

WAKE COUNTY, NC 354
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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HOLD: Senter, Stephenson, & Johnson PA Box 175 WCR

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
THE VILLAGE AT AVERSBORO

THIS DECLARATION, made on the date hereinafter set forth by S. Wake Properties, Inc., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, it is the intention of Declarants that The Village at Aversboro operate as housing designed for persons who are Fifty-five years of age or older as required under Sec. 100.306 of the Department of Housing and Urban Development 24 CFR. Part 100 Federal Register.

WHEREAS, it is the intention of the Declarants that The Village at Aversboro be an upscale community specifically designed to meet the needs of persons in the senior community who desire to own their own home and maintain their independent active lifestyle with their peers and to that end the community is planned with specific rules and regulations governing ownership and residency.

WHEREAS, Declarants are the owners of certain property in St. Mary's Township, County of Wake, State of North Carolina, which is more particularly described as follows:

Lots _____ of **The Village at Aversboro**, as the same are shown on map and survey recorded in Book of Maps 2007, Page 01946, Wake County Registry;
01947, 01948

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall and all future lots developed as The Village at Aversboro which incorporate these covenants by reference, be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. All Lot owners will be subject to monthly dues established by the Association for the maintenance and upkeep required by these declarations. Every Lot owner shall be a member of the Association and subject to the rules and regulations adopted by the Association. Failure of any Lot owner to pay dues or assessments will result in the filing of a lien upon the property of such owner as hereafter provided.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Village at Aversboro Homeowners Association, its successors and assigns.

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

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

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners, together with all water and sewer lines located on and serving the properties which are located outside dedicated public easements and city rights-of-way, except water and sewer lines located on a lot which serve only that lot. The Common Area to be owned by the Association will be shown on the map and survey titled **The Village at Aversboro**, recorded in Book of Maps 2007, Page 01946, Wake County Registry;

01947, 01948

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties upon which a Single Family Dwelling is to be situated.

Section 6. "Architectural Control Committee" shall be the declarant or anyone appointed by the declarant, its successors or assigns as provided for in Article V of this declaration, and is hereafter referred to as ACC.

Section 7. "Declarant" shall mean and refer to S. Wake Properties, Inc., its successors or assigns.

Section 8. The term "Improvement" shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, plantings, trees, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, clothesline installation, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior improvement which may not be included in any of the foregoing.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association, however, voting shall be limited to one vote per lot with the exception of the Declarant as provided for in Article VII of this declaration.

Section 10. "Master Covenants" shall mean and refer to this Declaration of Master Covenants, Conditions and Restrictions for The Village at Aversboro as the same may be amended from time to time as provided therein.

Section 11. "Town" shall be the Town of Garner, North Carolina.

ARTICLE II

EXTERIOR MAINTENANCE

Section 1. **Architectural Control.** The Declarant, its successor or assigns, shall have the sole and absolute right to determine the style and appearance of the Dwellings, fences, walls, buildings, garages, mailboxes, lawn decorations, irrigation, structures of any type, grading, landscaping and any other improvements to be built or constructed on any Lot (hereinafter individually and collectively referred to as "Improvements"). Outbuildings such as storage sheds will not be allowed.

Section 2. **Single Family Dwellings.** The Association shall have no obligation or responsibility for any maintenance of Single Family Dwellings which includes exterior of the dwelling, driveways, walks, patios, decks, (except it may clean out gutters) such being the sole responsibility of the Owner.

Section 3. **Maintenance by Owner.** In cases where maintenance or repair is required in this Declaration to be done or made by an Owner, and such maintenance or repair has not commenced within sixty (60) days, or if commenced, is not completed within a reasonable time thereafter, the Association may, and is hereby granted such right and easement, upon thirty (30) days written notice to such owner, make or complete such maintenance or repairs, and the cost thereof shall be an additional assessment applicable only to such lot and Owner, and shall be payable as determined by the Board of Directors of the Association.

Section 4. **(A) Common Areas.** The existing wooded area of parcel in common area shall generally be left in its natural state at this time. The Association may add walking trails and/or related improvements as approved by the Town of Garner. All other common areas (natural areas, retaining walls, islands, inside and outside rights-of way, entry, entry buffer and island along the entrance street, storm water devices, and all tree plantings, and landscaping within rights-of-way of all streets) shall be maintained by the Association. In addition to open common areas, the declarant will construct and the association maintain a clubhouse. If areas defined as full maintenance should fail to be maintained reasonably, the Town may at its discretion maintain or contract services and assess the Association reasonable charges for the work required.

(B) Yard Areas. The Homeowners Association shall keep all lawns mowed and free of debris, maintain all retaining walls and may, at the election of the association, prune and maintain shrubbery and trees within a yard. No shrubbery or trees may be planted or yard ornamentation or irrigation installed without the prior written consent of the architectural committee in existence at the time of the request. A home owner may have a small defined garden area that has been approved in writing by the Homeowners Association but the home owner shall be solely responsible for the maintenance and care of the defined garden area and shall not hold the Homeowners Association liable or responsible for any damage caused by any maintenance personnel supplied by the Homeowners Association. No above ground swimming pools, unsightly lawn furniture or decorations shall be permitted in the lawn area. The home owner shall be solely responsible for the maintenance and care of any irrigation system and shall not hold the Homeowners Association liable or responsible for any damage caused by any maintenance personnel supplied by the Homeowners Association.

Section 5. Street Lighting. Street lights will be installed per the applicable Town of Garner Standard. Should the Declarant and/or the Association desire to install street lights different from those furnished by the Power Company for Town, then the Declarant and Association shall be responsible for all costs.

ARTICLE III

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of the front and side yard space of each lot, the club house and the common areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office and/or storage of the Declarant and/or model houses used by Declarant or its assigns) shall be used except for residential and street purposes and for purposes incidental or accessory thereto. No signs other than marketing signs for sale of properties not exceeding 36" x 24" in size and signs expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant and, with the consent of and upon such conditions as Declarant, in its sole discretion, might impose, a Builder shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area, in connection with the development and sale of the properties.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried out upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. No automobile, or other vehicle, mechanical repairs or like activity shall be conducted within the properties other than in a garage and concealed from public view.

Section 4. Animals. No animals, livestock or poultry shall be raised, bred or kept in any portion of the Properties except that a total of two dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgement of the Board of Directors of the Homeowners Association) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. Such pets must reside primarily indoor and all feces must be cleaned up immediately regardless of whether deposited in or outside of the owner's yard. No dog or other animal pens or houses or the like shall be permitted. No animals shall be permitted on the common area at any time except as permitted by the rules and regulations of the Association. All animals must be kept on a leash while not on the Owners property.

Section 5. Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any lot having an area of the main structure, exclusive of open porches and decks, of less than 1600 square feet of heated area. Dwelling exteriors shall be a minimum of eighty percent (80%) brick. Accent materials may be brick or stone with vinyl siding or shakes on

gables and dormers. Vinyl trim such as soffit and fascia shall be permitted. All dwellings will have a two car attached garage. Each dwelling shall have a minimum thirty-six square foot (36 sq ft.) front porch.

No antennae or satellite dishes larger than 18 inches in diameter shall be permitted and all antennae or satellite dishes shall be mounted at the rear of the dwelling in a manner so as not to be visible from the road.

Section 7. Screening. All garbage containers, air conditioning units, utility meters and propane tanks shall be permanently screened from view from all street rights-of-ways except on the day of garbage pick-up.

Section 8. Mailboxes. All mailboxes will be initially installed by the builder and shall be of uniform design and color as determined by the Declarant. Any changes must have the approval of the ACC. Maintenance of mailboxes will be the duty of the Association.

Section 9. Vehicles. No vehicle of any kind shall be parked on any Lot except on a paved parking surface or driveway or within a garage. Vehicles may be parked on the streets of the subdivision for a period not to exceed twenty-four (24) consecutive hours after which time they shall be moved. No truck or vehicle used primarily for commercial purposes (other than those temporarily present on business) and no trailer may be parked within the Properties. Boats, golf carts and trailers or other similar vehicles, and any vehicle not in operable condition and validly licensed, may be kept on a Lot if kept inside a garage and concealed from public view. For the purpose of the preceding sentence, the term "kept" shall mean present for either a period of more than ten(10) hours or overnight, whichever is less. Recreational vehicles will not be allowed to be parked on the premises or driveway except that a guest of any lot owner shall be allowed to park a recreational vehicle or camper trailer in the driveway of the owner for a maximum of 10 consecutive days only at which time it must be removed and not return until 14 days has passed. Out of concern for the safety of the residents, care must be taken at all times to keep sidewalks clear of parked vehicles for pedestrian traffic.

Section 10. Setbacks. No dwelling shall be erected or permitted to remain on any lot nearer to the street, side and rear lines than those Wake County or Town of Garner Minimum Building Setback Limits as shown on the recorded plat of the subdivision.

Section 11. Leased Units. An Owner may lease or sublet his Unit; provided, however that any lease or sublease must be for at least twelve (12) months, in writing, comply with the age restriction outlined in Article VI of these covenants, and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions and Restrictions for The Village Aversboro recorded in the Wake County Registry and bylaws of the Association. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same".

If owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association with a copy of any leases or subleases of his Unit.

It is the express intention of the Declarant that The Village at Aversboro be an Owner's community. Purchase of any Lot within the subdivision shall be for the purpose of residence and not as investment or rental property. Lease is strongly discouraged except to immediate family members or in cases of hardship and under no circumstance will lease of a unit be allowed to anyone who does not meet the age restriction in Article VI.

ARTICLE IV

EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration, and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it; subject further easements as are requisite for the convenient use and enjoyment of the Properties.

An easement is hereby established over the common areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage

collection, postal delivery, emergency and rescue activities and law enforcement activities.

All lots and common areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant or anyone approved by the Declarant to the extent that such initial improvements actually encroach including eaves, gutters and downspouts, fences, decks and walls.

All lots and common areas shall be subject to a five (5) foot maintenance easement for the purposes of installation and maintenance of any improvements on any lot or common area. This easement is hereby granted to the adjacent property Owner, the Homeowner's Association and their successors or assigns.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. General. No site preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in fences, hedges, plants, trees, walls and other improvements, shall be commenced, erected or maintained on any Lot until the Architectural Control Committee (herein called the "ACC") appointed as hereinafter provided, has approved the plans and specifications thereof and the location of such Improvements and specifications for who has responsibility for maintenance.

Section 2. Composition. Until all Lots are sold, Declarant shall annually appoint the members of the ACC which will be composed of up to three (3) individuals. Each member will be generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards with the Project. In the event of the death or resignation of any member of the ACC, Declarant, for as long as it has the authority to appoint the members of the ACC, and thereafter, the remaining members of the ACC, shall have full authority to designate and appoint a successor, No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Subsequent to all Lots being sold, the Board of Directors of the association shall appoint the members of the ACC on an annual basis.

Section 3. Procedure. No improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications thereof and a site plan thereof have been submitted to and approved in writing by the ACC, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement;
- (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the ACC, or matters in which the ACC 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 Lot shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submissions of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the ACC, one complete set of plans and specifications will be retained by the ACC and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the ACC pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved", accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions, and restrictions or otherwise being so unacceptable. Any modifications or changes to the ACC approved set of plans and specifications must again be submitted to the ACC for its inspection and approval. The ACC's approval or disapproval, as required herein, shall be in writing. The ACC may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions, and restrictions. Although the ACC shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related

conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these covenants, conditions and restrictions and are incorporated herein by reference.

Section 4. Jurisdiction. The ACC is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Lot which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Project.

Section 5. Enforcement. The ACC shall have the specific, nonexclusive right (but not obligation) to enforce the provisions contained in this Article of the Declaration and/or to prevent any violation of the provisions contained in this Article of the Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of the Declaration. The ACC shall further be authorized to file liens pursuant to North Carolina General Statute §44A-7 et seq. for failure to pay dues and/or assessments and/or costs of repairs if the repairs have to be performed by the Association.

Section 6. Improvements. No improvements may be made to any property until the same has been approved by the ACC, The definition of Improvements does include both original Improvements and all later changes to Improvements.

Section 7. Failure of the ACC to Act If the ACC 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 thirty (30) days after submittal thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the ACC, it shall be conclusively presumed that the ACC has approved such conforming plans and specifications and other submittals, EXCEPT that the ACC 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 the Declaration. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

Section 8. Limitation of Liability. Neither the ACC nor the members thereof nor Declarant shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or failure to approve or disapprove any plans or specifications.

Section 9. Miscellaneous. No member of the ACC shall be entitled to compensation for, or be liable for, claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of or services performed pursuant to this Article. The Association shall reimburse members of the ACC for reasonable out-of-pocket expenses.

ARTICLE VI

AGE RESTRICTION

At least eighty percent (80%) of the occupied Units shall be occupied by at least one person who is 55 years of age or older, and all permanent occupants must be at least 18 years of age or older. A "permanent occupant" shall be defined as a person who occupies a Dwelling for more than eight (8) weeks in any calendar year.

A surviving or divorced spouse who is a permanent occupant under the age of 55 years and who was the spouse of an occupant 55 years of age or older will be allowed to remain as an occupant.

No Owner who is a Class A Member may rent or sell a Unit unless at least one person who will occupy the unit is 55 years of age or older. The Board of Directors shall have the right to require proof of age verification from all prospective occupants.

Notwithstanding anything to the contrary contained herein, the Declarant shall have the right, but not the obligation, to sell Units in which there will be no occupant who is 55 years of age or older, provided that such sales do not conflict with any federal, state or local law.

The Declarant and, after the Declarant no longer has voting control of the Association, the Association, shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of, or use of common facilities by persons under 18 years of age.

The Association shall maintain a record of Occupants in compliance with Sec. 100.306 of the Department of Housing and Urban Development 24 CFR. Part 100 Federal Register. This Declaration shall serve as notice to all Owners that such documentation will be requested and maintained in confidence on permanent record by the Association.

Each Owner is responsible for notifying the Association of any resale of any Lot within the subdivision within five (5) days of receipt of the purchase contract. The Association will request documentation in support of the age restriction from the buyer prior to sale in fulfillment of its obligation to maintain records.

ARTICLE VII

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. The Declarant shall be a Member of the Association, and a creditor who acquired title to any portion of the Property pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a Member of the Association. Every Owner shall be a Member of the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of membership:

Class A. Class A Members shall be all Owners of Single Family Lots. Class A Members shall be entitled to one (1) vote for each Single Family Lot owned.

Class B. The Class B Member(s) shall be the Declarant and its successors and/or assigns. Class B Members shall be entitled to three (3) votes for each Single Family Lot owned; provided, however that the Class B membership shall terminate and be converted to Class A membership upon the earlier of:

(i) The date the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, additional lands are annexed to the Property by the Declarant as provided in Article IX of this Declaration; or

(ii) December 31, 2012, and after that date there shall be no Class B Members.

Section 3. Governance. The Association shall be governed by the Declarant, its successors or assigns, during the period of Declarant control and by a Board of Directors as provided for in the by-laws of the Association thereafter.

ARTICLE VIII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the lien and personal obligation of assessments. The Declarant for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a 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 obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Permanent Common Open Space, including any maintenance, repair, and reconstruction of private streets, driveways, walks and parking areas situated on the Permanent Common Open Space, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance or for the use and enjoyment of the Permanent Common Open Space, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Permanent Common Open Space, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, but not limited to, the generality of the foregoing, signs, paving, grading, landscaping, and any other major expense for which the Association is responsible, and such other needs as may arise.

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In addition to maintenance of the Permanent Common Open Space, the assessments levied by the Association shall be used for the ongoing maintenance of the yard areas of each Lot including but not limited to the mowing and trimming of lawns and may include, at the discretion of the association, the trimming of trees, shrubs and other plantings but shall not include the maintenance or repair of the exterior of the dwelling structure, sidewalks, driveways, patios, decks such being the sole responsibility of the Owner.

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

Section 4. Working Capital Fund. The Association shall establish and maintain a working capital fund. The purpose of the fund is to establish available funds for the initial expenses of the Association and to financially strengthen the association against unforeseen expenses. Such working capital fund is to be established out of a \$150 surcharge due at the lot sale closing date of both initial purchases and subsequent resales. Amounts paid into this fund shall not be considered advance payment of regular assessment.

Section 5. Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment shall be Twelve Hundred (\$1200.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner by Declarant, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership by up to ten (10%) of the previous year's assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase allowed in Section 3(a) above by a vote of one-third (1/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. Written notice stating the purpose of such meeting shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The limitations hereof shall not apply to any change in the maximum assessment and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 6. Special assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Permanent Open Space, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all members not less than thirty (30) days nor more than (60) days in advance of the meeting.

Section 7. Notice and Quorum for any action authorized under sections 5 & 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots and may be collected on an annual, quarterly, or monthly basis as determined by the Board of Directors.

Section 9. Date of Commencement of Annual Assessment: Due Dates. The annual assessments provided for herein shall commence as to all Lots other than those owned by the original Declarant on the first day of the month following the recordation of this Declaration of Covenants, Conditions, and Restrictions. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a

reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 per cent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event, interest, costs, and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Permanent Open Space or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

Section 11. Subordination of the lien to mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**ARTICLE IX
GENERAL PROVISIONS**

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2017, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than eighty-five percent (85%) of the Lot Owners (inclusive of the ownership of the Declarant herein), and thereafter by an instrument signed by no less than seventy-five percent (75%) of the Lot Owners. For purposes of these covenant, each lot shall be entitled to one vote and multiple owners of a lot shall decide between themselves who shall cast that one vote.

Section 4. Annexation. Declarant reserves the right to annex additional property to this declaration at his discretion.

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IN TESTIMONY WHEREOF, S. WAKE PROPERTIES, INC. has caused this instrument to be executed in its corporate name by its President and sealed with its corporate seal, by authority of its Board of Directors, as of the day and year first above-written.

S. WAKE PROPERTIES, INC.
A NORTH CAROLINA CORPORATION

BY: *Douglas E. Ball* (Seal)
Douglas E. Ball, President

Johnston NORTH CAROLINA
~~WAKE~~ COUNTY

I, *Stacey S Kimmey*, Notary Public for the State of North Carolina, County of *Johnston*, certify that **Douglas E. Ball** personally came before me this day and acknowledged that he is President of S. WAKE PROPERTIES, INC., a North Carolina Corporation and that he as President, being duly authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or self, this *20* day of August, 2007.

(SEAL)

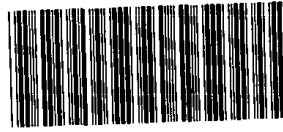


Stacey S Kimmey
Notary Public

Typed or printed name of notary:

Stacey S Kimmey
My Commission Expires: *02/21/2011*

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**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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