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JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NORTH CAROLINA	

**STATE OF NORTH CAROLINA**

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE MILLSTONE RIDGE SUBDIVISION**

**COUNTY OF MECKLENBURG**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made JULY 30, 2002 by THE MULVANEY GROUP, LTD., a North Carolina corporation (hereinafter referred to as "Declarant").

**STATEMENT OF PURPOSE**

Declarant is the owner of real property in Mecklenburg County, North Carolina, which is more particularly described on Exhibit A hereof. Declarant desires to create thereon a residential community of single-family detached residential dwellings to be known as the Millstone Ridge Subdivision.

Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof; to prevent nuisances; to preserve, protect, and enhance the values and amenities of all properties within the subdivision; to provide for the maintenance and upkeep of the sidewalks and the storm drainage system; and to undertake the other duties set forth herein; and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, assessments, charges, liens and other obligations hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant has deemed it desirable, for the efficient preservation, protection, and enhancement of the values and amenities in said subdivision, to create an organization to which will be delegated and assigned the powers of maintaining and administering said areas and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Declarant has incorporated or will incorporate under North Carolina law the Millstone Ridge Homeowners' Association, Inc., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

Declarant, by this Declaration, does hereby declare that all of the property described on Exhibit A hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

This declaration is made pursuant to the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes. In the event of a conflict between the provisions of the Planned Community Act and the Articles of Incorporation and/or the Bylaws of the Association and this Declaration, the provisions of the Planned Community Act, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

**DRAWN BY & MAIL TO:  
The Mulvaney Group, Ltd.  
7301 Carmel Executive Park #102  
Charlotte, NC 28226**

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1a.** "Amenity Area" shall refer to a swimming pool and surrounding area and improvements related thereto, which Declarant may, but is not required to, construct on the Property or the Common Area.

**Section 1.1.** "Articles of Incorporation" shall refer to the articles of incorporation of the Association, as filed with the North Carolina Secretary of State.

**Section 1.2.** "Assessments" are any dues or other monies owed the Association pursuant to the terms of this Declaration. There are three kinds of Assessments:

(a) Annual Assessments are those levied against each owner equally, in order to pay for normal activities of the Association.

(b) General Special Assessments are those levied against each owner equally, in order to pay for extraordinary activities of the Association.

(c) Specific Special Assessments are those levied against one or more individual owner(s) on account of violations of those owner(s) of the terms of this Declaration, or on account of expenses incurred by the Association as a result of the activity or inactivity of the owner(s).

**Section 1.3.** "Association" shall mean and refer to the Millstone Ridge Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

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

**Section 1.5.** "Builder" shall mean any homebuilders, developers or other contractors in the business of purchasing Lots or land from the Declarant, for the purpose of building thereon, and selling, residential dwelling units to the public.

**Section 1.6.** "Bylaws" shall refer to the bylaws of the Association.

**Section 1.7.** "Common Area" shall refer to all portions of the Property which are deeded to the Association or used for the common enjoyment of all members, including all improvements thereto. It shall include the Amenity Area, if any, and all entryways, sidewalks, traffic circles, or easements granted to the Association for landscaping or signage purposes.

**Section 1.8.** "Declarant" shall mean and refer to The Mulvaney Group, Ltd.

**Section 1.9.** "Dwelling" shall mean any single family residential dwelling unit erected upon any Lot.

**Section 1.10.** "HUD/VA/FNMA/FHLMC" shall refer to the U.S. Department of Housing and Urban Development, and/or the Veterans Administration, and/or the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation, any governmental authority which succeeds said organizations, and/or any other governmental or quasi-governmental authority which governs, regulates or administers the selling of residential dwellings or the issuing of mortgages on such dwellings.

**Section 1.11.** "Improvement" shall mean any construction, alteration or addition to a Dwelling or any other structure located on the Property or any Lot. Any landscaping planted by an Owner which is located in any are maintained by the Association shall be considered an Improvement

**Section 1.12.** "Lot" shall mean and refer to any numbered parcel of land upon which is or may be placed one single-family detached dwelling, with delineated boundary lines, appearing on plat or maps of

subdivision recorded with Mecklenburg County. In the event any Lot is subdivided, increased or decreased in size by resubdivisions, through recordation of new subdivision plats, by deed or otherwise, each lot resulting from such subdivision or resubdivision shall thereafter constitute a Lot for the purpose of this Declaration.

Section 1.13. "Map" shall mean and refer to any certain Subdivision map(s) which shows the Property and shall be recorded in the Mecklenburg County Registry.

Section 1.14. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 1.16. "Property" shall mean and refer to the property described on Exhibit A.

Section 1.17. "Subdivision" shall mean and refer to the entire Millstone Ridge subdivision, which consists of and is identical to the Property.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION**

Section 2.1. The Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Mecklenburg County, North Carolina, and is described on Exhibit A attached hereto.

Section 2.2. Annexation of Additional Property. Declarant shall have the right, so long as it owns any Lot, to add additional property to the Property which is the subject of this Declaration, provided that such additional property is physically contiguous to the Property. Such additional property shall be added by recordation of a Supplemental Declaration identifying such contiguous property. Provided however that, so long as there is a Class B Member, such annexation shall require approval of HUD/VA.

In the event the Declarant adds additional property to the Property which is the subject of this Declaration, the Declarant shall have the absolute right, all other provisions of this Declaration notwithstanding, to use any portion of the Property for roadway or other access to the property being added. This right shall include, but not be limited to, the right to use a platted lot(s) for vehicular and/or pedestrian access to the additional property.

Section 2.3. Conveyance or Transfer of Common Area. The Common Area may be conveyed and/or mortgaged by the Association, provided that such conveyance and/or mortgage is approved by at least 80% of the Members (excluding the Class B Member). Any dedication of the Common Area to any municipal authority shall, so long as there is a Class B Member, require the approval of HUD/VA.

If ingress or egress to any Lot is through or over any part of the Common Area, then any conveyance of said Common Area shall be made subject to an express easement in favor of that Owner and that Lot

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS**

Section 3.1. Membership. Every Owner of any Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.2. Classes of Membership. The voting rights of the membership shall be appurtenant

to the ownership of the Lots. There shall be two classes of membership with respect to voting rights. There shall be three class of membership with respect to dues.

### **I: Voting Rights**

(a) Class A Membership. Every Owner of a Lot, other than the Declarant, shall be considered a Class A Member. Each Class A Member shall be entitled to one vote per Lot owned. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Class A Lot.

(b) Class B Membership. The Declarant shall be the Class B Member. The Declarant shall be entitled to four (4) votes for each Lot owned by it. The Class B Membership shall cease to exist and shall be converted to Class A Membership for voting purposes upon the happening of either of the following events, whichever occurs earlier:

- (1) the date that 75% of the Lots are conveyed to Class A Members; or
- (2) five years from the date of this Declaration, or
- (3) written notice of consent to such conversion by the Declarant.

### **II: Dues Obligations**

(a) Class A Membership Dues: All Class A Members shall be responsible for paying Dues. Dues shall be the pro-rata share of all Common Area expenses and other normal and ordinary expenses of the Association. For purposes of determining the pro-rata share, the Dues shall be determined by dividing the total of such expenses by the total number of Lots on the Property.

(b) Class B Membership Dues. The Class B Member (or the Declarant when the Class B membership no longer exists), shall be responsible for one-third of the obligation owed by the individual Class A Members, as appropriate, for each Lot owned by it. Alternatively, the Class B Member (or the Declarant) shall have the right to pay any shortfall between the actual Association expenses and the actual revenues raised from the Class A Members. The Class B Member (or the Declarant) shall at all times have the right to satisfy its obligations hereunder by providing services in-kind for the Association.

**III: Builders**. Any Builder(s) that owns any Lot shall be considered a Class A Member for all purposes other than dues. As to dues, any Builder shall be responsible for one-third of certain dues obligations owed by the other Class A Members. Such reduction in dues shall apply to the Annual Assessment and any General Special Assessment, but not to any Specific Special Assessment. This reduction in dues is reasonable and equitable under the circumstances, as Lot(s) owned by any Builder(s) are likely to be vacant, and as such would not generate the same maintenance burden as occupied lots. The foregoing notwithstanding, no Owner other than any Builder shall be entitled to a reduced rate of dues, regardless of whether the Lot owned by that Owner is vacant or not.

## **ARTICLE IV**

### **POWERS OF THE ASSOCIATION**

Subject to the provisions of the Articles of Incorporation and this Declaration and the Declarant's rights herein, the Association may:

- (1) Adopt and amend bylaws and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;
- (3) Hire and discharge managing agents and other employees, agents and independent contractors;

- (4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community (subject to the limitations of Section 13.1, below);
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property. Provided, however, that common elements may be conveyed or subjected to a security interest by the Association only if persons entitled to cast at least 80% of the votes in the Association agree in writing to that action.
- (9) Grant easements, leases, licenses and concessions through or over the common elements;
- (10) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than the limited common elements and for services provided to lot owners;
- (11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 day or longer;
- (12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws and rules and regulations of the Association;
- (13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
- (14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;
- (15) Assign its right to future income, including the right to receive common expense assessments;
- (16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the Association.

## **ARTICLE V**

### **PROPERTY RIGHTS**

**Section 5.1. Owner's Easement of Enjoyment.** Every Owner shall have a general right and easement of enjoyment of his own Lot and the Common Area which is deeded to the Association, subject to the provisions of this Declaration.

**Section 5.2. [Reserved]**

**Section 5.3 Other Easements.**

(a) **Reservation of Five-Foot Side Line and Ten-Foot Rear-Line Easements.** The Declarant

hereby reserves for itself, its successors and assigns a permanent five-foot right of way along the side lines and a permanent ten-foot right of way along the rear lines of each Lot (other than portions of Lots on which common walls have been built) for purposes of the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, storm drainage, telephone service and other utilities and all walls, columns, lamps and entry ways appurtenant to the Common Area.

(b) Restrictions on Improvements or Interference with Easements. No improvement shall be built in such a way, and no other action shall be taken by any Owner, which in any way restricts or limits the easement rights granted and reserved herein. No Owner shall have any right to remove, destroy, damage or impede any improvement placed in any valid easement.

(c) Reservation of Easements for Encroachments. Declarant, for itself and for its successors and assigns, reserves a permanent right and easement over all of the Lots for encroachments of roofs, trim and molding, siding and any other integral components of structures, the walls of which are located on a common boundary line between adjoining Lots. This right and easement shall be for the continuing existence of any such encroachments; further, there shall be a perpetual right and easement of Owners and their employees, agents and representatives, to go upon adjoining property for the purpose of repair, maintenance and reconstruction of any structure located on the Lot of such Owners.

(d) Access through Lots. Each Owner shall afford to the Association, and when necessary to another Owner, access through the Owner's Lot reasonably necessary for any maintenance, repair or replacement activity required on the Common Area.

## **ARTICLE VI**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

#### **Section 6.1. Creation of the Lien and Personal Obligation of Assessments.**

(a) The Declarant, for each Lot within the Property, hereby covenants and each Owner of any Lot 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 (2) General Special Assessments for capital improvements and (3) Specific Special Assessments, as determined by the Association, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, fines 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 or charge is made. Each such assessment, together with interest, costs, fines 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 or charge fell due.

(b) Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a continuing lien on that Lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

#### **Section 6.2. Purpose of Assessments.**

(a) The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Property and in particular for the maintenance and improvement of the Common Area.

(b) [Reserved].

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it

by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot, by whatever means, and the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Property.

**Section 6.3. Maximum Annual Assessment.**

(a) The initial Annual Assessment for Class A Dues shall be Three Hundred and Sixty Dollars (**\$360.00**) per year. Upon completion of any swimming pool the Annual Assessment shall automatically increase by Two-Hundred and Forty Dollars (**\$244.00**) per year.

(b) The Annual Assessments shall be established by the Board of Directors on an annual basis. The Annual Assessments may be increased by the Board of Directors, without approval by the membership, by a percentage not to exceed the sum of ten percent (10%) per year. The foregoing notwithstanding, the increase in the Annual Assessment related to the completion of any swimming pool shall be permitted without the approval of the membership.

**Section 6.4. Capital Contribution.** Every Owner other than the Declarant shall likewise be responsible for an initial capital contribution in the amount of **\$200.00**. Such capital contribution shall be due upon transfer of the title to any portion of the Property to the Owner. All initial capital contributions shall be held as a working capital fund, net any bank fees or charges.

**Section 6.5. Notice And Quorum For Any Action Authorized Under Sections 6.3.** Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 hereof 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 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. This process may be repeated until a quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6.6. Rate Of Annual Assessment.** Both Annual Assessments and General Special Assessments must be fixed at a uniform rate for all Lots within each class and shall be collected on a not more often than monthly basis, but may be collected on a less frequent basis.

**Section 6.7. Date Of Commencement Of Annual Assessments; Due Date.** The Annual Assessments provided for herein shall be due in full on January 1 of each calendar year (other than the first year in which such Assessments are levied, in which case, such are due immediately upon assessment), and shall be payable on a semi-annual basis on the first business day of January and the first business day of July each year. The first such annual assessment shall be adjusted according to the number of days remaining in the calendar year after conveyance of the first Lot to an Owner. In the event of any failure of any Owner to pay the Annual Assessment(s) in a timely fashion, the Association shall have the right, upon written notice to the Owner, to accelerate the due dates for all Annual Assessments due for any particular calendar year.

General and Specific Special Assessments shall be due immediately when levied by the Association, or at such other time determined by the Association.

At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment against each Lot for the next year and at least thirty (30) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto.

The Association shall, upon demand, and for a fee to be determined by the Association, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

**Section 6.8. 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 18% per annum. In addition to such interest charge, the delinquent Owner shall also pay such late charges or fines as may have been theretofore established by the Board of Directors, as well as any attorney's fees incurred by the Association related in any way to the collection of said delinquent payment. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust, and interest, late payment fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot; nor shall damage to or destruction or any improvement on any Lot by fire or other casualty result in abatement or diminution of the assessments provided for herein.

Provided, however, that an Owner's failure to pay any assessment shall not constitute a default under a mortgage given by that Owner, unless expressly agreed to by the Owner in writing.

**Section 6.9. Exempt Property.** The assessments, charges and liens created under this Article VI shall not apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan. All land which shall be dedicated to and accepted by a local public authority, and all land granted to or used by a utility company, and property owned by a nonprofit organization exempt from taxation under the laws of the State of North Carolina shall be exempt from the assessments and charges created herein.

**Section 6.10. Subordination to the Lien of First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. The sale or transfer of any Lot shall not affect the assessment lien; ~~provided, however,~~ the sale or transfer of any Lot which is subject to any first deed of trust or first mortgage, pursuant to a foreclosure thereof or under a power of sale, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

**Section 6.11. Application of Payments.** In the event an Owner pays any funds after the imposition of any fines, or the incurrence of collection fees, the funds paid shall be applied first to any fines levied, then to any other late fees, then legal fees, if any, then to any special assessment, if any, then to the Annual Assessments, if any.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

No improvement of any sort shall be commenced, erected, or maintained upon the Property or any Lot, (including but not limited to exterior alterations such as fences, sheds, room additions, decks and/or porches) without the express approval of the Declarant, so long as the Declarant owns any Lot, and thereafter, by the Board of Directors of the Association. Additionally, no cosmetic change shall be made to any Dwelling (including but not limited to, color or painting of the exterior and the type of exterior finish) without the express approval of the Declarant (or the Board, as appropriate). In the event an Owner desires to erect an improvement on any Lot, or alter the exterior of any Dwelling, the Owner shall submit to the Declarant (or the Board, as appropriate), three copies of the plans and specifications showing the nature, kind, shape, height, materials, and location of the improvements. The Declarant (or the Board) shall have absolute discretion as to the approval or denial of any improvements, provided that the Declarant (or the Board) shall base its approval or denial upon reasonable consideration as to harmony of external design and location in relation to surrounding structures and topography. Absent such approval, the proposed improvement may not be commenced.



In the event the Declarant (or the Board, as appropriate) fails to approve or disapprove in writing any proposed plans and specifications within sixty (60) days after such plans and specifications have been submitted, such plans and specifications shall be deemed to have been expressly approved. The Declarant (or the Board) may refuse to approve plans and specifications based upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

In the event an Owner of any Lot in the Properties shall make unauthorized changes to any Lot or Dwelling and the improvements situated thereon in a manner unsatisfactory to the Declarant (or the Board) the Declarant (or the Board) shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the Dwelling and any other improvements erected thereon. The cost of such exterior maintenance and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be considered a Specific Special Assessment against that Owner(s) and his/her Lot(s).

No Builder shall construct any Dwelling or other improvement on any Lot without the prior approval by Declarant of the plans and specifications for such dwelling or improvement. In the event the Declarant fails to approve or disapprove in writing any proposed plans and specifications within thirty (30) days after such plans and specifications have been submitted, such plans and specifications shall be deemed to have been expressly approved. In the event that such Builder uses the plans and specifications previously approved by Declarant for the construction of other dwellings or improvements within the Subdivision, such plans and specifications shall not need to be re-approved by Declarant unless material alterations have been made to such plans and specifications. The Declarant may, but need not, enter into a separate agreement with any Builder(s) to permit the construction of residences pursuant to certain approved plans, and construction pursuant to such plan's shall not require individual approval of the Declarant, except as set forth in such separate agreement.

#### **ARTICLE VIII**

#### **MAINTENANCE**

##### **Section 8.1. Maintenance by the Association.**

The Association shall provide ordinary care and maintenance for the Amenity Area, and all other portions of the Common Area. Specifically, the Association shall care for and maintain the Amenity Area, all entryways to the Property and improvements thereto, all traffic circles centers, and such care and maintenance shall be deemed to benefit all Lots.

In order to enable the Association to accomplish its maintenance obligations as set forth in this Article, permanent rights and easements over all Lots have been reserved to the Association pursuant to Article V.

##### **Section 8.2. Maintenance by Owners:**

(a) Each Owner of a Lot shall be responsible for the maintenance, repair, and replacement of all improvements to his Lot. Each Owner shall maintain his Lot in an orderly fashion, keeping all vegetation of any kind neatly kept and trimmed. Provided, however, the external appearance of such maintenance, repairs or replacement shall be subject to the regulation and control of the Declarant or the Association as provided in this Declaration.

(b) Should an Owner fail to discharge his maintenance, repair or replacement responsibilities in a reasonable and prudent manner to standards harmonious with that of other Lots in the subdivision (as determined by the Declarant in its discretion or, after the Declarant owns no portion of the Property, by the Association), then the Declarant (or Association, if appropriate) in its discretion may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant (or Association) shall have the right to cause such maintenance, repair or replacement to be performed and to charge the cost thereof as a part of and in addition to the regular assessment attributable to the Lot as provided for in this Declaration,

notwithstanding any provision to the contrary contained herein. Should an Owner fail to pay any charge billed in accordance with this subparagraph (c) within fifteen (15) days of such billing, then the Declarant (or Association) shall have the right to levy fines and to claim a lien against the Lot and to foreclose such lien, all as provided for in Article VI of this Declaration. No such entry as provided herein shall be deemed a trespass.

### Section 8.3. General Maintenance Provisions.

(a) In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Lot is subject, notwithstanding any provisions to the contrary contained herein.

(b) The Association shall have the power to enforce the obligations contained in this Article VIII through the levy of General and/or Specific Special Assessments.

## ARTICLE IX

### USE RESTRICTIONS

Section 9.1 Residential Use. All Lots shall be used for single family residential purposes only and subject to the restrictions of this Article IX. No structure erected, altered, placed or permitted to remain on any Lot shall exceed three and one-half stories in height. A private garage for each Lot for not more than three cars and other accessory structures customarily incidental to the use of the Lot may be erected.

The foregoing notwithstanding, the Declarant shall have the absolute right, in the event additional Property is added to the Declaration pursuant to Article II, to use any lot(s) for purposes of roadway and/or other vehicle or pedestrian access, ingress, and egress, for purposes of integrating the additional property to the existing subdivision. Nothing herein shall be interpreted to limit the Declarant's rights to use any lot(s) for roadway purposes, in the event additional property is added to this Declaration.

Section 9.2 Setbacks. No building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded maps of Lots. No building shall be located nearer any side Lot line than the applicable zoning ordinance shall allow. Deviations from building line requirements not in excess of ten percent (10%) thereof shall not be construed as a violation of the building line requirements as long as such deviation does not violate any local ordinance or zoning.

Section 9.3 Animals and Pets. No animals of any kind shall be kept on any Lot except generally accepted household pets, which may be kept thereon for the sole pleasure and use of the occupants but not for commercial use and no more than three pets over the age of six months shall be permitted at any time. Birds shall be confined in cages. No swine shall be permitted. In no instance shall household pets become a nuisance to other Owners, or infringe upon the property rights of other Owners.

Section 9.4 Signs. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale," which sign shall not exceed two feet by three feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot. Notwithstanding the above, Declarant may erect and place signs of any size or shape on any unsold Lot or the Common Area. Declarant shall also have the right of ingress, egress and regress over the aforesaid Lots and Common Area in order to maintain and replace any such signs until 100% of the Lots have been conveyed by Declarant.

Section 9.5 Nuisances. No activity may be carried on which shall or may be offensive, illegal, or an annoyance or nuisance, as determined by Declarant or the Board of Directors. No Lot or right-of-way shall be used for rubbish disposal, or for storage if such storage may cause such Lot or right-of-way to appear unclean or unsightly; nor shall any thing be kept upon any Lot or right-of-way that will emit a foul odor or will cause noise that might disturb the peace. However, the foregoing shall not be construed

to prohibit temporary deposits of trash, rubbish and other such debris for pick up by trash removal service units, but such deposits shall only be permitted upon the specific day of pick up. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds, or underbrush or to maintain the main structures on each Lot in a manner satisfactory to the Board of Directors, the Board of Directors may, five days after delivering notice to the Owner requesting the Owner comply with the requirements of this paragraph, enter and remove all such unsightly objects or vegetation at Owner's expense and Owner agrees to pay such costs incurred by The Association in the enforcement of this paragraph. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to Declarant or to a Builder while constructing residences upon any Lots.

**Section 9.6 Clotheslines, Garbage Cans, Lawn Maintenance, General Upkeep of Lots, etc..** All clothes lines, lawn mowers, stored materials, wrecked unlicensed or inoperable vehicles, and similar equipment shall be kept in an enclosed structure or adequately screened by planting or fencing, as determined by the Declarant or Board of Directors. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot. All garbage cans and other sanitary containers must be kept behind the house, and shall not be permitted to be left on the street for pickup for more than 12 hours. Temporary window treatments (such as towels, bed sheets, etc.) shall not be permitted except for the first 30 days after an Owner takes possession of his/her/their property. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in garbage cans or other sanitary containers. No weeds, vegetation, rubbish, debris, garbage, or other waste materials shall be permitted to accumulate on any Lot or any other portion of the Property which would render it unsanitary, unsightly, or offensive. Each Owner shall keep his grass, hedges, shrubs, vines and mass planting of any kind trimmed or cut so as to appear neat and attractive, and shall promptly remove any dead trees, vines, shrubs or plants on his property.

**Section 9.7 Antennas, Satellite Dishes.** No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Lot. Provided, however, that radio and television antennas not exceeding three (3) feet in height above the roofline of the residence and dishes or disks not exceeding three (3) feet in diameter and not visible from the street in front of the residence shall be permitted so long as they are attached to the structure of the residence only and not visible from the street in front of the residence.

**Section 9.8 Walls, Fences and Hedges.** Only fences made of "split-rail" wood shall be permitted. No chain link, cyclone, or similar sort of fencing shall be permitted, provided, however, that a green or brown chain link pet fence may be incorporated into a split-rail fence, provided that such chain link portion is on the inside of the split rail fence. No dog kennels constructed of chain link, cyclone, or similar sort of fencing shall be permitted. No masonry walls, other than retaining walls, shall be permitted. Hedges shall be maintained in a neat condition on both sides. All walls, fences, and hedges shall be located only in the rear yard of each lot, a "rear yard" being defined as the portion of each lot from the rear most corners of any house to the rear property line. On corner lots, no walls, fences or hedges shall be erected in the side yard setback, as shown on the recorded maps of the Subdivision.

**Section 9.9 Pools and Trampolines.** In-ground pools only shall be permitted upon Lots but such pools must be located directly behind the residence of each Lot, and shall be screened from view by a six-foot privacy fence. No pool or privacy fence may be erected without first obtaining approval from the Association, as with all other improvements. No pool may be located in any setback area or easement, including any easement granted to the Declarant. No Trampolines shall be allowed on any Lot.

**Section 9.10 Driveways and Parking Areas.** Only driveways and parking areas constructed of concrete, asphalt, or brick shall be permitted.

**Section 9.11 Vehicles, Boats and Trailers: Commercial Vehicles.** No vehicles (other than automobiles and light pickup trucks), boats, trailers, recreational vehicles or similar items shall be allowed to remain upon any Lot unless parked in garages or upon driveways and screened from view by fencing or landscaping approved by the Board of Directors. No open portion of any Lot, or any street, shall be used as a parking area for any type of commercial vehicle.

**Section 9.12 Use of Outbuildings and Similar Structures.** There shall be no structure of a temporary nature on any Lot; all structures erected must have a permanent foundation. No trailer, shed, tent, garage or any other similar structure shall be used as a residence. Provided, however, this

paragraph shall not be construed to prevent Declarant from using sheds or other temporary structures during construction. Provided, further, this paragraph shall not be construed to prevent Owners from constructing a permanent detached garage, carport, or utility shed (such shed not to exceed 12 feet by 16 feet in area) if constructed of materials similar to those used in the residence upon such Lot, if located behind the rear wall of the residence, if constructed in conformity to existing structures within the immediate area, and if not located within any Easements.

**Section 9.13 Basketball Goals and Mailboxes.** Basketball goals shall be permitted on a Lot if placed a minimum of twelve (12) feet behind the concrete curb into such Lot and placed outside of the public right-of-way. All goals and surrounding areas are to be maintained in a neat and orderly condition so as not to create a nuisance. No stone or masonry mailbox structures are permitted. All mailboxes are to be constructed of break-away materials as approved by the North Carolina Department of Transportation, such as 4" x 4" wooden posts or small diameter metal posts.

**Section 9.14 Minimum Square Footage.** Dwellings shall contain not less than a minimum of 1450 square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings. Additionally, Dwellings of one and one-half (1 ½) story or more shall contain not less than minimum of 1000 square feet of heated floor area on the first floor of such Dwelling.

**Section 9.15 Side Setbacks.** (See Section 9.2)

**Section 9.16 Waiver.** Declarant may, but need not, waive in writing any violation of the designated and approved building location lines on either side Lot line, horizontal measurement only, provided that such violation does not exceed 10% of the applicable requirements and provided such violation does not violate any local ordinance or zoning.

**Section 9.17 Subdivision of Lots.** No Lot shall be subdivided by sale or otherwise, except by and with the written consent of Declarant and in compliance with local ordinances.

**Section 9.18 Fire.** In the event any home or structure is destroyed or partially destroyed, said damage must be repaired and the improvement reconstructed within twelve months.

**Section 9.19 General.** Each Lot now or hereafter subjected to this Declaration shall be subject to all Easements. No structure of any type shall be erected upon a Lot which will interfere with rights and use of any Easement.

**Section 9.20 Utility and Drainage.** An easement on each Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under and upon a strip of land ten (10) feet in width along the rear lot lines of all Lots shown on recorded plats, and easements five (5) feet in width along the front and side lot lines of all Lots shown on recorded plats, in addition to any other Easements. The purpose of these easements shall be to provide, maintain, and operate drainage facilities and utility service lines to, over or for each of the Lots. Within these easements, no structure, planting or other material shall be placed which may interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements except for party walls located on a portion of the side line or lines of a Lot. The easement area of and all improvements in it shall be maintained by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Declarant may exercise the right to remove obstructions in such easements upon Owner's failure to do so, at Owner's expense, and Owner agrees to pay costs incurred by Declarant in doing so. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the easements herein along any Lot lines in its sole discretion. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Declarant; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Declarant.

**Section 9.21 Emergency.** There is hereby reserved a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

**Section 9.22 Declarant's Consent to Sales Material.** Until all of the Lots have been conveyed by Declarant, all sales and advertising materials, and all forms of deeds, contracts for sale, and other closing documents for the sale of Lots by any Builder shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. If Declarant fails to notify a Builder of approval or disapproval within thirty (30) days, Declarant shall be deemed to have approved the foregoing. Upon disapproval, Declarant shall provide Builder a list of required changes, and the above procedure shall be repeated until approval is obtained.

**Section 9.23 Unintentional Violation.** In the event of an unintentional violation of any of the foregoing restrictions with respect to any Lot, Declarant reserves the right (with the mutual written consent of the then Owner of such Lot) to change, amend, or release any portion of the foregoing restrictions as the same may apply to that particular Lot.

**Section 9.25 Declarant's Right to Repurchase.** If at any time Declarant sells any Lot to a person or persons, firm or corporation, and such person or persons, firm or corporation shall intend to sell such Lot before any residence is constructed on said Lot, Declarant reserves and shall have the right and option, but not the obligation, to purchase the Lot at a price not to exceed the original selling price plus accrued interest from the date of purchase (at rate of interest announced by Bank of America, N.A. in Charlotte, North Carolina from time to time as its Prime Rate) with the option expiring thirty (30) days after the Owner notifies the Declarant in writing of his, her or their intentions, said notice to be by certified mail with return receipt, and said notice shall contain the name and address of the intended purchaser and the price and all other terms of the intended sale.

**Section 9.25 New Construction Only.** Construction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting same into a dwelling unit in this subdivision

#### **ARTICLE X**

#### **RESERVED**

#### **ARTICLE XI**

#### **INSURANCE**

#### **Section 11.1. Insurance Coverage to be Maintained - Use and Distribution of Insurance Proceeds.**

(a) Commencing not later than the time of the first conveyance of a lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available:

(1) Property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by a policy under this section shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lien holders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated; and

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) The Association shall maintain in full force and effect fidelity insurance coverage

protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

(c) If the Board of Directors so elects, officers and directors liability insurance covering the officers and directors of the Association may be obtained in such amount as the Board of Directors shall determine.

(d) The Association shall have the further right to purchase and maintain comprehensive general liability insurance coverage and such other insurance coverage as the Board of Directors may deem necessary and appropriate.

(e) Any portion of the planned community for which insurance is required under this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) the planned community is terminated, (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (c) the Owners decide not to rebuild by an 80% vote, including 100% approval of Owners assigned to the Common Areas or buildings not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, and (b) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the Lots.

(f) Premiums upon insurance policies purchased by the Association shall be paid by the Association as common expenses to be assessed and collected from all of the Owners.

(g) All insurance policies purchased by the Association shall be for the benefit of the Association.

## **ARTICLE XII**

### **ENFORCEMENT**

**Section 12.1. Enforcement.** In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines for violation of any duty imposed under the Declaration or the Bylaws, which shall be assessed as a Specific Assessment against the violating Owner. If any Owner shall violate or attempt to violate any of these restrictions, it shall be grounds for an action to recover sums due, damages or injunctive relief, or both, maintainable by Declarant, the Association, or, in proper case, by an aggrieved Owner. In the event that any occupant, guest or invitee of an Owner violates the Declaration or the Bylaws and a fine is imposed, the fine shall first be assessed against the occupant. If the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. Failure by Declarant, the Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall not be deemed a waiver of their right to do so. The Association may not file any lawsuit for purposes of enforcing this Declaration except in accordance with Section 13.1 below.

**Section 12.2. Notice.** Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten days within which the alleged violator may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

**Section 12.3. Hearing.** If a hearing is requested within the allotted ten day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes

of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

**Section 12.4. Appeal.** If a hearing is conducted before any body other than the Board, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the Board within 30 days after the hearing date.

**Section 12.5. Additional Enforcement Rights.** The Board may elect to enforce any provision of the Declarations or the By-Laws by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above, and entry upon property for the purpose of exercising this right shall not be deemed a trespass. In any such action, to the maximum extent permissible, the Person responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

### **ARTICLE XIII**

#### **GENERAL PROVISIONS**

**Section 13.1. Lawsuits.** The Association may, upon approval of the Board of Directors, institute formal legal proceedings for the purpose of 1) enforcing any use restrictions, 2) collecting any amounts owed under this Declaration, or 3) enforcing any other provision of this Declaration. The institution of any formal legal proceedings by the Association for any other purpose shall require the affirmative approval of two-thirds of the votes entitled to be voted. Nothing contained herein shall be deemed to limit the rights of any Owner to individually undertake legal action related to this Declaration.

**Section 13.2. Severability.** Invalidation of any one of the covenants, conditions or restrictions of this Declaration, or any part thereof, by judgment or court order shall in no way affect any of the other provisions not expressly held to be void and such remaining provisions shall remain in full force and effect.

**Section 13.3. Effective Period.** The covenants, conditions, and restrictions of this Declaration shall run with the land and bind the Association and the Owners of Lots for a period of twenty-five (25) years from the date this Declaration is recorded, after which time such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years until amended or terminated as herein provided. The reserved easements shall run permanently with each Lot.

**Section 13.4. Amendment.** This Declaration may not be materially altered, amended, modified, or changed at any time except by a written document executed by the Owners representing two-thirds of the votes entitled to vote. Provided, however, that as long as Declarant owns any portion of the Property subject to the Declaration, any Amendment to this Declaration must be approved by the Declarant. Any such Amendment must be recorded in the Mecklenburg County Public Registry and shall not be effective until so recorded.

The foregoing notwithstanding, any material change to this Declaration shall, so long as there is a Class B Member, require the approval of HUD/VA.

The foregoing notwithstanding, the Declarant may amend this Declaration at any time to correct scrivener's errors, patent or latent ambiguities, or to make any other modifications whatsoever that do not materially adversely affect the rights or responsibilities of any Owner. Additionally, Declarant may amend this Declaration at any time if such amendment is necessary for the exercise of any development right.

**Section 13.5. Termination.** This Declaration may be terminated only by agreement of Owners representing at least 80% of the votes entitled to vote. An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof

shall be recorded in the county in which the Subdivision is located and is effective only upon recordation.

**Section 13.6. Enforcement of Expenses as a Lien Upon Property.** All costs incurred by the Declarant or the Association in the enforcement of the terms and conditions hereof, including court costs, fines levied, costs of correcting deficiencies by any Owner of a Lot or Lots, and reasonable attorneys' fees in the enforcement hereof, shall be a personal liability of the Owner or Owners of such Lot or Lots subject to the enforcement or collection hereunder, and furthermore such costs and fees shall be a lien upon the Lot of the Owner, and each Owner agrees to accept such personal liability and the lien enforcement rights of the Declarant and the Association by acceptance of a deed to any Lot or Lots in the subdivision; provided, however, said lien shall be subject to the limitations contained in Article VI hereof.

**Section 13.7. Amendment to Conform to Requirements of FHA/VA/FHMA/FHLMC.** Declarant, without consent or joinder of the Association or any other Owner of Lot or Lots, may amend this Declaration to conform to the requirements of the FHA/VA/FHMA/FHLMC at any time during which Declarant owns any of the Property.

**Section 13.8. FHA/VA Approval.** In the event the Declarant has arranged for and provided purchasers of Lots with FHA/VA insured mortgage loans, then as long as the Class B Membership exists the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, other than as provided in Article II hereof, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

In the event the necessary HUD/FHA/VA, or other governmental approval is not obtained for any action as called for in this Declaration, such failure shall not void said action, but shall merely make such action subject to subsequent disapproval or modification by the appropriate governmental agency.

**Section 13.9. Headings.** Article and section headings are inserted for convenient reference and are not to be construed as substantive parts of the paragraphs to which they refer, except to the extent they differentiate by different classes of Lots, Members, or dues and Assessments.

**Section 13.10. Assignment and Delegation.** The Declarant reserves and shall have the right and option at any time and from time to time to assign and delegate any or all of its rights and its duties under this Declaration.

**Section 13.11. Joinder of Mortgagee and Trustee.** The undersigned mortgagee and trustee execute this Declaration for the sole purpose of evidencing their respective approval and acceptance of such Declaration. The mortgage and trustee shall not, and do not, have any rights or obligations as a Declarant.

[signatures appear on following page]



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

DECLARANT:  
THE MULVANEY GROUP, LTD.

By: [Signature]  
President

MORTGAGEE:  
BANK OF AMERICA, N.A.

By: Stephen A. Will  
Sr. Vice President

TRUSTEE:  
TIM, INC.

By: Stephen A. Will  
Sr. Vice President

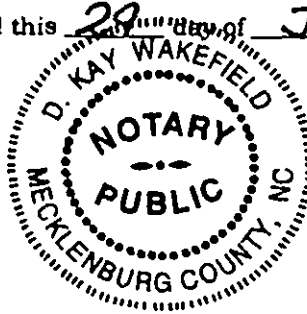
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, D. KAY WAKEFIELD, a Notary Public, do hereby certify that J. Michael Mulvaney personally came before me this day and acknowledged that he is the Vice President of **THE MULVANEY GROUP, LTD.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President.

WITNESS my hand and official stamp or seal this 29 day of July, 2002.

D. Kay Wakefield  
Notary Public

Commission Expiration Date: 06-03-2003



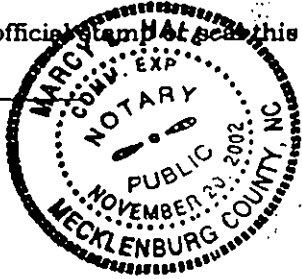
\*\*\*\*\*  
STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Marcy L. Hall, a Notary Public, do hereby certify that Stephen A. Windel personally came before me this day and acknowledged that he is the Sr Vice President of **BANK OF AMERICA, N.A.**, a national banking association, and that by authority duly given and as the act of the bank, the foregoing instrument was signed in its name by its Sr Vice President.

WITNESS my hand and official stamp or seal this 30th day of July, 2002.

Marcy L. Hall  
Notary Public

Commission Expiration Date:



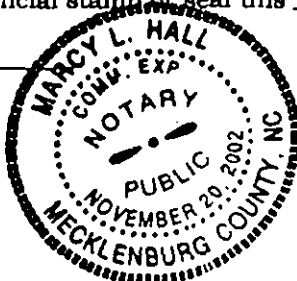
\*\*\*\*\*  
STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Marcy L. Hall, a Notary Public, do hereby certify that Stephen A. Windel personally came before me this day and acknowledged that he is the Sr Vice President of **TDM, INC.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Sr Vice President.

WITNESS my hand and official stamp or seal this 30th day of July, 2002.

Marcy L. Hall  
Notary Public

Commission Expiration Date:



## EXHIBIT A

Lying and being in the City of Matthews, Mecklenburg County, North Carolina and being more particularly described as follows:

Beginning at an existing nail lying on the westerly boundary of the existing 100 foot public right-of-way known as Matthews-Mint Hill Road and the northeasterly corner of that property owned now or formerly by R.N. Cochrane, as described in that deed recorded in Book 2279, page 47, such existing nail marking THE POINT AND PLACE OF BEGINNING; thence with the northerly boundary of said R.N. Cochrane property N 46-53-07 W 252.11 feet to an existing iron rod; thence with the westerly boundary of said R.N. Cochrane property, S 40-08-06 W 149.91 feet to an existing iron rod located on the southwesterly corner of said R.N. Cochrane property and on the northerly boundary of that property known as Lot 7, Block 1 of Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 71; thence with the northerly boundary of said Lot 7, Block 1, N 46-53-00 W 177.85 feet to an existing iron rod on the northwesterly corner of said Lot 7, Block 1, and the northeasterly corner of the northern terminus of Tall Pines Lane; thence with the northern terminus of Tall Pines Lane and with the northerly boundaries of Lot 1, Lot 7, Lot 8 and Lot 18, all of Block 2, of Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 71, N 46-53-36 W 858.05 feet (passing an existing iron rod at 61.10 feet) to an existing iron rod on the northwesterly corner of said Lot 18, Block 2, and the northeasterly corner of the northern terminus of Ives Wood Lane; thence with the northern terminus of Ives Wood Lane and with the northerly boundaries of the adjacent Lot 1, Block 3, and Lot 12, Block 3, of Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 71, N 46-53-36 W 330.62 feet to an existing iron rod on the northwesterly corner of said Lot 12, Block 3, and the northeasterly corner of the adjacent Lot 13, Block 3, of Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 71; thence with the norther boundary of said Lot 13, Block 3, N 50-22-57 W 320.05 feet to a 5/8" existing iron rod located on the northwesterly corner of said Lot 13, Block 3, and the northeasterly corner of the adjacent Lot 14, Block 3, of Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 71; thence with the northerly boundary of said Lot 14, Block 3, and with the northerly boundaries of the adjacent Lot 26, Block 3, and Lot 27, Block 3, of Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 209; N 50-27-33 W 486.73 feet (passing a 3/8" existing iron rod at 249.89 feet) to a 5/8" existing iron rod located on the northwesterly corner of said Lot 27, Block 3, and on the southeasterly corner of the adjacent Lot 42, Block 3, as well as the southwesterly corner of the adjacent Lot 43, Block 3, of Wood Hollow Subdivision, both as more particularly described in Map Book 17, Page 209; thence with the southerly boundary of said Lot 43, Block 3, and the southerly boundaries of the adjacent Lot 44, Block 3, Wood Hollow Subdivision, as more particularly described in Map Book 17, Page 209, and the adjacent property owned now or formerly by J.W. McWhirter, Jr., as more particularly described in the deed recorded in Deed Book 3908, Page 409, N 78-37-35 E 864.38 feet (passing an existing iron rod at 100.04 feet and a 3/8" existing iron rod at 210.04 feet) to a 3/8" existing iron rod located on a southeasterly corner of said McWhirter property and on the southwesterly corner of the adjacent property owned now or formerly by N.R. Cox, as more particularly described in deeds recorded in Book 2712, Page 244 and Book 3979, Page 568; thence with a southerly boundary of said Cox property, N 49-40-05 E 153.33 feet to a 1" existing iron pipe; thence continuing with the boundary of said Cox property and with the southwesterly boundary of the adjacent property owned now or formerly by L.M. Fisher, as more particularly described in the deed recorded in Deed Book 3772, Page 794, S 44-06-30 E 327.51 feet to a 1" existing iron pipe; thence with the southeasterly boundary of said Fisher property N 50-23-25 E 120.04 feet to a 1" existing iron pipe located on the common southerly corner of said Fisher property and the adjacent property also owned now or formerly by L.M. Fisher, as more particularly described in Deed Book 2967, Page 20; thence with the southeasterly boundary of said Fisher property (2967-20) N 49-45-06 E 147.29 feet to a 3/8" existing iron rod located on the southeasterly corner of said Fisher property (2967-20) and on the westerly boundary of Lot 7 of the W.P. Thomas Property, as more particularly described in Map Book 12, Page 375; thence with the westerly boundary of said Lot 7, and the westerly boundaries of the adjacent Lots 8, 9, 10 and 11 of W.P. Thomas Property, all as more particularly described in Map Book 12, Page 375, S 43-36-12 E 706.65 feet to a new iron rod located on the westerly boundary of said Lot 11; thence continuing with the westerly boundary of said Lot 11, S 15-30-42 E 22.32 feet to a 3/8" existing iron rod located on the westerly boundary of that property owned now or formerly by R.S. Bigham, as

more particularly described in Deed Book 4251, Page 883; thence continuing with the westerly boundary of said Bigham property S15-11-18 E 326.38 feet to a 1" existing iron pipe located on the southwesterly corner of said Bigham property and on the northwesterly corner of the adjacent property owned now or formerly by P.O. Cochrane, as more particularly described in the deed recorded in Deed Book 2023, Page 245; thence with the westerly boundary of said P.O. Cochrane property, S 35-21-54 W 190.16 feet to an existing iron rod on the southwesterly corner of said P.O. Cochrane property; thence with the southerly boundary of said P.O. Cochrane property, S 72-24-22 E 417.86 feet to a new iron rod on the southeasterly corner of said P.O. Cochrane property and on the westerly boundary of the aforementioned Matthews-Mint Hill Road; thence with the westerly boundary of said Matthews-Mint Hill Road, S 19-17-32 W 59.82 feet to an existing iron rod on the northeasterly corner of that property owned now or formerly by Cochrane Properties, Inc., as more particularly described in the deed recorded in Deed Book 7407, Page 809; thence with the northerly boundary of said Cochrane Properties property, N 72-26-18 W 435.36 feet to an existing iron rod on the northwesterly corner of said Cochrane Properties property; thence with the westerly boundary of said Cochrane Properties property, S 35-24-11 W 384.65 feet to an existing iron rod on the southwesterly corner of said Cochrane Properties property; thence with the southerly boundary of said Cochrane Properties property S 46-52-52 E 446.64 feet (passing a new iron rod at 185.88 feet) to an existing nail on the southeasterly corner of said Cochrane Properties property and on the westerly boundary of the aforementioned Matthews-Mint Hill Road; thence with the westerly boundary of said Matthews-Mint Hill Road, S 40-32-00 W 50.03 feet to an existing nail on the westerly boundary of said Matthews-Mint Hill Road and on the northeasterly corner of the aforementioned R.N. Cochrane property, such nail marking THE POINT AND PLACE OF BEGINNING.

Said tract contains approximately 36.4773 acres as shown on the Survey for Mulvaney Properties Re: Matthews-Mint Hill Site, dated August 22, 2001, as revised on December 4, 2001 and January 9, 2002, by R.B. Pharr & Associates, P.A., sealed by James P. Cameron, NCPLS.

Said tract is a portion of the property conveyed to Cochrane Properties, Inc. by deed recorded in Deed Book 5136, Page 259.

All book and page references herein are to the Office of the Register of Deeds for Mecklenburg County, North Carolina.