energy generating equipment may be constructed, placed or maintained on any Home Site unless approved by the Architectural Review Committee. Satellite dishes of less than 19 inches in diameter for reception of satellite television signals shall be allowed, provided that the location and design of any such satellite dish and related equipment shall be subject to prior approval by the Architectural Review Committee.

Section 16. Gas Meters. Unless otherwise approved by the Architectural Review Committee, no gas meters shall be set in the front of a residence of a Home Site unless such meter is of an underground type.

Section 17. Mail Boxes and Newsletter or News Box. The Architectural Review Committee shall adopt a standard design for approved mailboxes and news boxes and no mailbox, newspaper or news box shall be erected or maintained on any Home Site or within any street right-of-way unless of the standard design.

Section 18. No Clothes Lines. No clothes lines of any description or type, or the outside drying of clothes shall be allowed on the outside of the dwelling unit on any Home Site.

Section 19. Hoses and Pipes. Except for the temporary use of hoses and the like which are reasonably necessary in connection with normal lawn maintenance and pipe clean-outs, no hose, water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Home Site above the surface of the ground unless such installation is expressly approved by the Architectural Review Committee.

Section 20. No Subdivision of Home Sites. Except for Home Sites owned by Declarant, no Home Site shall be subdivided by sale, lease or otherwise so as to reduce the total Home Site area as shown on the recorded map or plan; however, portions of Home Sites may be added to other Home Sites so long as the total number of Home Sites is not increased and there shall not be erected more than one (1) single-family private dwelling on any Home Site. No single-family private dwelling may be erected on more than one (1) Home Site. Declarant reserves the right to waive this covenant and permit the subdivision of two adjoining Home Sites by the conveyance by the Owner of one such Home Site of a portion of such Home Site to the Owner of the adjoining Home Site provided that Declarant determines in its own discretion that the Home Sites resulting therefrom would be suitable for development and harmonious with the development of the Property.

Section 21. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Home Site and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Home Site shall continue to be applicable and shall be complied with in regard to the Home Sites.

Section 22. Procedure. No Improvements of any kind or nature shall be erected, remodeled or placed on any Home Site until the plans and specifications therefor and a site plan therefor, including a depiction of driveways, walkways, lawn areas, landscaping and drainage patterns, have been submitted to and approved in writing by the Architectural Review Committee, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions and alignment of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping; and
- (iii) other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Review Committee, or other matters in which the Architectural Review Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications for all Improvements proposed to be constructed on a Home Site shall be submitted in duplicate to the Architectural Review Committee for approval or disapproval. The Architectural Review Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Review Committee, one (1) complete set of plans and specifications will be marked "Approved" and returned to the Home Site Owner or his designated representative and the remaining set will be filed in the offices of the Architectural Review Committee. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the Architectural Review Committee pursuant hereto, one (1) set of plans and specifications shall be returned to the Home Site Owner.

marked "Disapproved," accompanied by a statement in reasonable detail of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Owner thereafter shall resubmit, in accordance with the provisions of this Section 22, such plans and specifications setting forth the required changes to the Architectural Review Committee for its approval. Any modification or change to the approved set of plans and specifications must again be submitted in duplicate to the Architectural Review Committee for its inspection and approval. The Architectural Review Committee's approval or disapproval, as required herein, shall be in writing. Once the Architectural Review Committee has approved the plans and specifications for the Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within twenty-four (24) months following the date of approval of the plans and specifications therefore by the Architectural Review Committee, such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Home Site in question, the plans and specifications therefor must again be approved by the Architectural Review Committee pursuant to this Article IX.

The final plans and specifications as referred to in the preceding paragraph shall mean the following:

- (i) Final floor plans at a scale of one-fourth inch (1/4") equals one foot (1');
- (ii) Final elevations showing all sides;
- (iii) All material selections and color selections; and
- (iv) Final survey.

In addition to the procedure described in this section, and in recognition of the cost involved in producing the final plans and specifications, the Home Site Owner may request a preliminary review of the design of the Improvements upon the submission of the following:

- (i) Schematic floor plans at a scale of one-fourth inch (1/4") equals one foot (1');
- (ii) Final elevations showing all sides;
- (iii) All material selections and color selections; and
- (iv) Schematic site plan.

The Architectural Review Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Home Sites and shall carry forward the spirit and intention of these covenants, conditions and restrictions. The Architectural Review Committee shall be responsive to technological advances and general changes in architectural design and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design.

and use of private property. Such bulletins shall supplement these covenants, conditions and restrictions and are incorporated herein by reference. The Architectural Review Committee may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons, which in the sole discretion of the Architectural Review Committee shall be deemed sufficient.

Section 23. Jurisdiction. The Architectural Review Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Home Site which may, in the reasonable opinion of the Architectural Review Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property.

Section 24. Enforcement.

(a) The Association shall have the specific right (but not obligation) to enforce the provisions contained in this Article IX and/or to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof, including, without limitation, the demolition and removal of any unapproved Improvements if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Home Site upon which such Improvements were commenced or constructed.

Section 25. Failure of the Architectural Review Committee to Act. If the Architectural Review Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within fifteen (15) days after receipt thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Review Committee, and provided the Architectural Review Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after additional written request to act on such items is delivered to the Architectural Review Committee following the passage of such first above described fifteen (15) day period, it shall be conclusively presumed that the Architectural Review Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Review Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration, except where variances shall be expressly permitted herein. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Review Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

Section 26. Limitation of Liability. Neither the Architectural Review Committee, the members thereof, the Association nor Declarant shall be liable in damages or otherwise to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal for approval or disapproval or failure to approve or disapprove any plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board of Directors or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quits all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

Section 27. Design Guidelines. The Architectural Review Committee may, from time to time, publish and promulgate design guidelines (the "Design Guidelines"), and such Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Review Committee in reviewing plans and specifications. In any event, such Design Guidelines shall not be binding upon the Architectural Review Committee and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Architectural Review Committee for approval.

Section 28. Variances. Upon submission of a written request for same, the Architectural Review Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install improvements which are in variance with the setback requirements, architectural standards or similar provisions of this Declaration or supplemental Declarations which may be promulgated in the future. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the Subdivision and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Architectural Review Committee has not expressly and in writing, approved such request within thirty (30) days of the submission of such requests. No member of the Architectural Review Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Review Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other Owner.

Section 29. Review Fee and Address. A review fee of \$50.00 per set of plans and specifications shall be imposed for initial submittals of plans and specifications for Improvements to be located on an Owner's Home Site; following the initial review and approval (or disapproval) process, the Association Board may impose a review fee, not to exceed \$25.00, for each resubmittal of plans and specifications to the Architectural Review Committee. The address of the Architectural Review Committee shall be the principal place of business of the Association from time to time designated in writing by its Board of Directors. Such address shall

be the place of the submittal of any plans and specifications and the place where the current rules and regulations, if any, of the Architectural Review Committee shall be kept.

Section 30. No Liability for Design Defect. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither Declarant, the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Section 31. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires. Unless otherwise required by the applicable public utility, transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Home Sites or, if approved by the Architectural Review Committee in writing, located elsewhere on the Home Site provided they are adequately screened as required by the Architectural Review Committee in accordance with the provisions of this Declaration.

ARTICLE X SPECIAL RESTRICTIONS AFFECTING COMMON AREAS

Section 1. Declarant's Right of Entry. The Declarant reserves unto itself its successors and assigns a perpetual right and easement of entry and access to go on, over and under the ground in any Common Area to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in the Common Areas. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations and tanks within the Common Areas. Such rights may be exercised by any contractor or licensee of the Declarant.

Section 2. Prohibition Against Dumping. No dumping of trash, garbage, sewage, sawdust, organic or inorganic waste or other similar materials shall occur and no unsightly or offensive material shall be placed upon the Common Areas, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as Common Areas. Owners of Home Sites adjacent to the Common Areas shall maintain a 10 foot (10') buffer of undisturbed vegetation, where possible, adjacent to the Common Areas. In addition, the following types of activities are prohibited:

- (i) Dumping backfill into Common Areas;
- (ii) Excavating soil from Common Areas;
- (iii) Parking in or driving through a Common Area;

- (iv) Stacking or storing supplies or equipment in the Common Area;
- (v) Changing site grade causing drainage problems in the Common Area;
- (vi) Locating temporary construction buildings in the Common Area; or
- (vii) Disposing of toxic materials (i.e., paint) or concrete slurry in the Common Area.

Section 3. No Public Rights. The establishment of the Common Area does in no way grant to the public or to the owners of any surrounding or adjacent land the right to enter such Common Area without the express permission of the Declarant or the Association.

ARTICLE XI CERTAIN APPROVALS BY U.S. DEPARTMENT OF VETERANS AFFAIRS

Until all Class B Home Sites cease to exist and are converted to Class A Home Sites as provided in Article II hereof, the approval of the United States Department of Veterans Affairs shall be obtained by Declarant prior to any of the following actions: (i) the annexation of additional property to the Existing Property subject to this Declaration, (ii) dedication of additional Common Area and (iii) amendment of this Declaration.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association and all 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. Amendment. The covenants and restrictions of this Declaration shall run and bind the land for a term of thirty-five (35) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated or altered in accordance with this Section 2. This Declaration may be amended during the first thirty-five (35) year period by an instrument signed by the Owners entitled to at least sixty-seven percent (67%) of the votes appurtenant to the Home Sites, and thereafter this Declaration may be terminated or amended by an instrument signed by the Owners of not less than eighty percent (80%) of the Home Sites. Any termination or amendment must be properly recorded. Notwithstanding the above, no amendment may be made without the Declarant, or the consent of its general partners on the date hereof so long as any of them owns a Home Site.

Section 3. Notices. All notices, demands, requests, permissions, consents or approvals ("Notices") given by Declarant or the Association to any Owner or by any Owner to Declarant or

the Association shall be in writing and shall be deemed to have been properly given three (3) days after posted if sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the Association to its registered agent at its registered office and addressed to Declarant at the following address: Mr. Timothy F. Coey, Forest City Land Group, 8307 University Executive Drive, Suite 265, Charlotte, North Carolina 28262 and if to an Owner, at the street address of the Owner's Home Site.

Section 4. Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the particular paragraphs to which they refer.

Section 5. Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and all remaining provisions shall continue unimpaired, in full force and effect.

Section 6. Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of North Carolina.

Section 7. Binding Effect. All of the covenants, stipulations and conditions contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, the Owners and their respective heirs, personal representatives, executors, administrators, successors and assigns.

Section 8. Consent of Lender. The Consent of Lender attached hereto is made a part hereof by this reference.

Section 9. Attorneys' Fees. To the extent permitted by Section 47F-3-120 of the North Carolina Planned Community Act, in any action to enforce the provisions of this Declaration, the Articles of Incorporation or the Bylaws governing the Association, or the rules and regulations duly adopted by the Association, the court may award reasonable attorneys' fees to the prevailing party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed this 20th day of July, 2001.

FC CALDWELL, LLC

By: Forest City Land Group, Inc., its Authorized Member

By: [Signature]

Name: Robert F. Monchein

Title: President

STATE OF OHIO

COUNTY OF CUYAHOGA

I, Michelle Meredith, a Notary Public for said County and State, do hereby certify that Robert F. Monchein personally appeared before me this day and acknowledged that he is President of Forest City Land Group, Inc., Authorized Member of FC CALDWELL, a North Carolina limited liability company, and that he, as President, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official seal, this the 20th day of July, 2001.

[Signature]
Notary Public

My Commission Expires:

 MICHELLE MEREDITH, Notary Public
STATE OF OHIO
[NOTARIAL SEAL] Commission Expires June 8, 2002
(Recorded in Cuyahoga County)

6/8/02



Exhibit A

Legal Description of Existing Property

Being all of that 350.782 Acre Tract of land situated on Caldwell Road (a maintenance agreement right-of-way), Crab Orchard Township, Mecklenburg County, North Carolina and being more particularly described as follows:

Commencing at a City of Charlotte GPS Control Monument #1083 a half inch rebar with cap stamped "1083" situated on the northwesterly side of Caldwell Road with published state plane grid coordinates of Northing: 564,315.0918 feet, and Easting of 1,496,067.572 feet (NAD 83);

Thence, N 14°36'48" E, a distance of 85.77 feet to a found concrete monument in the northwesterly right-of-way of said Caldwell Road, the POINT OF BEGINNING;

Thence, leaving said right-of-way and with the common line of that Melvin H. Williams and Betty C. Williams Tract (Deed Book 4206, Page 633, Mecklenburg County Registry) S 68°47'38" W, a distance of 478.76 feet to a found 1/2" rebar the common corner of said Williams Tract and that Michael C. Rowe and Teresa A. Pedalino Tract (Deed Book 8103, Page 352, Mecklenburg County Registry);

Thence, with said common line of that Rowe and Pedalino Tract the following two (2) courses: 1) S 68°40'06" W, a distance of 122.72 feet to a found 1/2" rebar; 2) S 68°51'46" W, a distance of 55.06 feet to a found 3/4" pipe, the common corner of said Rowe and Pedalino Tract and that Ku U. Chong and Dong Hi Chong Tract (Deed Book 10920, Page 767, Mecklenburg County Registry);

Thence, with said Chong Tract, N 73°04'32" W, a distance of 512.94 feet to a found 3/4" pipe, the common corner of said Chong Tract and that W. B. Simpson Tract (Deed Book 5950, Page 496, Mecklenburg County Registry);

Thence, with said Simpson Tract, N 72°56'20" W, a distance of 746.90 feet to a found 5/8" rebar, the common corner of said Simpson Tract and that Mecklenburg County Tract (Deed Book 6588, Page 890, Mecklenburg County Registry);

Thence, with said Mecklenburg County Tract the following two (2) courses: 1) N 72°56'31" W, a distance of 327.01 feet to a found 3/4" iron rod; 2) N 72°56'52" W, a distance of 439.30 feet to a found 3/4" iron rod the common corner of said Mecklenburg County Tract and that Mecklenburg County Tract (Deed Book 12019, Page 304, Mecklenburg County Registry);

Thence, with said Mecklenburg County Tract, N 10°52'49" E, a distance of 2,399.42 feet to a found 1/2" iron rod;

Thence, with said Mecklenburg County Tract and that Jo Ann Austin Tract (Deed Book 2133, Page 546, Mecklenburg County Registry), N 72°38'28" W, a distance of 1,061.38 feet to a found 5/8" rebar the common corner of that James E. Stroup and Cindy Hoffman Stroup Tract (Deed Book 5208, Page 198, Mecklenburg County Registry);

Thence, with said Stroup Tract, N 75°33'22" W, a distance of 196.23 feet to a found 1" pipe;

Thence, with said Stroup and that James E. Stroup and Cindy H. Stroup Tract (Deed Book 4222, page 498, Mecklenburg County Registry), S 81°38'49" W, a distance of 461.78 feet to a found 5/8" rebar;

Thence, with said Stroup Tract, N 02°01'53" W, a distance of 7.18 feet to a found 5/8" rebar in the easterly right-of-way of Timber Ridge Road (a 60' Public right-of-way);

Thence, crossing said Timber Ridge Road, and with the rear property line of Lots 48 and 49 of Winding Creek at Back Creek Subdivision (Map Book 26, Page 310, Mecklenburg County Registry), N 02°01'53" W, a distance of 400.78 feet to a found iron rod, the common corner of that Robert C. Tindle and Angela M. Tindle Tract, (Deed Book 7224, Page 336, Mecklenburg County Registry);

Thence, with that said Tindle Tract and that Fitzhugh L. Austin, Jr. and Daisy B. Austin Tract (Deed Book 2107, Page 053, Mecklenburg County Registry), N 62°24'02" E, a distance of 544.07 feet to a found 5/8" rebar;

Thence, continuing with said Austin Tract, N 31°10'36" E, a distance of 243.91 feet to a found 1-1/4" pipe, the common corner of said Austin Tract and that Clarence D. Rodgers Tract (Deed Book 2926, Page 492, Mecklenburg County Registry);

Thence, with said Rodgers Tract the following two (2) courses: 1) N 31°10'36" E, a distance of 250.80 feet to a found 5/8" rebar; 2) N 31°10'36" E, a distance of 149.25 feet to a found 1/2" pipe, the common corner of that Alfred Macrae Buchanan and Nezzie Sharpe Buchanan Tract (Deed Book 8380, Page 984 Mecklenburg County Registry);

Thence, with said Alfred Macrae Buchanan Tract, N 30°24'37" E, a distance of 99.66 feet to a found 1/2" rebar, the common corner of that said Buchanan Tract and that Alfred M. Buchanan Tract (Deed Book 9956, Page 551, Mecklenburg County Registry);

Thence, with said Buchanan Tract the following three (3) courses: 1) N 31°21'15" E, a distance of 370.47 feet to a found 7/8" pipe; 2) S 72°12'39" E, a distance of 1123.69 feet to a found 5/8" rebar; 3) N 06°25'03" W, a distance of 498.72 feet to a calculated point, the common corner of that said Buchanan Tract and that Portrait Homes Construction Company Tract (Deed Book 11895, Page 572, Mecklenburg County Registry);

Thence, with that said Portrait Homes Tract, S 71°14'20" E, a distance of 532.53 feet to a found 5/8" rebar, the northerly corner of that Marvin E. Ashley and Carleen Ashley Tract (Deed Book 2686, Page 277, Mecklenburg County Registry);

Thence, with said Ashley Tract the following six (6) courses; 1) S 40°08'31" W, a distance of 135.28 feet to a found square iron rod; 2) S 27°40'18" W, a distance of 325.54 feet to a found iron pipe; 3) S 72°41'18" E, a distance of 279.24 feet to a found 1-1/2" pipe; 4) S 72°57'01" E, a distance of 119.24 feet to a found 5/8" rebar; 5) S 72°57'01" E, a distance of 239.25 feet to a found 5/8" rebar; 6) S 87°29'48" E, a distance of 469.65 feet to a found steel rod, the common corner with said Portrait Homes Tract;

Thence, with said Portrait Homes Tract, the following eight (8) courses; 1) S 53°10'03" E, a distance of 458.49 feet to a calculated point; 2) N 47°52'48" E, a distance of 306.02 feet to a calculated point; 3) N 31°14'41" E, a distance of 203.05 feet to a calculated point; 4) N 18°16'55" E, a distance of 207.88 feet to a calculated point; 5) N 00°53'40" E, a distance of 190.79 feet to a calculated point; 6) N 61°12'14" E, a distance of 99.42 feet to a calculated point; 7) N 28°09'42" E, a distance of 231.84 feet to a calculated point; 8) N 59°43'07" E, a distance of 37.24 feet to a calculated point on the southerly right of way of that Future I-485 Outer Loop, State Highway Project #8.U671610, (Deed Book 7870, Page 531, Mecklenburg County Registry);

Thence, along said Future I-485 Outer Loop, the following three (3) courses; 1) A curve to the right having a radius of 2,689.79 feet, through a central angle of 4°46'20", having an arc length of 224.03 feet, bearing S 30°59'19" E, for a chord distance of 223.96 feet to a found aluminum R/W disk; 2) S 25°55'32" E, a distance of 387.73 feet to a found aluminum R/W disk; 3) S 24°37'00" E, passing a found aluminum R/W disk at 1,444.41 feet, for a total distance of 1,452.38 feet to a found 5/8" rebar;

Thence, departing said right of way of Future I-485, and along with the northwesterly line of that North Carolina Department of Transportation Tract (Deed Book 7893, Page 52, Mecklenburg County Registry), S 36°43'52" W, a distance of 160.86 feet to a found 5/8" rebar in the easterly right-of-way line of that Proposed Service Road No. 2 per Preliminary Right of Way Plans for I-485 Outer Loop;

Thence, along said right-of-way of Service Road No. 2 for the following six (6) courses: 1) N 11°46'58" E, a distance of 105.10 feet to a found 5/8" rebar; 2) N 78°13'02" W, a distance of 60.00 feet to a found 5/8" rebar; 3) S 11°46'58" W, a distance of 163.32 feet to a found 5/8" rebar; 4) S 11°46'57" W, a distance of 119.65 feet to a found 5/8" rebar; 5) A curve to the left having a radius of 348.31 feet, through a central angle of 65°58'09", having an arc length of 401.04 feet, bearing S 21°12'17" E, for a chord distance of 379.25 feet to a found 5/8" rebar; 6) S 03°13'26" E, a distance of 40.71 feet to a found 5/8" rebar, located on the northwesterly right of way of Caldwell Road, a state maintained right of way;

Thence, along said northwesterly right of way of Caldwell Road for the following two (2) courses: 1) S 35°36'31" W, a distance of 145.09 feet to a calculated point; 2) S 35°36'31" W, a distance of 65.38 feet to a found 5/8" rebar, the common corner with that Nancy Anne Caldwell Tract (Deed Book 2604 Page 399, Mecklenburg County Registry);

Thence, with said Nancy Anne Caldwell Tract the following two (2) courses: 1) N 54°44'18" W, a distance of 451.55 feet to a found 1/2" rebar; 2) S 35°16'30" W, a distance of 250.07 feet to a found 1/2" rebar, the common corner with that Milford Douglas Caldwell and Phoebe Weiss Caldwell Tract (Deed Book 2604, Page 394, Mecklenburg County Registry);

Thence, with said Caldwell Tract the following three (3) courses: 1) S 35°16'30" W, a distance of 249.87 feet to a found 1/2" rebar; 2) S 54°44'47" E, a distance of 462.08 feet to a found 5/8" rebar, located on the proposed northwesterly right of way of said Caldwell Road; 3) S 54°44'47" E, a distance of 30.00 to the centerline of said Caldwell Road;

Thence, with the centerline of said Caldwell Road, a curve to the left having a radius of 4,209.18 feet, through a central angle of 5°16'12", for an arc length of 387.14 feet, bearing S 32°21'13" W, for a chord distance of 387.01 feet to a calculated point in the centerline of said Caldwell Road;

Thence, departing the centerline of Caldwell Road, and with the common line of that William Arnold Irvin and Carolyn J. Irvin Tract (Deed Book 2604, Page 391, Mecklenburg County Registry) for the following three (3) courses: 1) N 46°56'07" W, a distance of 30.83 feet to a found 1/2" rebar, located on the proposed northerly right of said Caldwell Road; 2) N 46°56'07" W, a distance of 331.54 feet to a found 5/8" rebar; 3) S 34°54'47" W, a distance of 395.89 feet to a found 5/8" rebar, the common corner of said Irvin Tract and that James Williams Griffin and Rebecca Junker Griffin Tract (Deed Book 2604, Page 442, Mecklenburg County Registry);

Thence, with said Griffin Tract the following two (2) courses: 1) S 34°56'15" W, a distance of 384.96 feet to a found 5/8" rebar; 2) S 80°40'45" E, a distance of 384.04 feet to a found concrete monument, located on the proposed northwesterly right of way of Caldwell Road;

Thence, crossing said Caldwell Road to the southeasterly right of way, S 80°40'45" E, a distance of 65.32 feet to a found 5/8" rebar;

Thence, with said proposed southeasterly 60' right of way of state-maintained Caldwell Road the following three (3) courses: 1) S 34°12'12" W, a distance of 248.78 feet to a found 5/8" rebar; 2) S 35°17'50" W, a distance of 458.89 feet to a found 5/8" rebar; 3) A curve to the left having a radius of 2,558.91 feet, through a central angle of 5°27'01", for an arc length of 243.42 feet, bearing S 32°34'19" W, for a chord distance of 243.33 feet to a found 5/8" rebar;

Thence, departing said right of way of Caldwell Road, crossing Caldwell Road for the following two courses: 1) S 65°52'52" W, a distance of 97.04 feet to a found 5/8" rebar; 2) S 68°47'38" W, a distance of 2.67 feet to the POINT OF BEGINNING and containing 350.782 Acres of land, more or less as shown on that "ALTA/ACSM Land Title Survey of: 350.782 Acres situated on Back Creek Tributary No.1, Fronting on Caldwell Road and Timber Ridge Road", prepared by The Survey Company, Inc., dated 07/13/01, and signed by C. Bryan Duckett, PLS L-3931, to which reference is hereby made.

CONSENT OF LENDER

NATIONAL CITY BANK, a national banking association ("Lender"), owner and holder of a note secured by that certain Amended and Restated Deed of Trust (the "Deed of Trust"), dated January 29, 2001, and recorded in Book 11893 at Page 889 in the Mecklenburg County Public Registry, and First American Title of the Carolinas, LLC, Trustee under said Deed of Trust, hereby agree that they have consented to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions For Old Stone Crossing at Caldwell Creek (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Lender the rights and duties set forth herein, provided, however, that should Lender acquire title to the property secured by the Deed of Trust, any liability Lender shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Lender and First American Title of the Carolinas, LLC, Trustee (or such successor trustee as permitted by the Deed of Trust) set forth in the Declaration shall terminate.

[SIGNATURES PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the
18 day of July, 2001.

LENDER:

NATIONAL CITY BANK,
a national banking association

By: [Signature]
Name: Robert Sawitzke
Title: Vice President

STATE OF OHIO

COUNTY OF CUYAHOGA

I, TERRI A. HONOHAN, a Notary Public for said County and State, do hereby certify that ROBERT J. SAWITZKE, VICE President of **NATIONAL CITY BANK**, a national banking association, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said bank.

AKA Robert Sawitzke

Witness my hand and official stamp or seal, this 18th day of July, 2001.

[Signature]
Notary Public

My Commission Expires:

12/17/05

[NOTARIAL SEAL]



TERRI A. HONOHAN
NOTARY PUBLIC - STATE OF OHIO
Residence in Cuyahoga County
My Commission Expires Dec. 17, 2005

TRUSTEE:

**FIRST AMERICAN TITLE OF THE CAROLINAS,
LLC, a North Carolina limited liability company**

By: m b
Name: Michael Burt
Title: Manager

STATE OF NORTH CAROLINA
COUNTY OF ~~MECKLENBURG~~ Gaston at

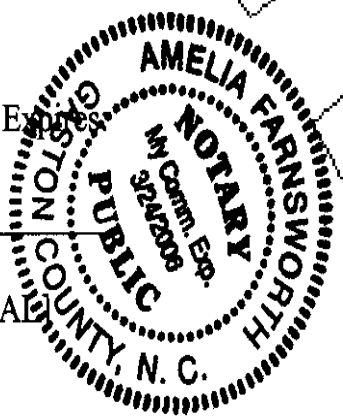
I, Amelia Farnsworth, a Notary Public for said County and State, do hereby certify that Michael Burt, Manager of **FIRST AMERICAN TITLE OF THE CAROLINAS, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

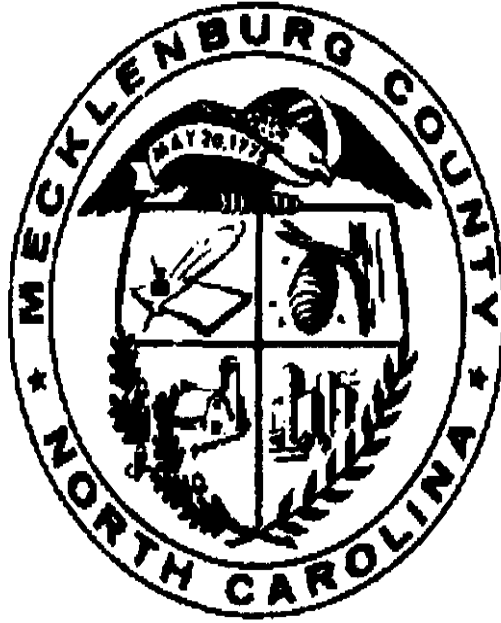
Witness my hand and official stamp or seal, this 27th day of July, 2001.

Amelia Farnsworth
Notary Public

My Commission Expires

[NOTARIAL SEAL]





JUDITH A. GIBSON
REGISTER OF DEEDS , MECKLENBURG COUNTY
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE NC 28202

Filed For Registration: 07/30/2001 12:49 PM
Book: RE 12495 Page: 234-272
Document No.: 2001125579
RESTR 39 PGS \$82.00

Recorder: STEPHANIE LINDSEY

State of North Carolina, County of Mecklenburg

The foregoing certificate of MICHELLE MEREDITH , TERRI A. HONOHAN , AMELIA FARNSWORTH Notaries are certified to be correct. This 30TH of July 2001

JUDITH A. GIBSON, REGISTER OF DEEDS By: Valerie A. White
Deputy/Assistant Register of Deeds



2001125579