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FILED  
CHATHAM COUNTY NC  
TREVA B. SEAGROVES  
REGISTER OF DEEDS  
FILED Dec 31, 2012  
AT 04:16:10 pm  
BOOK 01660  
START PAGE 0916  
END PAGE 0981  
INSTRUMENT # 14085  
EXCISE TAX (None)

BOOK 1660 PAGE 0916

FIRST AMENDMENT TO AND RESTATEMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
WESTFALL

Upon recording, please return to:  
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**FIRST AMENDMENT TO AND RESTATEMENT OF  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
WESTFALL**

This FIRST AMENDMENT TO AND RESTATEMENT OF THE DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTFALL, originally recorded on April 22, 2008 at Book 1398, Page 592 et seq., Chatham County Registry (the "Original Covenants"), is made as of the 31st day of December, 2012, by **WESTFALL ASSOCIATES, LLC and ACORN INVESTMENT ASSOCIATES LLC** a North Carolina limited liability company ("Declarant"), with reference to the following facts:

WITNESSETH:

WHEREAS, Declarant has become successor in title to the balance of the Property formerly owned by Over Jordan, LLC and subject to the Original Covenants, which Property is more particularly described in Article 2 below, and which Property shall be hereinafter referred to as **Westfall**, and Declarant has been assigned the rights of the Declarant under the Original Covenants pursuant to an Assignment of Declarant's Rights Recorded in Book 1597, Page 967, Chatham County Registry; and

WHEREAS, Declarant hereby amends and restates the Original Covenants pursuant to the authority set forth in Article 18, Section 18.10(b); and

WHEREAS, Declarant intends to continue to improve **Westfall** as a planned residential development by dividing such property into Lots appropriate for single-family dwellings and Common Area for the common use and enjoyment of the Owners of the Lots; and

WHEREAS, Declarant owns or may hereafter own Additional Land, as defined in Article 1 below, and Declarant may, in its sole discretion and without obligation, by one or more supplemental filings pursuant to Article 15 hereof, make all or any portion of the Additional Land, if any, subject to this Declaration and a part of **Westfall**; and

WHEREAS, Declarant intends to develop **Westfall** under a common scheme and general plan for its improvement and maintenance; and

WHEREAS, for this purpose Declarant intends to (and with respect to the Additional Land, if any, reserves the right to), subject the initial Maps of **Westfall** as described in Article 2 below, and so much of the Additional Land, if any, as shall, from time to time, be annexed in accordance with the provisions of this Declaration, to the covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of **Westfall** and the future owners of Lots therein; and

WHEREAS, Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate Westfall Homeowners Association, Inc. as a nonprofit corporation

under the laws of the State of North Carolina for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws; and

WHEREAS, this Declaration creates a planned community under the North Carolina Planned Community Act (N.C. Gen. Stat. Chap. 47F).

NOW, THEREFORE, subject to the rights of Declarant established herein, Declarant hereby declares that the Property and every Lot and Common Area (as hereinafter defined) which is a part of the Property shall be held, occupied, improved, used, mortgaged, transferred, sold, leased, rented, and conveyed subject to the Conditional Use Conditions and to following easements, liens, charges, assessments, equitable servitudes, restrictions, covenants and conditions, which are for the purpose of protecting the value, use, enjoyment and desirability of the Property, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the use, benefit and enjoyment of each Owner (as hereinafter defined).

ARTICLE 1  
DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

Act. "Act" means and refers to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes, as may be amended from time to time.

Additional Land. "Additional Land" means any land located within a five mile radius of the perimeter boundary of the land described on Exhibit A attached hereto, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof and which, when so subjected, shall become a part of the Property.

Annual Assessment. "Annual Assessments" or "annual assessments" shall refer to assessments levied on all Lots subject to assessment under Article 9 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Article 9.

Architectural Control Committee. "Architectural Control Committee" or "ACC" shall mean the committee of the Association created pursuant to Article 13 with authorization over new construction, modifications and alterations in the Property.

Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

Association. "Association" means Westfall Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Board. "Board" means the Board of Directors of the Association.

Bylaws. "Bylaws" means the Bylaws of the Association, including any amendments thereto.

Common Area. "Common Area" or "Common Areas" means all real property owned by or held in trust for the benefit of the Association for the common use and enjoyment of its Members, or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited, to (without any obligation or implication of Declarant to construct or install same) any signage, irrigation and/or drainage or detention facilities, pond, dam, dock, pump station and related facilities, fountain, water feature, wells, pumps and related facilities, landscaping, retaining walls, bridges, lighting, swimming pool, wading pool, green or natural area, walking paths or trails, picnic area, putting green, club house, roadway, driveway, parking area, sports complex, ballfield, playground, tot lot, gazebo, dog parks, curb and guttering, sidewalks, streetlights, or other amenity, if any, constructed on portions of the Property designated "Common Open Space", "Common Area", "Amenity Area", "Irrigation Area" or other similar designation on Map(s) of the Property recorded in the Office of the Register of Deeds for Chatham County, North Carolina. "Common Area" or "Common Areas" shall also include (i) all utility lines serving more than one lot located outside of public street rights-of-way and public utility easements; (ii) all retaining walls constructed by Declarant, (iii) any sidewalk, private road, public road, right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the County but not accepted for public maintenance by the appropriate governmental entity, (iv) storm pipes and any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property, (v) any real or personal property which the Association now or hereafter owns, leases or holds possessory or use rights in for the benefit of the Owners and their permittees; (vi) all Permanently Protected Undisturbed Open Space Areas as shown on a Map; (vii) such easement rights for right-of-way and appurtenant easements or licenses as Declarant may declare, acquire or reserve or as are granted to the Association for the benefit of the Owners and their permittees or for the use, care or maintenance of any portion of the Property, including, but not limited to, rights-of-way and appurtenant easements or licenses for landscaping, trees, plantings, irrigation (collection, treatment and spray), signage, monuments, lighting, water, sanitary sewer, storm sewer, stormwater drainage and/or retention, communications and/or other utility services; and (viii) all Spray Areas and Irrigation Areas as designated on Plats or described in that certain Agreement between Westfall Associates, LLC, Acorn Investment Associates, LLC and Aqua North Carolina, Inc. ("Aqua"), dated June 15, 2012 or within any applicable DWQ permit for the same. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sac within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

"Common Expenses" shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve, all as may be

found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association, but shall not include any expenses for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs for improvements constructed by Declarant unless approved by a majority of the Voting Power of the Association; provided, however, the repair, maintenance and replacement of such infrastructure or other original capital improvements shall be a Common Expense and lease payments on all leased Street Lights within the Property shall be a Common Expense. Common Expenses shall include, without limitation, (i) all sums lawfully assessed by the Association against its members; (ii) the actual and estimated expenses incurred or anticipated to be incurred by the Association for administration, maintenance, repair, or replacement of the Common Area; (iii) the actual and estimated expenses incurred or anticipated to be incurred by the Association declared to be Common Expenses by the provisions of this Declaration, the Bylaws, or the Articles of Incorporation of the Association; (iv) premiums for hazard, liability, casualty and such other insurance as the Declaration or the Bylaws may require or authorize the Association to purchase or which the Association is required by law to purchase; (v) ad valorem taxes and assessment charges lawfully levied against the Common Area owned in fee simple by the Association; (vi) the actual and estimated expenses incurred or anticipated to be incurred by the Association as agreed by the members to be Common Expenses of the Association; (vii) fees for utilities used in connection with the Common Area; (viii) fees for services of accountants, attorneys, engineers, managers and other professionals engaged by the Association; (ix) lease payments on all leased street lights within the Property; (x) expenses incurred for trash removal providers engaged by the Association to serve the Property; (xi) unpaid assessments following a foreclosure; and (xii) all expenses classified as Common Expenses pursuant to the Act.

Completion of Sales. "Completion of Sales" means the conveyance of all Lots in the Property to purchasers other than a successor Declarant hereunder.

Conditional Use Permit Conditions. "Conditional Use Permit Conditions" mean the Conditional Use Permit as approved by the County, and all zoning ordinances and related conditions presently or hereafter applicable to the Property and all modifications, amendments, variances, conditional uses or special exceptions thereto hereafter made or granted by the County in effect from time to time. The Conditional Use Permit is attached hereto as Exhibit B and incorporated herein by reference. Declarant shall cause the Property to be developed accordance with the Conditional Use Permit Conditions, and the Association shall cause the Property to be maintained in accordance with the Conditional Use Permit Conditions.

County. "County" means Chatham County in the State of North Carolina, which terms as used elsewhere herein shall include any other governmental entity having jurisdiction over the Property or any part thereof.

CPI. "CPI" means The Consumer Price Index For All Urban Consumers ("CPI-U"), U.S. City Average (All Items) published by the United States Bureau of Labor Statistics.

Declarant. "Declarant" means Westfall Associates, LLC and Acorn Investment Associates LLC, each a North Carolina limited liability company and any successor or assign to

whom Declarant assigns its interest as Declarant hereunder in whole or in part by instrument recorded in the Office of the Register of Deeds for Chatham County, North Carolina.

Declaration. "Declaration" means this Declaration and all amendments or supplements hereto.

Grinder Pump Station. "Grinder Pump Station" means the wastewater grinder pump, tank and controls to be located on each Owner's (customer) Lot near the dwelling or commercial building into which the customer's wastewater enters and is then pumped into the wastewater collection system.

Insurance Trustee. "Insurance Trustee" means a national banking association or title company licensed to do business in North Carolina as may be designated by the Association to hold and disburse funds as trustee for the Association and the Owners, as provided in this Declaration.

Limited Common Area. "Limited Common Area shall be as defined in Section 4.09 herein.

Lot. "Lot" means any numbered lot or plot of land, together with any improvements thereon, which is shown upon any Map covering the Property, or a part thereof, which is not dedicated right-of-way or Common Area (provided, certain Common Area easements may encroach upon a Lot). For the purposes of determining voting rights and number of votes per Lot, with respect to the Declarant, "Lot" shall include any unrecorded lot depicted on a master plan or site plan approved by Chatham County as part of the Westfall development, as the same may be amended from time to time.

Map. "Map" means a recorded boundary, recombination or subdivision plat of all or a portion of the Property recorded in the Office of the Register of Deeds for Chatham County, North Carolina.

Member. "Member" means a member of the Association.

Mortgage. "Mortgage" means a mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage.

Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

Owner. "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant.

"Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

Permanently Protected Undisturbed Open Space Area. "Permanently Protected Undisturbed Open Space Area" means all permanently protected undisturbed open space areas shown on the Maps as "Permanently Protected Undisturbed Open Space Area" or other similar designation that includes the words "protected and "undisturbed" within which no land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment or construction or erection of any structure shall occur without the express written consent of the ACC and the County.

Person. "Person" means an individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Property. "Property" means the portion of **Westfall** described on "Exhibit A," attached hereto,, together with all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

Phase. "Phase " means the real estate shown on each Map of the Property, including the portion of **Westfall** described in Article 2 below, as recorded in the Office of the Register of Deeds for Chatham County, North Carolina.

Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

Special Assessment. "Special Assessment" or "special assessment" shall mean and refer to assessments levied in accordance with Article 9, Sections 9.06 and 9.07 of this Declaration.

Special Declarant Rights. "Special Declarant Rights" means, without limitation, the rights as defined in Section 47F-1-103(28) of the Act for the benefit of Declarant and its appointees, which are hereby reserved in favor of Declarant, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements indicated on Maps of the Property, including, without limitation, utility infrastructure, dwellings and Common Area improvements; the right to exercise any development right; the right to maintain sales offices, manage offices, models and signs advertising the Property; the right to use easements through the Common Area and through any Lot or Lots for the purpose of making improvements within the Property and repairing, maintaining, replacing and operating improvements within the Property, provided that following the exercise of such rights the Property will be restored, and the right to elect, appoint or remove any officer or Board member of the Association during the period of Declarant control described in Section 8.06.

Spray Area. "Spray Area" shall be all areas in the Property that have been or may in the future be permitted by DWQ for spray irrigation of reuse effluent, including all areas designated on the plans as "Irrigation Areas."

Supplemental Declaration. "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, if any, to the Property and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration, and any additional covenants, conditions and restrictions contained in the supplemental declaration of covenants, conditions and restrictions.

Voting Power. "Voting Power" means the total number of votes allocated to Members whose membership at the time the determination of Voting Power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property. Notwithstanding anything else herein to the contrary, for a period of one year from and after transfer of control of the Association by Declarant to the Association, Declarant shall retain a veto power over all decisions of the Association.

## ARTICLE 2 PROPERTY, SUBMISSION AND TERM

2.01. Property. The property subject to this Declaration and within the jurisdiction of the Association is located in Chatham County, North Carolina, and is described as the real property described on "Exhibit A," attached hereto, together with all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

2.02. Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, transferred, leased, rented, used, occupied and improved subject the Conditional Use Permit Conditions and to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (a) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (b) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.03. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be



deemed to incorporate the provisions of this Declaration, as amended from time to time, whether or not the deed makes reference hereto.

2.04. Term. This Declaration shall remain in force until terminated by the affirmative vote of ninety percent (90%) of the Voting Power of the Association. In such events, all Conditional Use Permit Conditions set forth in the Conditional Use Permit or incorporated herein shall survive and shall run with the land unless the County, in a recorded acknowledgment, agrees otherwise.

### ARTICLE 3 COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident, tenant or guest of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of this Declaration shall prevail. In the event that anything shown on a Map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail unless otherwise required by law. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

### ARTICLE 4 PROPERTY RIGHTS

4.01. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey by Special Warranty Deed title to the Common Area depicted on the Maps of the Property to the Association at any time, in its sole discretion, but no later than the time of conveyance of the last Lot in the subdivision, free and clear of all encumbrances and liens, except those set forth in this Declaration and utility, greenway and storm drainage easements. In the event a conveyance of the Common Area would result in an illegal subdivision, then such Common Area as shown on a Map shall be deemed dedicated to the Association for the benefit of the Association and for the common use and enjoyment of its Members. Following conveyance of Common Area to the Association, Declarant shall be entitled to a proration credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant. Upon such conveyance, maintenance of the

Common Area shall be the responsibility of the Association, including, but not limited to, the maintenance of any stormwater facilities and any Spray Areas that are part of the Common Area. The maintenance of all stormwater facilities, including the expansion of such facilities as required by the County or otherwise, shall be performed to the standard required by the County or other applicable governing body. Title to the Common Areas, including, without limitation, all private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

4.02. Common Area Easements. Each Owner shall have a non-exclusive perpetual right and easement of use and enjoyment in and to the Common Area and of access to and from such Owner's Lot over any streets, parking areas and walkways comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to such Owner's Lot and subject to the following rights and restrictions:

(a) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable fees with respect to the use of Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Property.

(b) The right of the Association to suspend the right of an Owner to use any Common Area facilities (except drainage rights and rights of access to Lots) (i) for any period during which any fine against a Member or any assessment against such Owner's Lot remains unpaid; and (ii) after Notice and Opportunity for Hearing, for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations;

(c) The right of the Association, subject to the provisions of the Act (Section 3-112), to encumber or convey all or any part of the Common Area.

(d) The right of the Association to grant easements, leases, licenses and concessions through or over the Common Areas.

(e) The right of the Association, subject to the provisions of the Act (Section 3-112), to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes.

(f) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area and the Property.

(g) The rights of the Association and of Declarant to the use of easements for ingress and egress over, in, to and throughout the Common Area.

(h) Public and private storm drainage easements, sanitary sewer easements, spray irrigation system easements, public utility easements, any and all other easements over the Common Areas as shown on the Maps and all easements described in that certain Agreement between Westfall Associates, LLC, Acorn Investment Associates,

LLC and Aqua North Carolina, Inc., dated June 15, 2012 and the Effluent Easement and Irrigation Agreement attached thereto.

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

(j) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of developing the remainder of the adjacent property owned by Declarant, including Additional Land. Although not limiting the scope of this easement, this easement shall include the right of access at all times for its employees, agent, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements, spray irrigation system easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or twenty (20) years from the date hereof, whichever first occurs.

4.03. Delegation. Any Owner may delegate his or her rights of use and enjoyment of the Common Area and any facilities thereon to the members of his or her family or household residing on his or her Lot and to his or her guests and invitees while in possession of his or her Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Subject to the provisions of Section 4.02(a) and Section 4.04 of this Declaration, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his or her obligations hereunder, including, without limitation, the obligation to pay Annual Assessments and Special Assessments.

Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.04. Tenants. Except with respect to construction trailers or model homes which may be used or occupied by Declarant or a builder to whom Declarant gives written permission and except in cases of emergency or undue hardship, **no Owner shall lease or rent its Lot except as may be permitted by the Rules and Regulations.** The Board shall determine instances of emergency and undue hardship on a case-by-case basis, and such determination shall be made in the Board's sole and absolute discretion. The leasing of Lots in the Property that is not approved by the Board shall be a violation of this Declaration and the Rules and Regulations, and Declarant and the Association and any Owner within the Property shall have the right to

employ any and all remedies available at law or in equity to enjoin the leasing or rental of such Lot.

4.05. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts, the repair of fences and similar improvements, and lawn maintenance; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot improvement encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.06. Utility Easements. Any easements for installation, maintenance, use or repair of utilities or drainage or detention facilities which are dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be kept free of buildings, and within such easements no structure, fence, planting or other improvement shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public utilities or drainage or detention facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Notwithstanding anything contained herein to the contrary, any such easement dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be maintained by the Owner(s) of any affected Lot(s) to the extent so encumbered by said easement, including all storm drainage facilities located within any "Drainage Easement" shown on the Map, except as otherwise indicated by such Map or unless maintenance has been assumed by any public utility or governmental entity having jurisdiction thereover. All such easements described in this Section 4.06 at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities and drainage facilities. Nothing herein shall be construed to prevent or limit reasonable development by the developer or Declarant.

All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Lot must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the private streets or roads and over any Lot, and over such areas as are so identified on any Map of the Property or shown on any site plan or construction drawings for the Property on file with and approved by the County. In addition, the Association may cut, in the above described easements, as well as any where else as required, at its own expense, drainways for surface water and/or to install underground

storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along streets fronting property lines, Declarant reserves the right to install, maintain and repair pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association upon the termination of Class B membership. Any easements first established on property not owned by the Declarant must be consented to by the Owner of such property and evidenced on the Map or in recorded instrument creating the easement.

With respect to each Grinder Pump Station, a perpetual easement for ingress, egress, regress and access for installation, maintenance, replacement, use or repair is hereby reserved unto Declarant, Aqua and their respective successors and assigns. Said easement shall be a total width of ten (10) feet centered on the service line, and a fifteen (15) foot diameter circle centered at the center of the Grinder Pump Stations. These perpetual easements shall be for ingress, egress, regress, and access to install, operate, repair, maintain and replace the service line and the Grinder Pump Stations.

The Declarant may, but shall not be required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property.

4.07. No Subdivision of Lots; No Time-Sharing. Other than that effected by Declarant in preparing and recording Maps, or in revising recorded Maps, there shall be no further subdivision or partition of any Lot nor shall any Owner other than Declarant, or any other person acquiring any interest in a Lot seek any partition or subdivision thereof unless the Association consents to such subdivision or partition as evidenced on a Map. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.08. Sale of Common Area. Except as otherwise provided in this Declaration and except as provided in the Act, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall, or may be, effected.

4.09. Limited Common Area. Certain portions of the Common Area may be designated as "Limited Common Area" and reserved for the exclusive use or primary benefit of Owners of designated Lots and their invitees. By way of illustration and not limitation, Limited Common Area may include entry features, recreational facilities, landscaped medians and cul-de-sacs, roadways not necessary to provide other Lots with access to public streets and other portions of the Common Areas designated to benefit particular Lots. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an expense allocated to the Owners to which the Limited Common Area is assigned, which may be recovered by one or more Special Assessments levied by the Board equally against the benefited Owners. Any Limited Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed(s) by which the Declarant conveys the Common Area to the Association and shown on a Map designating such Limited Common Area; provided, any such assignment shall not be exclusive and shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Lots. The Association may, upon approval of

the Owner(s) of the Lot(s) to which certain Limited Common Area is assigned, permit Owners of other Lots and their invitees to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Special Assessments attributable to such Limited Common Area.

4.10. Declarant's Right to Change Development Plans. With the approval of the County, Declarant shall have the right, without consent or approval of the Owners, to create Lots and dwelling units, add Common Area, change unit types and reallocate units within the Property, and release or withdraw real property from the development. In addition, Declarant shall have the right to change Common Area and Lots designations, the boundary lines of Common Area and Lots and the location of easements shown on any Map by recording a new Map showing such changes, which Map shall be executed by the Declarant and the Owner of the Common Area or Lot so modified. To the fullest extent permitted by North Carolina law, each Owner covenants by acceptance of the deed or instrument by which its Lot is conveyed not to protest, challenge or otherwise object to (i) changes in uses or density of the Property or Additional Land, or (ii) changes in the site plan and other development documents filed with the County in connection with the Property or Additional Land.

4.11. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations and any changes thereto shall be effective upon Board approval and shall be mailed to each Owner addressed to the Owner's address last appearing in the books of the Association, postage prepaid, within thirty (30) days of Board approval.

4.12. Enforcement. Unless otherwise limited by the terms and provisions of the Act, the Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or the Rules and Regulations. Sanctions may include reasonable monetary fines not to exceed \$100.00 per day and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (excepting drainage rights and rights of access to Lots). In addition, the Association, through the Board, after Notice and Opportunity for Hearing, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations of this Declaration, the Bylaws or the Rules and Regulations or to abate nuisances.

4.13 Conditional Use Permit Conditions, Rezoning and Variances. Declarant shall cause the Property to be developed in accordance with the Conditional Use Permit Conditions, and the Association shall cause the Property to be maintained in accordance with the Conditional Use Permit Conditions. No Owner shall seek to rezone the Property, their Lot, or any portion thereof; seek any variance or special exception from the Conditional Use Permit Conditions applicable to the Property, their Lot, or portion thereof; or seek to alter, modify or

change any zoning ordinance or conditional use permit conditions applicable to the Property, their Lot, or portion thereof, without the written consent of the Board of Directors and the Declarant so long as the Declarant owns real property within the Property.

**ARTICLE 5**  
**COMMON AREA EASEMENTS AND RIGHTS OF WAY; ENCUMBRANCES**

5.01. Dedications. The Association shall have the power to grant easements in, on, over, through and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (a) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot, and (b) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney for the purpose of granting such easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his or her interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Easements in Private Streets, Private Water Lines and Private Sewer Lines. In its development of the Property, the Declarant may construct certain private streets, private water lines and private sewer lines within the Property. The Owners of those Lots adjacent to such private streets, private water lines and private sewer lines shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets. In no case shall the County or the State of North Carolina be responsible for maintaining any private street, private water line or private sewer line. Such maintenance obligations shall be the responsibility of the Association and Owners acknowledge that private streets will not be constructed to minimum standards sufficient to allow their inclusion for public maintenance. If any private streets, private water lines or private sewer lines encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist; provided, however, that in no event shall such an easement exist for willful encroachments. In no case shall the County be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property and the Owners when such failure is due to lack of access to

such areas within the Property due to inadequate design or construction, blocking of access routes, inadequate maintenance or any other factor within the control of the Declarant, Association or Owners.

5.03. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and Limited Common Area and to place liens on the Common Area and Limited Common Area and otherwise encumber the Common Area and Limited Common Area for such purposes upon the vote or written consent of eighty percent (80%) of the Voting Power of the Association, or such lesser percentage as may be required or permitted by the Act.

#### ARTICLE 6 COMMON AREA AND LOT MAINTENANCE

6.01. Maintenance by Association. The Association shall repair and maintain the Common Area and Limited Common Area and any improvements, utilities and facilities located on the Common Area. Repair and maintenance of any ponds or lakes within the Property shall be performed in accordance with the standards set forth in the Operations and Maintenance Manual for Westfall attached hereto as Exhibit C and incorporated herein by reference, as the same may be amended from time to time. The Association may, but shall not be obligated to, provide enhanced landscaping and maintenance to those areas and medians located within the rights-of-way for streets located within the Property. Any maintenance or enhancement called for herein shall be subject to governmental authorities' rules and regulations in the County.

The Declarant is responsible for construction of streets and roads within the Property. The Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of all private streets and private utilities constituting Common Areas or Limited Common Areas and all improvements thereon; provided, however, that, with respect to Limited Common Areas, the cost of operation, maintenance, repair, servicing, replacement and renewal shall be borne by the Owners to whom the applicable Limited Common Area is assigned. In the event of any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the Association shall maintain such streets and roads to the extent such activities are not performed by the applicable governmental entities. Maintenance for private streets, private water lines and private sewer lines shall be the responsibility of the Association, along with the maintenance of any private easements.

6.02. Maintenance by Owners. Each Owner, at all times, shall maintain, repair and otherwise be responsible for his or her Lot and the improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of Section 13.06 of this Declaration, an Owner shall be responsible for replacement and reconstruction of improvements on his or her Lot required because of damage or destruction by fire or other casualty, and each Owner shall maintain, repair and replace the surface and subsurface drainage facilities and appurtenances located on his or her Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the



maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair or replace such drainage facilities and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07.

No building or other structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of drainage facilities and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the Map(s) of the Property by the County, except to the extent such alteration in drainage pattern is approved in writing by the Association and all public authorities having jurisdiction. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until the Property is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

6.03. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, the Owner's family, guests, or invitees, shall be the obligation of such Owner and shall be added to and become a part of the assessment to which such Lot is subject.

6.04. Right to Enter. After reasonable notice to the occupant (except in the case of an emergency in which no notice shall be required), the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his or her Lot subject to such right of access of the Association or its agents.

6.05. Easements for Governmental and Utilities Personnel Access. An easement is hereby established over the Common Area and Limited Common Area and every Lot for the benefit of applicable governmental agencies and utilities personnel for installing, removing, and reading water meters; installing, maintaining and replacing water, sewer, irrigation and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, animal control, garbage collection, and the delivery of mail.

6.06. Sign and Landscape Easement. Declarant, for itself, its successors and assigns, including but not limited to the Association, hereby reserves easements over any portion of any Lot designated as "Landscape Easement," "Sign Easement," "Landscape and Sign Easement" or other similar designation on Map(s) of the Property recorded in the public records of the County, for installation, construction, operation and maintenance of landscaping, berms, retaining walls, drainage facilities, private utilities, lighting and sprinkler systems, if any, monuments, fencing, signage and other improvements as installed by Declarant on such areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such easements other than those initially installed by Declarant, or its designated successor, without Declarant's prior written approval or, after all Lots are occupied by Owners, the Association's prior written approval. The Association shall at all times have the right of access for its employees, agents and subcontractors over the above-described easement areas for the purpose of constructing, improving, repairing, replacing, landscaping, planting, mowing and otherwise maintaining the area and amenities within such easements. The Owners of any Lot containing any portion of these easements shall maintain the area not maintained or landscaped by the Declarant or the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, or the Association, to continue to maintain the planting, retaining walls, landscaping or other improvements located within the described easements.

6.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Common Area, the Limited Common Area, or both, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice without payment of a termination fee.

## ARTICLE 7 USE RESTRICTIONS

In addition to the architectural control restrictions set forth in Article 13 below, the following use restrictions apply to the Property:

7.01. Residential Use. Except as otherwise provided in this Declaration, Lots shall be used for single family residential purposes and for no other purpose. The Association shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may enforce reasonable occupancy limits. Except with respect to construction trailers or model homes which may be used or occupied by Declarant or a builder (solely with Declarant's express written permission), no Owner shall use or cause or permit to be used his or her Lot for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. The foregoing notwithstanding, it shall be expressly permissible for Owners to conduct certain business or commercial activities within their residence which do not conflict with local zoning ordinance restrictions and regulations. No such activity shall be conducted which shall unduly burden traffic flows within the Property or cause the parking of non-resident vehicles upon the street for unreasonable or excessive periods of time. It shall be

within the discretion of the Board to determine, on a case-by-case basis, which commercial and business related activities will be compatible with the residential nature of the subdivision.

7.02. Unlawful Activity. No unlawful activity shall be conducted on any Lot or in any other part of the Property. Nothing shall be done within the Property that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Property, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. Property Owners Parking Rights. Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle (commercial vehicle being defined as a vehicle having advertising of the Owner's business or an employer's business shown thereon) shall be parked, stored or left (a) on any undesignated part of the Common Area, (b) in any parking space, (c) on any other part of a Lot, (d) or otherwise within the Property. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to the Completion of Sales.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any part of the Common Area or on any Lot, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations.

The maximum number of vehicles permitted per household for each Lot may be regulated by the Rules and Regulations. To enhance the streetscape in the Property, it shall be required that each Owner park its vehicles in the garage on the Lot whenever possible. All garages shall be used primarily for the storage of vehicles. No vehicles of any type shall be parked on a sidewalk, nor shall vehicles of any type be parked or stored on any part of a Lot other than in the garage or driveway of such Lot, excepting occasional overflow parking for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots.

An Owner, his household or tenants shall not park any vehicle in any undesignated portion of the Common Area or overnight on the street rights of way within the Property. Parking in any Common Area facility parking lot shall be limited to the hours of operation of such facility. Owners shall be subject to sanctions if the parking regulations are violated. Sanctions may include reasonable monetary fines not to exceed \$150.00 per day and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (except drainage rights and rights of access to Lots). In addition, the Association, through the Board, after notice to the Owner, shall have the right to exercise self-help to cure violations, including the towing of vehicles at the Owner's expense. The Association shall have the right to require the Owners to register the license plate number of any vehicle of the Owner or any member of its household with the Association.

7.04. Signs and Curtains. No Owner shall place on or about any window any metallic foil or other coating, substance or material which similarly acts as a reflector of light nor shall an Owner place newspapers or bed sheets in any window. No Owner shall display, hang, store or exhibit any signs outside of the dwelling on any Lot or in any dwelling so as to be visible from outside the Lot, other than as may be permitted by the Rules and Regulations or required by the County Code. Notwithstanding the foregoing, one sign of customary and reasonable dimensions, conforming to such reasonable standard as may be adopted by the Board, advertising a Lot for sale or rent may be placed by the Owner on his or her Lot in such manner that it will be visible from outside the Lot. The prohibitions in this Section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Lots.

7.05. Antennas. As provided in Article 13, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no Owner shall construct, install, erect or maintain any outside television or radio pole or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot, without the express written approval of the Architectural Control Committee.

7.06. Laundry. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot and no clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored or kept outdoors on any Lot.

7.07. Fences and Shrubbery. Except that which may be constructed by Declarant and except soil erosion and silt fences, no fence or wall shall be erected upon any Lot unless plans therefor have been approved, in advance, by the Architectural Control Committee pursuant to the provisions of Article 13. Chain link fencing is expressly prohibited. With respect to screening landscape elements, no hedge, shrubbery, or other planting, nor other plant screening shall be installed on any Lot except with the prior written permission of the Architectural Control Committee.

7.08. Pets.

(a) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed a total of three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, including, but not limited to a complaint that an Owner's animal is being neglected, improperly treated, or not properly restrained upon such Owner's Lot, or if upon Common Area, not properly leashed, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and may require the complainant to present evidence of unreasonable annoyance, inconvenience or nuisance at the hearing, and if the Board finds that such animal constitutes an

unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property. Any time that an animal is outside, it must be on a leash and accompanied by the Owner, or some other person. Animals shall not be left unattended outside even when chained or contained inside a fence, except as may be permitted in writing by the ACC. At no time shall animals be allowed to be chained or tied in the Common Area. Each Owner shall also be responsible for cleaning up the feces of its animals both on its Lot and on the Property.

(b) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including (if not already mandated by applicable laws of the County) rules requiring that all animals be kept on a leash when in the Common Area and/or that animals be restricted to designated areas within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.08(a).

7.09. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in a garage or, if there is no garage, in an appropriate area screened and concealed from view (except for the periods immediately preceding and subsequent to pick up by the applicable disposal service). No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the occupants of any property in such vicinity, except as is temporary and incidental to the bona fide improvement of any portion of the Property. Job site debris shall be removed from all Lots at least two times per month. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Property shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. It shall be each Owner's responsibility to water the lawn and the plants on its Lot at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority.

7.10. Nuisance. No noxious or offensive activity shall be carried on in or upon any part of the Property nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his or her Lot which would result in the cancellation of insurance on said Lot or any other residence or any part of the Common Area or which would be in violation of any law.

7.11. Outbuildings, Yard Art, Gazebo, Trampolines, Awnings, Freestanding Flagpoles and Above-Ground Pools. Except as may be permitted by the Architectural Control Committee, no Owner shall construct, install, erect or maintain upon any Lot any outbuilding, yard art, storage shed (unless erected by Declarant), gazebo, awning or freestanding flagpole (provided,

flags may be displayed using a bracket or other approved device mounted to a dwelling so long as the size of the flag displayed does not exceed a standard size as same may be determined by the Architectural Control Committee). In no event shall any outbuilding, storage shed, gazebo, or trampoline be constructed on any Lot in the front or side yards, as determined by the building lines applicable to the Lot. No above-ground pools (except for wading pools no deeper than 2 feet tall and no wider than 10 feet in diameter, which shall be regulated by the Architectural Control Committee) shall be allowed or approved by the Architectural Control Committee on any Lot. Wading pools shall only be allowed during appropriate weather and must be emptied and stored when not in use. Trampolines located entirely in the rear yard and not visible from the roadway are allowed.

7.12. Temporary Structures. No temporary structures shall be placed upon any portion of the Property at any time; provided, however, this restriction shall not prohibit construction trailers or shelters or sheds used by Declarant or any builder or its contractors during the development of the Property or the construction of improvements or additions to any Lot. Tents, recreational vehicles, trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of the Property.

7.13. ACC Approval of Plans and Other Prohibitions

(a) The construction of improvements on Lots shall be completed pursuant to the Plans in accordance with Article 13. In addition, Lots shall comply with all applicable building, plumbing, electrical and other codes.

(b) INTENTIONALLY LEFT BLANK.(c) No vents, pipes or other appendages may extend from the front of any dwelling on a Lot, unless screened from public view by screening material or shrubbery approved by the ACC.

(d) Any exterior air-conditioning or heating equipment added after the completion of construction must approved by the ACC and be screened from public view by screening material or shrubbery approved by the ACC.

(e) Downspouts and gutters shall be constructed so as not to promote the erosion of the soil of any Lot.

(f) Exterior lighting shall be shielded and must be directed so as not to shine directly on another Lot.

(g) No yard art (including, without limitation, any windmills, figurines, or sculptures) may be installed on a Lot unless approved by the ACC.

(h) One basketball goal per Lot may be allowed so long as it meets the requirements and standards as to appearance and location set forth in the ACC standards and regulations adopted from time to time.

7.14. Trees and Foliage. Trees measuring two (2) inches or more in diameter at a point two (2) feet above ground level and any flowering trees or shrubs above two (2) feet in height may not be removed from the Property without the prior written approval of the ACC, unless such landscaping material is in the path of driveways and walkways located or to be located on any Lot. Excepted herefrom shall be damaged or diseased trees that threaten persons or property, which damaged or diseased trees shall be removed by the Owner. Notwithstanding the foregoing, no trees shall be removed from any portion of the Property designated as a Permanently Protected Undisturbed Open Space Areas as shown on a Map without the written approval of the ACC and the County.

7.15. Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within the Property is prohibited.

7.16. Motorized Vehicles. All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within the Property; except that golf carts are allowed on pedestrian trails (not sidewalks).

7.17. Mail and Delivery Boxes. The ACC shall determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All Owners must display the assigned street address on their mail boxes, or other appurtenance, pursuant to the then current regulations of the County or other appropriate governmental entity. No mailboxes nor additions nor modifications to the standard mailbox shall be allowed unless approved by the Architectural Control Committee on any Lot.

7.18. Underground Storage Tanks. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other toxic product will be allowed anywhere in the Property.

7.19. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, nor its agents, employees and contractors shall be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots in the Property. The rights of Declarant, and their agents, employees and contractors shall include, without limitation:

(a) The right and easement of ingress in, over and upon the Common Area , Limited Common Area and any Lot for the purpose of performing on any part or parts of the Property acts deemed necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots;

(b) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area and Limited Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots; and

(c) The right to use Lots and improvements owned by Declarant as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Property.

The rights reserved under this Section shall terminate one (1) year after the Completion of Sales. Amendment of this Section shall require the vote or written consent of seventy-five percent (75%) of the Voting Power of the Association. Further, no amendment of this Section can be made without the written approval of Declarant.

7.20. Right to Enter. Any governmental agency, including, but not limited to the County, their agents and employees, shall have the right of immediate access to any Lot and to the Common Area and Limited Common Area at all times if necessary for the preservation of public health, safety and welfare.

7.21 Minimum Heated Square Footage. With the exception of sixty-foot (60') wide lots, all Westfall Lots shall have a minimum heated square footage of 1,800 square feet. Sixty-foot (60') wide lots shall have a minimum heated square footage of 1,400 square feet. Said minimums may be changed by rule set forth in the Rules and Regulations.

7.22 Permanently Protected Undisturbed Open Space Area. Within all Permanently Protected Undisturbed Open Space Areas shown on the Maps, no land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment or construction or erection of any structure shall occur without the express written consent of the ACC and the County.

## ARTICLE 8 MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03. Voting. The Association shall have two classes of voting membership:



Class A. Class A Members shall be all Owners with the exception of Declarant; provided, however, that Declarant shall become a Class A Member when its Class B membership ceases as provided hereinafter. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. Class B Member shall be Declarant which shall each be entitled to ten (10) votes for each Lot owned (including unrecorded lots depicted on a master plan or site plan approved by Chatham County as a part of the Westfall development, as the same be amended from time to time); provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier: (a) passage of one year from the date Declarant has conveyed one hundred percent (100%) of all Lots in the Property to Owners other than a successor Declarant for use as a residence; (b) December 31, 2042; or (c) an earlier voluntary and written conversion to Class A membership by Declarant, which written declaration of conversion is recorded in the Chatham County Registry .

8.04. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the Annual Assessment against that interest has been levied by the Association as provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to the approval of any amendments to this Declaration.

8.05. Declarant's Voting Rights. Declarant shall have the right to cast votes attributable to Lots owned by Declarant on all matters submitted to a vote of the Members.

8.06. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles, or in the Bylaws, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 8.03 above concerning the termination of the Class B Member status of Declarant or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if it then owns one or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting

the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

## ARTICLE 9 COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments; Lien. Declarant, for each Lot owned by Declarant, hereby covenants to pay, and every Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such Annual Assessments or charges and such Special Assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration or the Act, shall be and become a lien upon the Lot assessed when such annual or special assessment remains unpaid for a period of thirty (30) days or longer and the Association causes to be recorded in the office of the clerk of superior court in the County a notice of assessment, which notice shall state:

- (a) The amount of such assessment and such other charges thereon as may be authorized by this Declaration and the Act;
- (b) A description of the Lot against which the same has been assessed; and
- (c) The name of the record owner of the Lot assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recordation of such notice of assessment. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted under the Act or by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same.

9.02. Personal Obligation. Each Annual Assessment or Special Assessment, together with any late charges, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one Person held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself or herself from payment of assessments, or installments, by waiver of the use or non-use of

common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his or her Lot.

9.03. Use of Assessments. Annual Assessments or Special Assessments paid by Declarant and other Owners shall be used to pay the Common Expenses of the Association.

9.04. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance and the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in the discretion of the Board unless a different level of reserves is approved by the vote or written consent of a majority of the Voting Power of the Association. Reserve Funds shall be used for the purpose deemed most prudent by the Association under all of the facts and circumstances. Reserve Funds are intended to anticipate maintenance costs but may or may not cover all required maintenance.

9.05. Annual Assessments.

(a) The Annual Assessment for each Lot for fiscal year 2013 shall be \$900 per year per Lot (\$75/month/Lot). The Board shall adopt a proposed budget and fix the amount of the Annual Assessment as to each Lot for each subsequent calendar year at least thirty (30) days prior to January 1 of such calendar year. The Association shall send written notice of the amount of the Annual Assessment and a summary of the proposed budget, as well as the amount of the payment due, to each Owner within thirty (30) days after the adoption by the Board of such budget. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth in subsection (b) below, the budget is ratified unless at such meeting Members exercising all of the Voting Power in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in subsection (b) below, the budget is ratified unless at such meeting Members exercising a majority of the Voting Power in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

(b) For years following 2013 and thereafter, the Board, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under N.C. General Statutes 47F-3-103(c), or other applicable law, in which case the procedures set forth in subsection [a] above shall apply), may increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the CPI for the most recent

12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used.

(c) From and after the first year of Annual Assessments, the maximum annual assessment may be increased above the maximum amount set forth above by a vote of a majority of the Voting Power, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

(d) The Board may fix the Annual Assessment at an amount not in excess of the maximum set forth above (the "Maximum Annual Assessment"), subject to the procedures set forth in subsection (a) above if applicable. If the Board shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental annual assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in subsection (a) above, if applicable. In no event shall the sum of the Annual Assessments and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

9.06. Special Assessments. In addition to the Annual Assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners or, in the case of a Special Assessment relating to Limited Common Areas, against the applicable Owners to whom said Limited Common Area is assigned, 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 capital improvements and related fixtures and personal property on or comprising a part of the Common Area or Limited Common Area, including, without limitation, any stormwater detention or retention facility located on the Common Area or Limited Common Area; provided, however, in any fiscal year, Special Assessments which exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association.

9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a Special Assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his or her Lot or his or her residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations. To the extent the amount of any such assessment is limited by law or other regulation, no such limitation applies to liability of the Owner for such amount.

9.08. Allocation of Assessments. All Annual Assessments and Special Assessments shall be levied equally against all Owners, except:

Special Assessments relating to Limited Common Areas shall be assessed only against the Owners to whom the applicable Limited Common Area has been assigned.

9.09. Commencement of Assessments; Time of Payment. The Annual Assessments provided for herein shall commence as to all Lots in Westfall on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant ) for use as a residence. The first assessment year shall be the period commencing on the date Annual Assessments commence and ending on the December 31 next following. The Annual Assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Property which is annexed in accordance with the provisions of Article 15 below shall commence on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

Upon commencement of Annual Assessments on the Lots, Owners (other than Declarant if it instead opts to fund budget deficits pursuant to Section 9.12 below) ) shall pay Annual Assessments on an annual basis, the first payment of which shall be due at closing of the transfer of title to a Lot to Owner and shall be pro-rated based on the number of days remaining in the year on the date of closing. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the Annual Assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the Annual Assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments; Fines. Any assessment not paid within ten (10) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.12 may be imposed in an amount not to exceed \$25.00 per day (or such greater amount as may be permitted by the Act and approved by the Board) for each day that the violation continues. The Association may bring a legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

9.12. Declarant's Option to Fund Budget Deficits. To the extent permitted by North Carolina law, during the period of Declarant control described in Section 8.06, Declarant may satisfy the obligation for Annual Assessments on Lots which it owns either by paying Annual

Assessments in the same manner as a Class A Member as described in Section 9.08 or by funding the budget deficit. The budget deficit is the difference between the amount of Annual Assessments levied on Class A Member-owned Lots, plus any other income received during the calendar year, and the amount of the Association's actual expenditures during the calendar year, including reserve contributions. Unless Declarant otherwise notifies the Board in writing at least thirty days before the beginning of each calendar year, Declarant shall continue paying on the same basis as during the previous calendar year.

In the event Declarant elects to pay assessments in the same manner as a Class A Member as described in Section 9.08, and a deficit results, the Association, and not Declarant, shall be responsible for such deficit and its funding.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of Declarant control described in Section 8.06, Declarant shall pay assessments on Lots which it owns in the same manner as any other Owner as described in Section 9.08.

If Declarant elects to fund the budget deficit, such obligation, together with interest thereon and costs of collections, including, but not limited to, reasonable attorneys' fees, are hereby declared to be a charge and continuing lien upon each Lot owned by Declarant. Said lien shall be effective only if its obligation remains unpaid for a period of thirty (30) days or longer and from and after the time of the recordation in the official records of the County of a notice of assessment in accordance with Section 9.1. Upon full payment of all sums secured by any such lien, Declarant shall be entitled to a satisfaction of the notice of assessment in recordable form in accordance with Section 9.1.

9.13. Capital Contribution. Notwithstanding any provision contained herein or in any other document or instrument to the contrary, every Owner (other than Declarant or a successor Declarant) who purchases a home located on a Lot on the Property from Declarant or a successor builder to Declarant shall pay to the Association at the time of the closing of such purchase a non-refundable capital contribution fee in the initial minimum amount of \$300.00 for each , which amount may be held by the Association in reserve for maintenance, repair, construction and replacement of capital assets and improvements within the Common Area and the Property. It is expressly provided herein that such capital contributions shall not be held in reserve for the benefit of the Owner paying such amount at closing, shall not be required to be held in an interest bearing account, and may be commingled by the Association with its other reserve funds and shall not reduce an Owner's obligation to pay Annual Assessments or Special Assessments. The Board may adjust the amount of the capital contribution fees from time to time.

9.14 Reserves for Stormwater Repair and Reconstruction. The budget of the Association shall at all times contain line items for routine maintenance of any stormwater detention or retention facility located on the Common Area and a separate line for the repair and reconstruction of such stormwater facilities.

9.15. Exempt Property. The following property subject to this Declaration shall be exempt from all assessments, charges and liens created herein:

- (a) Common Area as defined in Article 1 of this Declaration;
- (b) Limited Common Area as defined in Section 4.09 of this Declaration;
- (c) all properties exempt from taxation by the laws of the State of North Carolina upon the terms and to the extent of such legal exemption (provided homestead exemptions, if any, shall not be considered an exemption); and
- (d) property owned by Aqua North Carolina, Inc., its successors, affiliates, parents, subsidiaries or assigns.

Notwithstanding any provisions of this Section 9.15, no Lot shall be exempt from the assessments, charges or liens created herein. In addition, in the event a Common Area easement or Limited Common Area easement encroaches upon a Lot, this shall not exempt a Lot from paying the assessments, charges or liens created herein.

9.16. Certification of Assessments. The Association, upon written request, shall furnish to an Owner of a Lot or the Lot Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against such Lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, and every Owner of a Lot.

## ARTICLE 10 INSURANCE

10.01 Insurance Requirements. Under the Act, Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds, requires certain provisions for property and liability insurance and governs repairs made with insurance proceeds. In the event the insurance requirements of this Article 10 conflict with or fail to incorporate, the provisions of Sections 47F-3-113 of the Act, the provisions of the Act shall apply and govern.

10.02. By Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

- (a) Coverage. Each Lot and improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) insurable replacement value. Such coverage shall provide protection against:
  - (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars per occurrence.

All such policies shall name the Association as an additional insured as its interest appears and copies of said policies and renewals thereof shall be furnished to the Association. Upon failure by any Owner to promptly obtain the required coverage, naming the Association as an additional insured, or to pay the premiums due on such policy, the Association may, but is not required to, obtain the required coverage, naming the Association as one of the additional insureds, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of the calendar month following payment of same by the Association.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire. Although they may, neither the Declarant nor the Association is obligated to monitor compliance with these insurance obligations nor to enforce it.

10.03. By Association. The Association shall procure and maintain insurance coverage as follows:

(a) Common Areas. All insurance policies upon the Common Area and Limited Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) Coverage. All buildings and improvements upon the Common Area and Limited Common Area and all personal property of the Association included in the Common Areas or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief:

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and



(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, directors and officers errors and omissions insurance coverage.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described in Article Nine above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Insurance Trustee under this Declaration. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas or Limited Common Areas are to be held for the Association.

(ii) If applicable due to insured casualty occurring on the Common Area or Limited Common Area, proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owners shall be held in trust for the mortgagee and the Owners as their interests may appear.

(f) Subrogation. Each insurer shall waive its right to subrogation under any policy maintained pursuant to this Section 10.03 against any Owner or member of Owner's household.

(g) Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to this Section 10.03.

(h) Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

(i) Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. Any insurer issuing an insurance policy under this Section 10.03 may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association, each Owner and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

10.04. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provisions made therefore.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area and, if applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 10.03(e)(ii).

10.05. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

10.06. Obligation to Rebuild. Any portion of the Property for which insurance is required under Section 10.02 shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

Any portion of the Property for which insurance is required under Section 10.03 of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Owners decide not to rebuild by an eighty percent (80%) vote of the Voting Power of the Association (excepting any improvements that are required to be repaired under applicable provisions of the County Code). The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense, and the cost thereof may be recovered by one or more Special Assessments levied by the Board equally against all Owners. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the

Property and (ii) 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 Area liabilities of all the Lots.

## ARTICLE 11 DAMAGES AND DESTRUCTION

11.01. Damage to Lots. Restoration and repair of damage to any Lot (including, in accordance with the definition of "Lot," the improvements thereon) shall be made by and at the expense of the Owner thereof.

11.02. Damage to Common Area. Restoration and repair of damage to any Common Area or Limited Common Area shall be made at the expense of the Association unless, under the provisions of Section 47F-3-113(g), the repair or restoration is not required to be effected, provided that the improvement is not otherwise required by the County. If the work is to be accomplished, the Association shall promptly contract for the repair, restoration or reconstruction and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 10.03. The difference, if any, between the insurance proceeds payable by reason of such repairs and the cost thereof may be recovered by one or more special assessments levied by the Board equally against all Owners.

Funds collected and held by the Insurance Trustee shall be disbursed by the Insurance Trustee for the purpose of repair, restoration or reconstruction in accordance with the terms and conditions of repair or reconstruction contract(s) between the Association and Persons engaged to perform the work. Funds from any special assessment shall be delivered to and held in trust by the Insurance Trustee and shall be held and disbursed for repair, restoration and reconstruction in the same manner as insurance proceeds. The Insurance Trustee may invest and reinvest funds held by it in a manner consistent with its duties as trustee. The Insurance Trustee shall be entitled to a reasonable fee for its services.

## ARTICLE 12 EMINENT DOMAIN

12.01. Eminent Domain. Notwithstanding any provision contained herein to the contrary, in the event of a taking of all or any portion of a Lot or all any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act. If all or any portion of the Common Area or Limited Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as provided in the Act.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area or Limited Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area or Limited Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is

reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area or Limited Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all Owners.

### ARTICLE 13 ARCHITECTURAL CONTROL

13.01. Architectural Control. No site preparation of a Lot, change in grade, building, house, swimming pool, spa, statuary, flag pole, mailbox, basketball goal or other sports equipment (permanent or portable), fence, wall, gazebo, or any other structure or improvement shall be placed, erected, commenced, constructed, demolished, rebuilt or altered upon any Lot or attached or affixed to any improvement upon any Lot or upon the Common Area nor shall any exterior addition to or change or alteration of a residence building be made, including, but not limited to, additions or alterations to any deck, fence, wall, driveway, or patio, plating or clearing and cutting of trees, color or painting of the exterior (other than maintenance to and touch-up painting to preserve the original exterior paint) or change of the type of exterior finish, the installation of aerials, satellite dishes, flags or awnings or the addition of any exterior attachment (such as a storm door) until an application, including plans and specifications showing the nature, kind, shape, height, materials, finishes, colors and location of the same (including floor plans and elevations) (the "Plans"), shall have been submitted in triplicate to and approved in writing by the Architectural Control Committee; provided, however, that no such approval shall be required for alterations solely to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. The Architectural Control Committee shall have the absolute and exclusive right to approve or disapprove Plans in its sole discretion and may approve or disapprove Plans based on purely aesthetic reasons, which in the sole discretion of the Architectural Control Committee shall be deemed sufficient. Absent an approval from the Architectural Control Committee the proposed alteration or improvement may not be commenced. THE RESTRICTIONS HEREIN CONTAINED SHALL HAVE NO APPLICATION TO THE DEVELOPMENT, IMPROVEMENT, MAINTENANCE AND REPAIR OF THE PROPERTY BY DECLARANT OR BY THE ASSOCIATION, AND NEITHER THE BOARD NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE ANY POWER OR AUTHORITY TO REVIEW OR REQUIRE MODIFICATIONS TO THE PLANS FOR CONSTRUCTION OR INSTALLATION OF IMPROVEMENTS BY DECLARANT.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Telecommunications Act of 1996 or which is not installed in accordance with the advance notice requirements and location guidelines of the Telecommunications Act of 1996 may be installed or maintained on any Lot except with the prior written approval of the Architectural Control Committee.

13.02. Architectural Control Committee.(a) Membership; Right of Declarant to Act as ACC with Respect to Initial Construction.

(i) The Architectural Control Committee shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board; provided, however, and notwithstanding the foregoing, prior to the Completion of Sales, the Architectural Control Committee shall be composed of three (3) persons (who need not be Members of the Association), and shall be representatives of Declarant selected by Declarant and appointed by the Board. Decisions of the ACC shall be by majority vote. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the ACC, the Board shall have full authority to designate a successor, provided, prior to the Completion of Sales, the ACC shall always consist of three representatives selected by Declarant. Unless otherwise approved by the Association, neither the members of the ACC nor its designated representative shall be entitled to any compensation for services performed pursuant to this Section. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the ACC and a list of the names and addresses of any designated representatives of the ACC, and such a list shall be available in the principal office of the Association to any Owner upon request.

(ii) Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the Architectural Control Committee responsible for the review, approval, and monitoring of construction of improvements for the Lots. Any requests for modifications or alterations of improvements in fact constructed on a Lot or for the construction of additional improvements on a Lot shall be the responsibility of the Architectural Control Committee. The rights of the Declarant pursuant to this section shall cease upon the Completion of Sales. Prior to the Completion of Sales, the Declarant may at any time relinquish, either temporarily or permanently, its rights to review, approve and monitor the Initial Construction of Improvements.

(b) Procedure. At least twenty (20) days prior to the commencement of any construction on a Lot, the Plans for such Lot shall be submitted to the ACC. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the ACC. Within ten (10) days after receipt of the Plans and any other requested information, the Architectural Control Committee shall notify the Owner of the Lot in writing as to whether the Plans have been approved. Unless a response is given by the ACC within ten (10) days from receipt of all required information, the Plans shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be

deemed a determination that the information submitted was inadequate, and the ten (10) day time period for further ACC response shall only commence upon receipt of the requested additional information. If an approval with conditions is granted and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot, and the conditions imposed shall become a part of the approved Plans. No improvements shall be constructed except in strict conformity with the approved Plans. The ACC shall have the right to monitor construction of improvements and investigate compliance with the approved Plans and is hereby granted the right to enter upon any Lot in order to do so.

Any Owner who submits Plans to the ACC and disagrees with the finding of the ACC may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following its receipt of notice of denial. The Board shall review the Plans and hold a meeting to hear the case with the Owner and the ACC or its representative. At such meeting the ACC or its representative shall present to the Board specific reasons why the Plans were denied, and the Owner or his agent may present information challenging the findings of the ACC. The decision of the ACC shall only be overridden by a majority vote of the Board. Notwithstanding the foregoing, an Owner shall have no right to appeal decisions by the Declarant acting as the ACC with respect to the Initial Construction of Improvements or to approvals by the ACC which are disapproved by the Declarant pursuant to Section 13.02(a)(ii).

The Association may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and related documents are submitted to the ACC. The ACC shall have the right, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the ACC in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot and shall be in addition to any fees due for processing any requests for approval.

All notices required to be given under this Section 13.03(b) shall be given in writing and delivered by hand, mailed with prepaid postage or deposited with an overnight carrier (e.g. Federal Express, UPS, etc.). If the ACC denies an application, the ACC shall specify the particular grounds upon which denial of such application is based. If the ACC approves the application, one set of Plans, marked approved (or approved with specified conditions), shall be retained by the ACC, and the remaining two sets of Plans shall be returned to the applicant.

13.03. Landscape Plan; Landscaping. As part of the Plans package submitted by an Owner to the ACC for approval of the Initial Construction of Improvements or any improvements thereafter, there shall be included a comprehensive landscape plan (the "Landscape Plan"). Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the specifications for all terraces, walkways, driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and for other fixtures and structures to be constructed as part of the Landscape Plan.

The Landscape Plan shall unite the Lot as well as all other structural aspects of the landscape with its setting and shall provide for the introduction of plant materials of reasonable size and quantity to create (when first installed) a mature landscape scene.

Each Lot shall be maintained consistently with the Landscape Plan approved for it by the ACC. All material changes to the Landscape Plan or the landscaping installed on a Lot shall be first approved by the ACC. The ACC shall have the authority to create additional landscaping guidelines applicable to the Property.

13.04 Maintenance of Construction Activities. During the construction of any improvement to a Lot, the Lot, roads, landscaping and Common Areas or Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Common Areas, Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent, employee or contractor shall fail to maintain the Lot and adjoining areas, as specified herein, or damage occurs and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightly conditions, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot until paid.

13.05. Timely Completion. When construction of any Lot, structure, improvement, or addition thereto has begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Lots under construction in the Property be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within one hundred twenty (120) days of the commencement of construction and that all phases of work, including execution of the Landscape Plan, be complete within six (6) months of the date of ACC approval. In the event that completion is delayed beyond one year from the date of ACC approval and provided the Owner is notified within thirty (30) days of the expiration of the one year construction period, the ACC may, upon unanimous vote of the committee, rescind the original approval and require that the Owner resubmit Plans for approval.

13.06. Reconstruction of Residences. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original Plans; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the ACC to reconstruct or repair his or her residence in accordance with revisions in the Plans. The ACC shall grant such requests only in

the event that the proposed change or deviation will materially benefit and enhance the entire Property in a manner generally consistent with the plan and development thereof.

13.07. Limitation of Liability. Review and approval of any application pursuant to this Article 13 is made on the basis of aesthetic considerations only and the ACC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

13.08. Enforcement. Any construction, alteration, or other work done in violation of this Article 13 shall be deemed to be nonconforming. Upon written request from the Board, the ACC or the Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a special assessment pursuant to Section 9.07 hereof.

Any contractor, subcontractor, agent, employee, or other permittee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the Board from the Property. In such event, neither the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this Section 13.08.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article 13 and the decisions of the ACC.

#### ARTICLE 14 MORTGAGEE PROTECTION

14.01. Interpretation. In the event any provision of this Article 14 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 14 shall control.

14.02. Notices. Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (a) any default which is outstanding for sixty (60) days or longer by the Owner of such Lot in the performance of his or her obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (b) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements



located thereon, and (c) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

14.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Property; and (c) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.04. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.05. Condemnation Rights. If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

14.06. Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

14.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer

or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

14.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

14.09. Consent of Mortgagee. With respect to any provision in this Declaration requiring the consent or written approval of a Mortgagee, any Mortgagee who does not respond within thirty (30) days' request by the Association for such consent or written approval shall be deemed to have approved such request.

## ARTICLE 15 ANNEXATION

15.01. Right to Annex. Declarant shall have the right to annex to **Westfall** subdivision, thereby bringing within the scheme of this Declaration and subject to the jurisdiction of the Association, part or all of the Additional Land, if any. Annexation of any real property other than Declarant's annexation of the Additional Land shall require the vote or written consent of not less than sixty-seven percent (67%) of the total Voting Power of the Association. Annexation of additional property may be accomplished in Phases.

15.02. Procedure for Annexation. Any annexation shall be made by recordation of a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the jurisdiction of the Association to cover the property described therein. The Supplemental Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Phase being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation of the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration, to the extent made applicable by the Supplemental Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration, the Articles, Bylaws and Rules and Regulations.

15.03. Annexed Property. Each Owner of a Lot in an annexed Phase automatically shall be a Member of the Association and such Owners and annexed real property shall be subject to assessment by the Association for the benefit of the Property or any part thereof. Assessments of Lots in an annexed Phase shall commence upon the last to occur of: (a) commencement of

Annual Assessments for the Property, and (b) the first day of the month next following the first conveyance of a Lot in such Phase to a purchaser, as provided in Section 9.09. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Property shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Property may be expended by the Association anywhere in the Property without regard to the particular Phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Property and any Phase thereof and shall have use and enjoyment of any Common Area facilities and other amenities contained within the Common Area throughout the Property, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

15.04. All Common Areas and Limited Common Areas within lands annexed to the Property shall be conveyed to the Association in accordance with Section 4.01.

#### ARTICLE 16 INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, Bylaw, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this Declaration.

ARTICLE 17  
EXCULPATION

It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of their officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively, the "Declarant and Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Declarant Related Parties.

ARTICLE 18  
MISCELLANEOUS PROVISIONS

18.01. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

18.02. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

18.03. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

18.04. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

18.05. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

18.06. Notices. Notices shall be in writing and shall be addressed as follows: (a) if to an Owner, to the address of his or her Lot as listed in the County Tax Office; (b) if to Declarant, to 128 Yorkchester Way, Raleigh, NC 27615; and (c) if to the Association, to 128 Yorkchester Way, Raleigh, NC 27615. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to all Owners and to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

18.07. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

18.08. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws, the Articles or the Rules and Regulations shall entitle the Association, any Owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

18.09. Equal Opportunity Housing. This Property provides equal opportunity housing. Each Lot sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, familial status, handicap, age or sex of the purchaser.

18.10. Amendments.

(a) Except as otherwise expressly provided herein, this Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant .

This Declaration may be amended or modified at any time by the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association. Provided, however, that if the percentage of the Voting Power necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Owners is required

pursuant to this Section 18.10 shall become effective when an instrument executed by the Owners voting for such amendment or modification is filed of record in the Office of the Register of Deeds for Chatham County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Owners voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Owners, as provided in this Section 18.10.

Notwithstanding the terms of the immediately preceding paragraph of this Section 18.10, during the period of Declarant control, Declarant, without obtaining the approval of any Owner or Owners other than Declarant, shall have the right to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provisions of this Declaration.

(b) Any action to challenge the validity of an amendment adopted under Section 18.10(a) must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

18.11 Release of Property. Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register of Deeds for Chatham County, North Carolina. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

## ARTICLE 19 WASTEWATER COLLECTION, TREATMENT AND IRRIGATION

Pursuant to Agreements with Aqua, its successors and assigns, ("Aqua"), all wastewater generated by the Property shall be collected, treated and irrigated by Aqua.

Each Lot in Westfall served by a pressure wastewater main shall have a standardized Grinder Pump Station, the design of which must be pre-approved by Aqua and the North Carolina Department of Water Quality ("DWQ"). Upon the first customer request for service at each residential Lot, Aqua shall arrange for the installation by an outside contractor of Aqua's choice of the Grinder Pump Station to serve the Lot and shall coordinate the installation thereof. Each Lot owner shall be required to pay the entire cost of the Grinder Pump Station and shall be required to pay the outside contractor the entire cost for such installation, including any applicable inspection fees and start up fees. None of the fees for the installation of the Grinder Pump Stations shall be paid to Aqua. Each Grinder Pump Station shall be owned by Aqua, and Aqua shall be responsible for the maintenance, repair and replacement of such Grinder Pump Station. Aqua may apply to the Commission for approval of a surcharge to recover the cost of maintaining, repairing and replacing the Grinder Pump Stations. Additionally, should any person place into the Grinder Pump Station any materials or objects that interfere with the operation of the Grinder Pump Station, Aqua may charge and collect from the person the actual cost of the repairs and/or replacement of the Grinder Pump Station. Aqua shall not be

responsible for providing power for the Grinder Pump Stations, which will be provided through the Lot owner's individual electric service. Aqua shall not reimburse Lot owners for any portion of their electric bill. Aqua shall not be responsible for providing an emergency generator when there are power outages, nor shall there be any liability to Aqua should a portable generator not be connected to the Grinder Pump Station during a power outage.

After the completed initial installation of the Grinder Pump Stations, Aqua shall operate, maintain, repair and replace the components of the Grinder Pump Stations and service lines. The customer shall be responsible for that portion of the collection line from the home or building to the Grinder Pump Station. The electric service for the Grinder Pump Stations shall be provided by each customer as part of their household electric service. NEITHER AQUA NOR DECLARANT SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WHATSOEVER SHOULD A PORTABLE GENERATOR DURING A POWER OUTAGE NOT BE CONNECTED TO THE GRINDER PUMP STATION TO KEEP IT FROM OVERFLOWING OR BACKING UP.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this First Amendment to and Restatement of Declaration as of the date first above set forth.

WESTFALL ASSOCIATES, LLC, LLC  
a North Carolina limited liability company

By: *Jan R. Futrell*

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

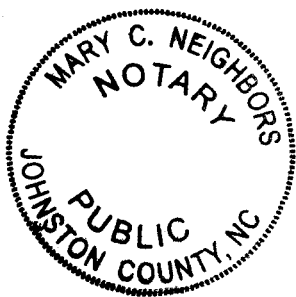
I, a Notary Public of <sup>JOHNSTON</sup> ~~said~~ County and State, hereby certify that JAN R. FUTRELL personally known to me, personally appeared before me this day and acknowledged that s/he is a manager Westfall Associates, LLC, , a North Carolina Limited Liability Company, and that by authority given and as the act of said company, the foregoing instrument was executed by him for and on behalf of the said limited liability company.

Witness my hand and official seal or stamp, this the 31<sup>st</sup> day of December, 2012.

My Commission  
Expires: 6-28-17

*Mary C. Neighbors*  
NOTARY PUBLIC  
*MARY C. NEIGHBORS*

(SEAL)



ACORN INVESTMENT ASSOCIATES LLC  
a North Carolina limited liability company

By: *Jan R. Futrell*

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, a Notary Public of JOHNSTON County and State, hereby certify that JAN R. FUTRELL personally known to me, personally appeared before me this day and acknowledged that s/he is a manager of Acorn Investment Associates LLC, a North Carolina Limited Liability Company, and that by authority given and as the act of said company, the foregoing instrument was executed by him for and on behalf of the said limited liability company.

Witness my hand and official seal or stamp, this the 31st day of December, 2012.

My Commission  
Expires: 6-28-17

*Mary C. Neighbors*  
NOTARY PUBLIC  
MARY C. NEIGHBORS

(SEAL)

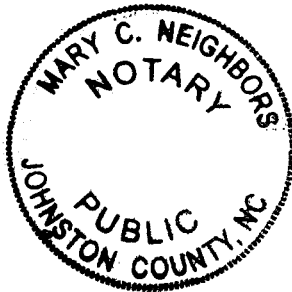


EXHIBIT A

LAND INITIALLY SUBMITTED

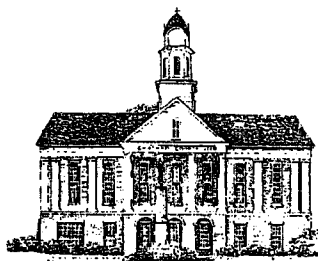
Being all of that certain property identified as "Phases 1A, 1B and 1C" on the map recorded in Plat Slide 2008-95 through 2008-98, as amended by maps recorded in Plat Slide 2012-141 and 2012-250 in the Office of the Register of Deeds for Chatham County, North Carolina.

EXHIBIT B

CHATHAM COUNTY CONDITIONAL USE PERMIT

## COUNTY OF CHATHAM

PLANNING DEPARTMENT  
POST OFFICE BOX 54  
PITTSBORO, N. C. 27312-0054



PHONE: 919-542-8204  
FAX: 919-542-0527  
email: keith.megginson@ncmail.net

ORGANIZED 1770      707 SQUARE MILES  
January 25, 2005

MacGregor Development Company  
201 Shannon Oaks Circle  
Cary, NC 27511

Gentlemen:

During their regular meeting January 18, 2005, the Chatham County Board of Commissioners considered your request as described below:

Request by MacGregor Development Co. for a Conditional Use Permit within the existing RA-40 zoning district for a Planned Residential Development [**Booth Mountain**], for 180 lots, on 294 acres, off S. R. 1721 (Lystra Church Road) and S. R. 1717 (Jack Bennett Road), Williams Township.

After considering your written request, comments received at the public hearing, and recommendations of the Planning Department and Planning Board, the Board of Commissioners approved your request. Please see attached, "A Resolution Approving an Application for a Conditional Use Permit for a Request by MacGregor Development Company for Booth Mountain Community", reflecting the Board of Commissioners approval of your request January 18, 2005.

Minutes of the meeting are available from Ms. Sandra Sublett, Clerk to the Board of County Commissioners, at 542-8200. If you have any questions about the Board's action or would like to discuss uses of your land, please call me at 542-8205.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Keith Megginson". The signature is fluid and cursive.

Keith Megginson  
Planning Director  
Chatham County

Attachment (1)

C: Nick Robinson, Attorney

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**RESOLUTION APPROVING AN APPLICATION FOR A CONDITIONAL USE  
PERMIT FOR A REQUEST BY MACGREGOR DEVELOPMENT COMPANY  
FOR BOOTH MOUNTAIN COMMUNITY**

WHEREAS, MacGregor Development Company, and other associated parties, have applied to Chatham County for a conditional use permit for a certain tract or parcel of land containing approximately 294 acres located off Lystra Church Road (SR-1721) and Jack Bennett Road (SR-1717) for use as a Planned Unit Development for residential uses approved this date; and

WHEREAS the Chatham County Board of Commissioners hereby make the five findings as listed below:

1. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.
2. The requested conditional use permit is either essential or desirable for the public convenience or welfare.
3. The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community.
4. The requested permit will be consistent with the objectives of the Land Development Plan.
5. Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County's plans, policies and regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE CHATHAM COUNTY BOARD OF COMMISSIONERS as follows:

That a Conditional Use Permit be, and is hereby approved for the reasons hereinabove stated subject to the additional stipulations and conditions set forth hereinafter; and

BE IT RESOLVED FURTHER that the Chatham County Board of Commissioners hereby approves the application for the conditional use permit in accordance with the plan of Booth Mountain Community dated revised December 30, 2004 attached hereto and incorporated herein by reference with specific conditions as listed below:

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1. A right turn deceleration lane shall be provided at the developer's expense on the south side of Lystra Church Road at the entrance of the subdivision if allowed by the North Carolina Department of Transportation.
  2. There shall be a "no-build" zone adjoining the lots that border the south side of the Herndon Creek ravine (Lot #98-113). The "no-build" area will be such that no house is located more than 125 feet from the edge of the road right-of-way (specifically excluding Lot #114) (The determination of said "no-build" line for Lot #98 shall be depicted on the detailed plan attached). With regard to lots adjoining the north side of the ravine, Lot #59, #60, #63, #67 and #68 shall be restricted so that no house is constructed more than 150 feet from the edge of the road right-of-way. With regard to Lots #61 and #62, no house shall be constructed more than 175 feet from the road right-of-way. No such restriction shall be imposed on Lot #58.
  3. With regard to the "no-build" areas (between the rear lot line and the edge of the building area) on the lots mentioned in these conditions, a restriction will be put in place that will allow homeowners to clear such areas only with hand tools (effectively limiting clearing to underbrush and removal of dead vegetation) and disallowing grading.
  4. The wastewater treatment plant will be a concrete facility with the blowers being enclosed. The developer will install an aerator in the wastewater treatment plant storage pond. Further, the developer shall use odorophos or other equivalent chemical agent, a chemical addition, at the pump station in order to minimize odors.
  5. On the site of the amenity area, there shall be a 200-foot non-disturbance area from the bank of Herndon Creek (see the attached drawing). The only exception to non-disturbance will be the pedestrian access, water line, the sewer line and related appurtenances. There shall be an additional dry basin structure to release the swimming pool backwash into the structure rather than into the wastewater treatment plant.
  6. The roads in the estate section may be private, but will be built to the NCDOT standard for the hilly condition. The private road may be gated, provided access is made available to emergency vehicles.
  7. There shall be no land clearing until the additional plant survey referred to in the S&EC report is performed in the spring. If endangered or threatened species are found on the property, the applicant shall work with the North Carolina Botanical Garden or similar organization to protect and preserve said species.
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8. The developer shall create an easement for a trail from the village area to the school site with the location of such easement to be determined at preliminary plat phase. The installation of such trail will be contingent upon agreement by the Chatham County Board of Education.
  9. A preliminary field reconnaissance archaeological survey, to determine the existence or absence of any site of likely archaeological significance will be performed by a professional archaeologist (as listed on the NC Department of Cultural Resources website). The reconnaissance survey shall be performed in areas of ground disturbance which would adversely impact potential sites, such as areas of future roadways, active recreation areas to be graded, and lots to be developed (i.e. not including buffers, open space or irrigation areas). Areas determined by the NC Department of Cultural Resources, Archaeology/Historic Preservation Section as a low probability of likely significant sites are not required to be surveyed. Any site identified with likely archaeological significance shall have an intensive survey to determine significance. If a site is determined as a candidate for nomination to the "National Register of Historic Places", it shall be preserved or documented prior to being disturbed. The field reconnaissance survey shall be performed prior to preliminary plat submission. Any recommended intensive survey shall be performed prior to ground disturbing activity in the area of concern. The surveys shall be performed at the developer's expense.
  10. The developer shall erect signs along the mutual boundary with the US Army Corps of Engineers. Said signs shall be placed at sufficient intervals to be visible from a distance of 75 feet. The signs shall provide warning of potential conflicts of land use. On one side the signs shall warn of hunting in the area and on the other side warn of residential development nearby. Said signs shall be of a size and height to be easily seen and of all weather materials such as metal painted traffic control signs. Said signs shall be posted prior to final plat approval. The final plat shall display a note disclosing the potential conflict of land uses for lots adjacent to US Army Corps of Engineers land.
  11. The name of the development shall be changed so that it does not duplicate and is not similar to other developments.
  12. According to the application booklet, all street lighting shall comply with the proposed Chatham County Draft Lighting Ordinance to minimize light pollution and light trespass. The development's covenants shall also require residential lighting to meet the Draft Lighting Ordinance.
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13. There shall be a 50 foot external boundary undisturbed buffer as shown on the plans. In addition to the 50 foot external boundary, with respect to the lots that border the Booth Hill Subdivision to the east (except as noted on the revised plan dated December 30, 2004 for Lots #14-16 and Lot #98) and also with respect to Lots #79, #80, and #23-26, because of limited and unique circumstances the developer has voluntarily agreed to impose an additional 100 foot buffer by including the same in the recorded protective covenants for the subdivision. Said 100 foot buffer may be included as a portion of the lot but left as an undisturbed buffer. The developer shall provide the County a copy of said covenants prior to final subdivision plat approval, to assure the condition is implemented.
14. A "no build" setback, like condition #2 above, of 175 feet on Lots #50, #52-58 and Lots #2-13. Said "no build" setback distance may be reduced to provide a buildable area on said lots.
15. A 50-100 foot undisturbed buffer along the drainage areas of Lots #59 and #60, #64 and #66, #77 and #87 as shown on the revised plan dated December 30, 2004. This area of buffer shall be outside the lots' areas and shall be community common area.
16. The developer shall negotiate with the Chatham County School Administration the feasibility of shared-use of the Booth Mountain Community wastewater treatment system and Chatham County Schools' property for effluent spray irrigation.

Non-Waiver. Nothing contained herein shall be deemed to waive any discretion on the part of Chatham County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

BE IT FURTHER RESOLVED that the Board of Commissioners of the County of Chatham hereby approves the application for a conditional use permit in accordance with the plans and conditions listed above.

This 18th day of January, 2005.

  
Bunkey Morgan, Chairman

ATTEST:

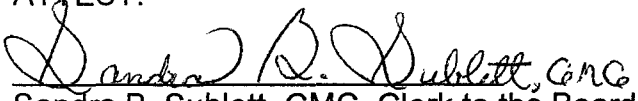
  
Sandra B. Sublett, CMC, Clerk to the Board  
Chatham County Board of Commissioners

Exhibit C

**OPERATIONS & MAINTENANCE MANUAL**  
for  
Westfall

**This manual established procedures for maintenance and operation of the referenced Westfall:**

I. Maintenance of Embankments

A. Vegetation

The embankment has a ground cover of fescue, which if properly maintained will prevent erosion of the embankment and provide an easy surface for inspection. The grass will be most difficult to obtain in the area subject to water level fluctuation below the top of the riser. Grass should be fertilized every October and April.

- ◆ Re-Seeding - periodically re-seeding may be required to establish grass on areas where seed did not take or has been destroyed. Before seeding, fertilizer (12-12-12) should be applied at a minimum rate of 12 to 15 pounds per 1,000 SF. The seed should be evenly sewn at a rate of three pounds per 1,000 SF. The seed should be covered with soil to the depth of approximately  $\frac{1}{4}$ ". Immediately following the planting, the area should be mulched with straw.
- ◆ Trees & Shrubs - trees, shrubs, and other landscape vegetation should be permitted only as shown on the approved planting plan.
- ◆ Mowing - grass mowing, brush cutting and removal of weed vegetation will be necessary for the proper maintenance of the embankment. All embankment slopes and vegetation of spillways should be mowed when the grass exceeds 8" in height. Acceptable methods include the use of weed whips or power brush cutters and mowers.

B. Erosion

Erosion occurs when the water concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The dam should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the embankment. Rills and gullies should be filled with suitable soil compacted and then

seeded. Methods described in Section I-A, on vegetation, should be used to properly establish the grass surface. Where eroded areas are detected, the cause of the erosion should be addressed to prevent a continued maintenance problem. Frequently problems result from the concentration of runoff to one point of the embankment crest instead of a uniform distribution of runoff. This can be corrected by reshaping the crest to more evenly distribute the runoff to areas, which are not experiencing erosion problems. The top of the dam should not be allowed to be used for pedestrian or bicycle traffic.

- ◆ Abutment Areas - the abutment is the line formed where the embankment fill comes into contact with the existing slope. Runoff from rainfall concentrates in these gutter areas and can reach erosive velocities because of the steep slopes. If a normal stand of grass cannot be maintained on the abutments, additional measures may be needed such as jute matting to provide for the establishment of a good ground cover.
- ◆ Upstream Embankment Slope - Erosion problems can develop on the upstream face of the dam due to the fluctuation of water level in the pond. This is a result of a combination of wave actions and ground saturation, which occurs from the elevated water levels. The erosion generally occurs as the water level falls and the saturated ground becomes subjected to the wave action. If erosion becomes a problem, it may necessitate the installation of a stone armoring along the zone subject to fluctuating water level. This would consist of 18" of NCDOT Class B stone for erosion control underlain with Mirifi 140 geotextile fabric. It should be centered at the point of the erosion problem and covering an area 2' above and below the approximate center of the eroded area.

#### C. Seepage

- ◆ Detection - Seepage may vary in appearance from a soft wet area to a flowing spring. It may show up first as only an area where the vegetation is more lush and darker green. Cattails, reeds, mosses and other marsh vegetation often become established in a seepage area. The downstream abutment areas where the embankment fill and natural ground interface are very common locations for seepage. Also the contact between the embankment and the spillway conduit is a very common location, which is generally attributed to poor compaction around the conduit. Due to the way in which conduits are put in, this is generally most evident on the underside of the conduit. Slides may result from excessively saturated embankment slopes. The natural foundation area immediately downstream of the dam abutment should also be inspected to ensure that "piping" is not occurring underneath the embankment. "Piping" may appear as a "boil" evident as spring carries soil. The soil usually deposits around the boil area and is evident by the sedimentary deposits accompanying it. Seepage can also occur into the spillway conduit through cracks in the pipe or improperly sealed joints. These can be seen by observing the conduit when the water level is high. The movement of the water itself is not dangerous, but if soil particles are being carried with it, then it can create a shortcut for the piping of

soil. This might show up on the upstream face of the embankment roughly along the line of the conduit itself.

#### D. Cracks, Slides, Sloughing, and Settlement

- ◆ Cracks – the entire embankment should be inspected for cracks. Short, isolated cracks are usually not significant, but larger cracks (wider than  $\frac{1}{4}$ "), well-defined cracks indicate a serious problem. There are two types of cracks: transverse and longitudinal.

Transverse cracks appear crossing the embankment and indicated difference of settlement within the embankment. These cracks provide avenues for seepage and piping could develop.

Longitudinal cracks run parallel to the embankment and may signal the early stages of a slide. In recently built structures, these cracks may be indicative of poor compaction or poor foundation preparation resulting in consolidation after construction.

- ◆ Slides – Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch shaped cracks are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.
- ◆ Settlement – settlement occurs both during construction and after the embankment has been completed and places in service. To a certain degree this is normal and should be experienced. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the foundation or perhaps the lower part of the embankment. Settlement accompanied by cracking often precedes failure.
- ◆ What to do if seepage, cracks, slides or settlement are detected: If any of the above items are detected there may be signs of significant problems, which could lead, to the failure of the structure. A geotechnical or civil engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions for correcting them. If the professional is not immediately able to inspect the dam, then the bottom drain should be opened and the water level lowered to remove the risk of failure until a professional can observe these problems.

### E. Rodent Control

Generally in this urban environment, rodents are not a problem. Rodents such as ground hogs, muskrats, and beavers are attracted to dams and reservoirs and can be quite dangerous to structural integrity and proper performance of the embankment and spillway. Groundhog and muskrats thrive on burrowing in the manmade earth embankments, which become pathways for seepage. In the event that burrows are detected within the dam, then the rodents should be dealt with by removal.

## II. MAINTENANCE OF SPILLWAYS & CONTROL STRUCTURES

### A. Inspection of Spillway Conduits

Conduits should be inspected thoroughly twice a year. Conduits should be visually inspected by actually entering the conduit a sufficient distance between the riser structure and the outlet to check all the joints. Because the outlet works tie into the street storm sewer system, catch basins and pipes. Conduit should be inspected for proper alignment (sagging), elongation and displacement at joints, cracks, leaks, surface water, surface wear, loss of protective coating, corrosion and blocking. Problems with conduits most often occur at joints and special attention should be given to them during inspection. Joints should be checked for gaps caused by elongation or settlement and loss of joint filler material. Open joints can permit erosion of the embankment material and possibly the piping of soil material through the joints. Catch basin should be checked for signs that water is seeping along the exterior surface of the pipe where it enters the catch basin. A depression in the soil surface over the pipe may be signs that soil is being removed from around the pipe.

- ◆ What to do if problems are detected with the spillway: Retain the assistance of a civil engineer or geotechnical engineer qualified in the design of embankments to perform an inspection of the dam. If in doubt, lower the water surface elevation of the pond until such time as a qualified professional can perform an inspection.

### B. Trashracks on Pipe Spillways

The spillway riser for this dam is the only spillway structure. The intake structure has been fitted with a trashrack to prevent debris from entering the spillway structure. Most of the runoff entering the pond comes in through grated inlets, which have essentially provided filtration of the runoff and should limit the size of the debris that enters the basin to floating debris, which will most likely pass through the trashrack. The opening between the trashrack and riser is smaller than the opening of the outlet pipe. The intent is that any debris, which passes through the trashrack, will be easily passed by the pipe outlet.

Maintenance should include periodically checking the rack for rusted or broken sections and repairing as needed. The trashrack should be checked frequently

during and after storm events to ensure that it is properly functioning and to remove accumulated debris.

### III. OPERATION

#### A. Lake Drains

Lake drains should always be operable so that the pool level can be drawn down in case of an emergency or for repairs or maintenance. Lake drain valves or gates that have not been operated for a long time present a special problem. Generally, when draining the pond, it should be drained slowly. Open the drain until a good flow of water is present but not a torrent, so that the water level can be drained over a period of 48 hours or more. Rapidly lowering the water level in the pond can cause permanent damage to the embankment and must be avoided. The gate valve controlling the lake drain should be operated from fully closed to fully opened position at least twice a year.

#### B. Record Keeping

Operation of a dam should include recording of the following:

- ◆ Semi Annual Inspections - Inspections are to be performed by a qualified registered North Carolina professional engineer, landscape architect, or surveyor.
- ◆ Semi Annual Inspection Reports - a collection of written inspection report should be kept on record in Section IV of this manual. Inspection should be conducted annually. Copies should be provided to the owner or homeowner's association.
- ◆ Observations - all observations should be recorded. Where periodic inspections are performed following significant rainfall events, these inspections should be logged into the Periodic Inspection, Operation & Maintenance Form in Section IV of this manual.
- ◆ Maintenance - written records of maintenance and/or repairs should be recorded on the Periodic Inspection, Operation & Maintenance Form in Section IV of this manual.
- ◆ Other Operation Procedures - the owner should maintain a complete and up-to-date set of plans (as-built drawings) and all changes made to the dam over time should be recorded on the as-builts.

#### C. Sedimentation & Dredging

Sedimentation from establishing areas tributary to the pond will eventually result in the reduction of the retention pool and eventually will have to be removed. The frequency of this sediment removal can be reduced by ensuring that the site areas around the building be stabilized with a vegetative ground cover such that it restrains erosion. This would include a periodic application of fertilizer and other treatments necessary to promote a stable groundcover and minimize sedimentation to the pond. The maintenance on this pond requires that when the **sediment level** (as measured from the

top of the riser to the sediment pool) is within 5-feet of the top of the riser that the sediment must be removed and the original pond restored. For aesthetic purposes it may be desirable to maintain it prior to this point. Generally, the dredging process begins with the removal of as much water as possible from the deposited silt and so the material can be excavated with conventional equipment for trucking offsite. The removed material should be hauled offsite to a suitable landfill site or mounded somewhere on site and stabilized with a groundcover sufficient to restrain erosion.

D. Responsible Party:

Westfall Homeowners Association, Inc.

IV. INSPECTION, OPERATION & MAINTENANCE CHECKLISTS

POND INSPECTION CHECKLIST

Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Westfall

SPILLWAYS – DRAINS – OUTLETS

Check/Circle Condition Noted	Observations	Action - Repair	Action - Monitor	Action - Investigative
<b>Principal Spillway</b>	<b>Type:</b>			
Trashracks/ Debris				
Cracks/ Deterioration				
Joint Deterioration				
Improper Alignment				
Cracks/ Deterioration				
Joint Deterioration				
Seepage/ Piping				
Undercutting				
Erosion				
Debris				
<b>Lake Drain/ Other Outlets</b>	<b>Type:</b>			
Gates/ Valves				
Operability				

General Comments, Sketches & Field Measurements



POND INSPECTION CHECKLIST

Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Westfall

EMBANKMENT – POOL

Check/ Circle Condition Noted	Observations	Action - Repair	Action - Monitor	Action - Investigative
<b>U/S Slope</b>	<b>Type:</b>			
Vegetation/ Riprap				
Beaching/ slides/ cracks				
Undermining/ erosion				
Rodent burrows				
<b>Crest</b>	<b>Type:</b>			
Ruts/ erosion				
Cracks/ settlement				
Poor alignment				
<b>D/S Slope</b>	<b>Type:</b>			
Vegetation/ erosion				
Rodent burrows				
Sloughs/ slides/ cracks				
Seepage/ wetness				
<b>Pool</b>	<b>Type:</b>			
Erosion/ ground cover				
Sedimentation				
Water quality				
<b>Abutment</b>	<b>Type:</b>			
Vegetation/ erosion				
Slough/ slides/ cracks				
Seepage/ wetness				

General Comments, Sketches & Field Measurements

## Westfall

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