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**DECLARATION OF PROTECTIVE COVENANTS**  
**FOR**  
**BACK CREEK CHASE**

DECLARATION OF PROTECTIVE COVENANTS

FOR

BACK CREEK CHASE

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**EXHIBIT "A" PROPERTY SUBMITTED**

**EXHIBIT "B" ADDITIONAL PROPERTY**

**EXHIBIT "C" BYLAWS OF BACK CREEK CHASE COMMUNITY ASSOCIATION, INC.**

DECLARATION OF PROTECTIVE COVENANTS

FOR

BACK CREEK CHASE

THIS DECLARATION is made on the date hereinafter set forth by **BACK CREEK II DEVELOPERS, LLC**, a North Carolina limited liability company (hereinafter sometimes called "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" hereof;

and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article I  
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 "Approved Builder" means Colony Homes, LLC, a Georgia limited liability company, for as long as it owns at least one (1) Lot in the Community or has a contract for the purchase from Declarant of any portion of the property described on Exhibit "A" or Exhibit "B" to this Declaration.

1.2 "Articles of Incorporation" means the Articles of Incorporation of Back Creek Chase Community Association, Inc., filed with the North Carolina Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.3 "Association" means Back Creek Chase Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.4 "Board of Directors" or "Board" means the appointed or elected body of the Association, Vested with the authority to manage the affairs of the Association under the Non-Profit Corporation Law of the State of North Carolina.

1.5 "Bylaws" means the Bylaws of Back Creek Chase Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.6 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.8 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.9 "Declarant" means **BACK CREEK II DEVELOPERS, LLC**, a North Carolina limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument executed by the Declarant and the successor Declarant, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.10 "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site as shown on a recorded plat for the Community. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property.

1.11 "Mortgage" means any and all instruments used for the purpose of encumbering or conveying title to real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.12 "Mortgagee" means the holder of a Mortgage.

1.13 "Occupant" means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.14 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Lot within the Community but does not include any Mortgagee.

1.15 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under North Carolina law.

1.16 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.17 "Total Association Vote" means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

#### Article 2

#### Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

2.2 Unilateral Annexation By Declarant. As the owner thereof, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public records of the county where the Community is located a Supplementary Declaration describing the property being subjected. Declarant intends

to annex hereto the property contained in Declarant's land plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B". However, inclusion of property on Declarant's land plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Additional Covenants, Restrictions and Easements. The Declarant may subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property.

2.4 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public records of the county where the Community is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.



3.2 Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

#### Article 4 Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs and reasonable attorney's fees actually incurred, as provided herein, when remaining unpaid for thirty (30) days or longer, shall be secured by a lien on such Lot in favor of the Association, when the Association files a claim of lien in the public records of the county in which the Lot is located in the manner provided by law. Such lien shall be superior to all other liens and encumbrances on such Unit, except for (i) liens and encumbrances recorded before the docketing of the claim of liens and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget, the assessment to be levied against each Unit for the year (or portion thereof in the case of the initial budget) and a notice of the meeting to consider ratification of the budget (which notice shall include a statement that the budget may be ratified without a quorum being present) to be provided to each member no more than thirty (30) days after the adoption of the budget. The date for the meeting of the members to consider ratification of the budget shall be not less than ten (10) days nor more than sixty (60) days after mailing of the budget and notice. The meeting shall be held at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The budget is ratified and the assessment shall become effective unless disapproved at the meeting by a at least seventy-five (75%) percent of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget last ratified shall be continued until a new budget is ratified. Any surplus funds of the Association remaining after payment of or provision for the common expenses, the funding of a reasonable operating expense surplus, and any prepayment of reserves shall not be refunded or credited to the Owners but shall be Association funds for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws. General assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific

assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

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4.6 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the property pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation or relieve such property or the then Owner from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association. Any sums (including assessments or installments thereof) assessed against any Lot pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a claim of lien, as herein provided, may be filed in the public records of the county in which the Lot is located in the manner provided by law. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. If any sum assessed against any Lot pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. The lien provided for in this Article shall be in favor of the Association and shall be for

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the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. If any such sums are not paid within thirty (30) days after the due date, the Association may, after notice and an opportunity to be heard, suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities, maintained by the Association, if any, and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect any lien on such property in favor of the Association.

4.8 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Lot on the first to occur of the date that the Lot is first occupied for residential purposes; or is conveyed by the Declarant to an Owner who is not an Approved Builder acquiring such Lot in the ordinary course of business or a successor Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.

4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant, or the Approved Builder with the consent of the Declarant, may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant or the Approved Builder, as applicable); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan. Notwithstanding anything to the contrary herein, the Declarant, Approved Builder and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant, Approved Builder or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant, Approved Builder or its affiliate, as the case may be, cannot agree as to the value of any contribution, the Declarant, Approved Builder or its affiliate, as the case may be, shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant, Approved Builder or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant, Approved Builder or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

4.10 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.11 Estoppel Letter. The Association shall, within ten (10) days after receiving a written request therefore certify to the amount of any unpaid assessments and other charges against a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

4.12 Initiation Fee. Upon the first sale of each and every Lot after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee in the amount of \$100.00 shall be collected from the purchaser at the closing of such sale for the benefit of the Association. The aggregate fund established by such initiation fee shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board.

## Article 5

### Maintenance: Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall maintain all Community entry features, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

5.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1 all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall

maintain such Lot n a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repairing and painting (or other appropriate external care) of improvements located on a Lot. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.

**5.3 Conveyance of Common Property by Declarant to Association: No Implied Rights.**

Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant, or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the public records of the county where the Community is located.

**5.4 Partition.** The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.6 Liability. Owners, Occupants and their guests shall use the Common Property, Community recreational facilities, if any, and green space maintained by the Association at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

#### Article 6

#### Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior doors and shutters of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Approved Builder may submit its standard plans for approval hereunder, which approval will not be unreasonably withheld, and thereafter no further approval shall be required under this Article for such Approved Builder to construct improvements on Lots consistent with the approved standard plans. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant and Approved Builder until (a)

the Declarant no longer has the right to unilaterally annex additional property to the Community, and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Architectural Control Committee. The Architectural Control Committee ("ACC") of the Association shall consist of three (3) members. Until Declarant's and Approved Builder's rights are terminated in accordance with Section 11.5 of this Declaration, the Declarant shall have the right to appoint two (2) members of the ACC and the Approved Builder shall have the right, but not the obligation, to appoint at least one (1) member of the ACC. Approved Builder's representative can not be removed by Declarant but can only be removed by Approved Builder. During such time as Approved Builder's representative is serving on the ACC, all actions of the ACC must be unanimous; provided however, in reviewing plans of a builder or Owner other than Approved Builder, the Approved Builder's representative shall not unreasonably deny or delay the approval. In the event the members of the ACC are unable to reach unanimous agreement on any matter before the ACC, such matter shall be submitted to and decided by arbitration. If arbitration is necessary, the Declarant and Approved Builder shall each appoint one (1) arbitrator. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties as to the matter arbitrated. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the other party, the matter shall be resolved in favor of the party requesting arbitration. The cost of arbitration shall be shared equally by Declarant and Approved Builder. Notwithstanding anything provided herein to the contrary, Approved Builder's rights hereunder cannot be altered or deleted, by amendment or otherwise, nor shall Declarant surrender its authority to appoint the members of the ACC as provided above, without the prior written consent of Approved Builder.

Prior to the termination of the rights of Declarant and Approved Builder hereunder, the ACC may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to an advisory ACC while retaining control over all other building and construction in the Community. For example and without limitation, the ACC may relinquish control over modifications of existing structures to an advisory ACC while retaining all authority to review and approve new home construction. Any right, power or authority of the ACC which may be relinquished to the Association prior to the termination of the rights of Declarant and Approved Builder hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ACC shall not be deemed to be a relinquishment by Declarant or Approved Builder of any of its right, power and authority hereunder.

Upon the termination of all rights of Declarant and Approved Builder hereunder, the Board of Directors shall appoint an ACC, which shall have all such jurisdiction over architectural control within the Community under this Article.

6.3 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the ACC. Such plans and specifications shall be of sufficient detail to allow the ACC to make its review and, to the extent required by the ACC, shall show the nature, kind, shape, height, materials and location of the proposed improvement.



The ACC may adopt written design and development guidelines and application and review procedures, which may provide for a review fee. The ACC shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The ACC shall make the architectural guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the ACC fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the ACC, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The ACC and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the ACC for reconsideration.

6.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the ACC assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications. Neither the ACC, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against the ACC, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver. The approval of the ACC of any proposals plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.6 Variances. Notwithstanding anything to the contrary contained herein, the ICC shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) prevent the ACC from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ACC, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the ACC and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the ACC from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the ACC, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the ACC, in the event of noncompliance with this Article, the ACC may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the, foregoing, the ACC shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

## Article 7 Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

7.2 Residential Use. Each Lot shall be used for single-family residential purposes exclusively. For the purposes of this restriction a "single-family" means a group of individuals related by blood, marriage, adoption, or guardianship, or not more than six (6) persons not so related, living together as a single housekeeping unit. Leasing of a Lot for single-family residential occupancy shall not be considered a business or business activity. No trade or

business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the dwelling unit so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms “business” and ~ as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Leasing. Lots may be leased for single-family residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate the Occupants to comply with the foregoing.

7.4 Signs. No sign of any kind shall be erected within the Community without the prior written approval under Article 6 hereof. Notwithstanding the foregoing, the Board, the Declarant and the Approved Builder shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

7.5 Vehicles: Parking. Vehicles shall be parked only in appropriate parking areas serving the Lot or other designated areas, if any. All parking shall be subject to such rules and regulations as the Board may adopt. The term “vehicles,” as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term “parking areas” shall refer to the number of garage parking spaces and if and only if, the Occupants of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles which are an Occupant’s primary means of transportation on a regular basis may be parked on the driveway on the Lot. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any

towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

7.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on the exterior of any Lot, with the exception of dogs, cats or other usual and common household pets. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof.

7.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot. Any noise that can be heard inside a neighboring house with the windows and doors closed will be considered too loud and in violation of this provision.

7.8 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.9 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (1) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (2) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (3) antennas that are designed and intended to receive television

broadcast signals. Owners shall install any permitted antenna on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.10 Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, all trees and shrubs planted in any required landscape buffer, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or the Association or the Approved Builder in connection with construction approved under Article 6 hereof.

7.11 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. Owners shall not obstruct or alter the drainage flow across or from their Lot after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans. Woodpiles. Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow Approved Builder to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant or Approved Builder.

7.14 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the effected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private Street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such property.

7.15 Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

7.16 Fences. Except as herein provided, no fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

7.17 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of the Declarant or Approved Builder.

7.18 Air-Conditioning Units. No window air-conditioning units may be installed.

7.19 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.20 Artificial Vegetation. Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculpture, fountains, flags or similar items must be approved under and pursuant to Article 6 hereof.

7.21 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant, in accordance with the provisions of Article 6 hereof.

7.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.23 Gardens. Play Equipment and Garden Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on any Lot without the prior written approval in accordance with the provisions of Article 6 hereof.

7.24 Mailboxes. All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further

approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.25 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

7.26 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant or Approved Builder on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.27 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

## Article 8 Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the North Carolina Planned Community Act, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three (3) months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on all structures and a liability policy covering damage or injury occurring on the Owner's property.

The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

8.3 Damage and Destruction -Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least eighty percent (80%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Lot. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

8.4 Damage and Destruction -Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

#### Article 9 Mortgagee Provisions

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of



such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"). will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

9.4 VA/HUD Approval. As long as the Declarant has the right to appoint and remove the officers and/or directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Community the following actions shall require the prior approval of the VA and/or HUD as applicable: annexation of additional property to the Community, except for unilateral annexation by Declarant as provided herein; dedication of Common Property to any public entity; merger, consolidation or dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

#### Article 10 Easements

10.1 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the public records of the county where the Community is located.

10.2 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, if any, to limit the number of Persons who may use the

Community recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Community recreational facilities, if any, for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least eighty percent (80%) of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community.);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

(e) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least eighty percent (80%) of the Lots (other than Declarant) and the Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

(g) all encumbrances and other matters shown by the public records affecting title to the Common Property.

10.3 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve

the Community. Declarant, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

10.4 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.5 Easement for Maintenance. Declarant hereby grant to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.6 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes as may be more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

10.7 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and Approved Builder a blanket easement across all Lots for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. It is anticipated that increased storm water run off across downstream Lots will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarant, the Association or any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow

or increased velocity of surface water resulting from approved construction within the Community.

10.8 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any Approved Builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such Approved Builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such Approved Builder, including, but not limited to: the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way at street intersections within the Community; the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any Approved Builder may use residences, offices or other buildings owned or leased by Declarant or such Approved Builder as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

#### Article 11 General Provisions

11.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved

Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

11.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the ACC or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

11.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually, until terminated by the agreement of the Owners of at least eighty (80%) percent of the lots as provided in the North Carolina Planned Community Act.

11.5 Termination of Rights of Declarant and Approved Builder. The rights of Declarant and Approved Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant or the Approved Builder as the case may be no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by Declarant (or by an Approved Builder) in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's (or Approved Builder's) rights hereunder.

11.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination

which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Lot without the consent of the affected Owner. In addition to the above, this Declaration may be amended upon the affirmative vote or written agreement of the Owners to which at least sixty-seven (67%) percent of the Total Association Vote is allocated and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and North Carolina law were given.

11.7 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

11.8 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this -Declaration are declared to be severable.

11.9 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

11.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and

until Declarant, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

11.11 Preparer. This Declaration was prepared by David N. Dorough, Jr., Dorough & Dorough, LLC, Attorneys at Law, Two Decatur TownCenter, Suite 520, 125 Clairemont Avenue, Decatur, Georgia 30030.

11.12 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of North Carolina. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

11.13 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11.14 Indemnification. To the fullest extent allowed by the Non-Profit Corporation Law of the State of North Carolina, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

11.15 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto,

if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument this \_\_\_\_ day of \_\_\_\_, 2001.

DECLARANT: **BACK CREEK II DEVELOPERS, LLC**, a North Carolina limited liability company

By: REED ENTERPRISES OF CHARLOTTE, INC., a North Carolina corporation, as its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledges that he is \_\_\_\_\_ of REED ENTERPRISES OF CHARLOTTE, INC., a North Carolina corporation and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its \_\_\_\_\_

\* the Manager of Back Creek II Developers, LLC, a North Carolina limited liability company  
Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_ 2001.

[STAMP/SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

P:\Clients\1385\North Carolina\Back Creek Chase\Back Creek Chase Declaration 3.doc

OFFICIAL SEAL  
Notary Public, North Carolina  
County of Mecklenburg  
**JOYCE L. SCHMIDT**  
My Commission Expires 12-5-04



EXHIBIT "A"  
Property Description

Lying and being in the Crab Orchard Township, Mecklenburg County, North Carolina and being more particularly described as follows:

BEGINNING at an iron set located in the southerly margin of the variable width right-of-way of Interstate 485 (NCDOT Project No. 6.678004T SHT. 15) said iron being the northeasterly corner of property owned, now or formerly, by Back Creek Hollow as described on Map recorded in Map Book 33, at Page 301, of the Mecklenburg County Public Registry thence with the northerly line of Back Creek Hollow the following four (4) courses and distances: (1) South 53.50-45 West 257.29 feet to an iron pin; (2) North 58.28-53 West 220.89 feet to an iron pin; (3) South 43-32-54 West 388.54 feet to an iron set; and (4) South 03-04-50 East 57.19 feet to an iron found located in the northeast corner of property owned, now or formerly, by Thelma C. Morgan as described in deed recorded in Deed Book 2336, Page 67, of the Mecklenburg County Public Registry; thence with the northerly line of Morgan the following two (2) courses and distances: (1) South 60-27-38 West 1072.16 feet to an iron found and (2) South 60-27-38 West 30.16 feet to an iron pin located in Back Creek Church Road~ thence with Back Creek Church Road the following three (3) courses and distances: (1) North 28-36-36 West 531.93 feet to an iron pin; (2) North 48-31-37 West 54.94 feet to an iron pin; and (3) North 48-31-37 West 437.63 feet to an iron pin; thence leaving Back Creek Church Road in a new direction North 47-46-03 East 22.40 feet to an Iron found; thence North 47-46-03 East 149.83 feet to an iron found; thence North 47-46-03 East 244.87 feet to an iron found located in the southerly margin of property owned now or formerly, by Back Creek Presbyterian Church as described in deed recorded in Deed Book 8877, Page 168, of the Mecklenburg County Public Registry thence with the southerly margin of Back Creek Presbyterian Church, North 78-19-07-1094, 34 feet to an iron set located in the southerly margin of the variable width right-of-way of Interstate 485; thence with the aforesaid right of way margin of Interstate 485 the following four (4) courses and distances: (1) South 65.58-18 East 181.00 feet to an iron set; (2) South 65.58-18 East 325.95 feet to an iron pin; (3) South 66-53-28 East 409.11 feet to an iron pin; and (4) South 67-54-08 East 25.57 feet to the Point and Place of Beginning & containing 32.852 acres, more or less, as shown on a boundary survey of Reed Enterprises Inc., by Tarheel Surveying Company dated December 4, 2000, Drawing Number BACKCRK2.DWG, reference to which survey is hereby made for more particular description of the property.

EXHIBIT B

Additional Property Which May Unilaterally

Be Submitted To This Declaration by Declarant

ALL THAT TRACT OR PARCEL OF LAND lying and being in Mecklenburg County, North Carolina, adjacent to the real property described in the foregoing Exhibit "A" to the Declaration of Protective Covenants for Back Creek Chase or contiguous to other real property hereafter subjected to the Declaration. Adjacent property shall include property in the immediate vicinity of any property subjected to the Declaration even though separated by, without limitation, a public or private road, stream, pond or other body of water or a right-of-way of any kind.

BACK CREEK CHASE COMMUNITY HOMEOWNERS ASSOCIATION

# ADDEDUM

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**STANDARDS AND GUIDELINES FOR INTERPRETATION OF THE DECLARATION OF  
PROTECTIVE COVENANTS FOR BACK CREEK CHASE COMMUNITY ASSOCIATION,  
INC.**

**It is recommended that you SAVE this document for your records. When updated, you will be notified.**

**EFFECTIVE October 3, 2009**

**STANDARDS AND GUIDELINES FOR INTERPRETATION OF THE DECLARATION OF  
PROTECTIVE COVENANTS FOR BACK CREEK CHASE COMMUNITY ASSOCIATION,  
INC.**

Pursuant to its authority under the Declaration of Protective Covenants for Back Creek Chase Community, the Architectural Review Committee (ARC) and the Board of Directors of the Back Creek Chase Community Association, Inc. hereby issues the following Standards and Guidelines for interpretation of that Declaration. These Standards and Guidelines are supplemental to the existing Declarations, and are not inclusive of all items upon which the Back Creek Chase Architectural Review Committee may act. It is intended to provide guidance to Owners regarding requirements for additions and modifications to property in Back Creek Chase and matters of particular concern to the Architectural Review Committee in considering applications for approval of such additions and modifications. In addition, it sets forth various restrictions on other matters relating to the overall appearance of property in Back Creek Chase.

Compliance with the guidelines and requirements of this Guide is required, but does not constitute the sole basis for review of applications for approval under Article VI of the Declaration, nor does it guarantee approval of any application. In reviewing each submission, the ARC may consider any factors it deems relevant. *Decisions may be based on purely aesthetic considerations.* Each owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of proposed additions and modifications. To this end, it is important to note that decisions are made on a case-by-case basis, and although a modification or addition may have been approved in one instance, there is no guarantee that it will be approved again.

Unless otherwise specifically exempted by the Declaration or this Guide, *all proposed modifications and additions to homes and lots within Back Creek Chase community require application to and prior approval of the ARC.*

## ***I. General Policies***

1. Trash Containers & Woodpiles:
  - a. Garbage cans and recycle bins must be stored in one of the following locations (stated in the order of preference): 1) inside your garage or 2) behind the house (screened from street view by the house).
  - b. No garbage cans or recycle bins should be placed at the curb any earlier than sundown the night before collection and should be removed by midnight the day of collection.
  - c. Woodpiles, swimming pool pumps, filters and similar items are permitted in the rear yard and must be screened so as to be concealed from view from neighboring streets and properties. Screens should be consistent with the color of the dwelling or left in a natural treated wood. All screens must be approved by the ARC prior to installation.
2. Trash & Vegetation:
  - a. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any lot, except in sanitary containers (garbage cans) located in an appropriate area screened and concealed from view.
  - b. No weeds, vegetation, rubbish, debris, or materials of any kind whatsoever shall be allowed to accumulate on any portion of the lot which would render it unsanitary, unsightly, offensive, or detrimental to any other property.
  - c. Outside burning of trash, leaves, debris or other materials is not permitted.
  - d. Compost must be fully contained in an air tight container and not be visible from any street or common area.
  - e. Building materials and equipment used for architectural improvements, as approved by the ARC or Board, should not be stored where visible from the street for more than thirty (30) days.
3. Lawn & Landscaping:
  - a. Lawns must be mowed and maintained on a weekly basis during the growing season.
  - b. Lawns should be edged and grass clippings should be removed from the streets and sidewalks and secured in proper disposal containers.
  - c. Shrubbery and other plantings must be kept neat and trimmed as to appear neat and attractive.
  - d. Dirt yards, yards with large dirt patches, or yards that are consumed with weeds are prohibited. It is the homeowner's responsibility to maintain a healthy lawn that is alive, free of weeds and is neat and attractive.
  - e. All trees planted adjacent to fence lines, excluding easement areas, must be a minimum of five (5') feet away from the fence.
  - f. Landscaping additions may not impede or interfere with drainage of the lot or of adjacent lots.
4. Seasonal Holiday Decorations:
  - a. External seasonal house decorations of any type should be removed within 30 days of the holiday. Christmas lighting is not permitted before Thanksgiving or after January 15th.
  - b. Seasonal Yard statuary or "blow up" decorations are permitted within reason
5. Laundry:
  - a. No laundry or wash shall be dried or hung on the exterior of any home or lot.
  - b. Clothes lines are strictly prohibited
6. Signs:
  - a. Lot Owners may display the following:
    - i. One "for sale" or "for rent" sign on their lot, provided the sign does not exceed four square feet in size; stands no more than 36" tall as measured from the ground to the top of the sign; and is muted in tone and color or otherwise unobtrusive as determined by the Association's Board of Directors;

- ii. One sign, not to exceed two square feet, identifying the home/lot as being protected by a security system;
    - iii. During political campaign years, signs (of reasonable size and quantity, as determined by the Association's Board of Directors) endorsing political parties or candidates, provided they are not displayed for more than 45 days prior to an election and no later than 7 days after an election;
    - iv. Such signs or permits as may be required by governmental or municipal agencies, or by court order.
  - b. No other signs shall be displayed except with the express written approval of the Board."
- 7. Fireworks
  - a. The use and discharge of firecrackers and other fireworks are not permitted on any lot within the neighborhood.
- 8. Firearms
  - a. The use and discharge of firearms in the Community is prohibited. The term "firearms" includes without limitation, B-B guns, pellet guns, bows and arrows, sling shots and small firearms of all types.
- 9. Motorized Vehicles
  - a. Operation of motorized vehicles, including but not limited to, dirt bikes, go-carts, four wheelers, golf carts, etc are strictly prohibited on any community street or on any common area.
- 10. Barbeque Grills
  - a. Must be stored in the garage or rear of home not visible from the street
  - b. Cannot be used in the driveway or front of the home except in the case of an HOA sponsored neighborhood cookout or block party.
- 11. Damage to Common Areas
  - a. Each owner is responsible for damage caused to any common areas by their family or guests.
  - b. The owner may be directed to repair such damage, or the association may make the repairs and bill the homeowner for damages.

## ***II. Rental Policies***

1. In the event an Owner shall rent or lease his or her Lot such Owner shall immediately give to the Association in writing:
  - a. the name of the tenant and the Lot rented or leased;
  - b. the current address of such Owner;
  - c. a true and complete copy of the lease or rental agreement (inclusion of monthly rental fees is optional); and
  - d. the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have there under as a tenant.
  - e. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.
  - f. Any lease or rental agreement must include the following notice:  
 "The terms of this (lease or rental) agreement are subject to the provisions of the Rules, DCC&R's, Articles, and Bylaws of the Back Creek Chase Community Association and any applicable agreements between the Association and any of the Federal Agencies. Any failure by the (lessee or renter) to comply with the rules or terms of those documents shall be a default under this (lease or rental) agreement."

- g. The Board of Directors reserves the right to waive any or all of these restrictions with respect to any particular Lot if strict enforcement hereof would result in an undue hardship on the Lot Owner. Decisions on claimed hardships shall be determined on a case by case basis and are in the sole discretion of the Board of Directors, and are not appealable by the Lot Owner.

### **III. Architectural Policies**

1. All changes to the exterior of the home require ARC approval
2. Work can not begin until the owner receives approval in writing.
3. All projects must be completed within 30 days of beginning work (completion date conditional based on type of work performed)
4. The Committee will NOT approve and **specifically prohibits** the following:
  - A. Chain link fencing in any form (including dog pens / runs).
  - B. Fencing greater than 6' in height.
  - C. Fencing that does not meet the guideline of having no more than 80% of its surface closed as viewed from a point on a line of sight perpendicular to the line formed by the line of the fence. Eighty percent (80%) of a fence surface shall be defined as follows: For every 1" of board there must be 0.2" of space (i.e., 5" board would require 1" of space). The maximum board width allowed is 5\12 inches, i.e. No privacy fencing is allowed that completely blocks the view of the rear yard.
  - D. Location of fencing that does not comply with restrictions as set forth in the DCCR's. The DCCR's which specifically prohibits fences from being erected any closer to the street than the side and rear setback line on lots adjoining streets. Fences are also prohibited from extending beyond the rear facade of the building (unless approved by the Committee).
  - E. Storage of materials of any kind behind a fence or perimeter hedges if they are visible from the street or neighboring yards.
  - F. Brick, stone, block or other solid material mailboxes. Such mailboxes are prohibited by N.C. Department of Transportation. All mailboxes and mailbox posts shall be of a style and color approved by the ARC.
  - G. The construction, installation, erection, or maintenance of any television or radio pole, antenna, aerial, dishes larger than 18", or tower on any lot. Direct TV 18" satellite dishes will be allowed, but will be mounted on the house in a position not visible from the road (unless approved by the Committee due to reception issues as detailed in the DCCR's).
  - H. Above-ground pools must be approved, with the exception of small plastic or inflatable "kiddie pools". Plastic or inflatable should be removed at the end of season.
  - I. Any house/shutter paint colors different from the color that is already on the house (without prior approval from the Committee.)

J. The installation of freestanding security lights in the front yard greater than 7' in height, and in the rear yard, greater than 10' in height. This does not apply to builder standard eave-mounted security lights.

K. Window treatments as follows:

- Aluminum foil window covers
- Solid black window coverings
- Bed sheets, towels or newspapers

Window treatments such as blinds, draperies, shades, plantation shutters and stained glass shall be permitted. In windows facing the street, the side of the window treatment viewable from outside of the house should be white or off white unless otherwise approved by the ARC.

L. Window air conditioning units or fans.

M. Firewood piles are allowed in the rear yard, screened from public view, no larger than 2 cords (pickup truck load) and stacked no higher than 4 feet. Compost piles and firewood piles on corner lots must be located at the furthest possible point from the intersecting street.

N. The construction of circular driveways or asphalt driveways.

P. Statues (and/or figurines - including figurine planters) or fountains, which are visible from the road (unless approved by the ARC).

Q. Flagpoles located anywhere on the property. One (1) flag up to 4' X 6' in size may be attached to a flagpole mounted on the house. The flagpole may not exceed 4" in diameter and 60" in length. Only official flags of countries, states or universities and seasonal decorative flags may be displayed; flags which display trademarks or advertising, and battle flags and similar flags which, in the Board's judgment, are intended to, or tend to, incite, antagonize, or make political statements (other than a statement of citizenship or country of origin of the residence of the dwelling) shall not be permitted. Flags shall be maintained in good condition and shall not be displayed if mildewed, tattered or faded beyond recognition.

R. Any significant landscaping, or removal of landscaping, that changes the character of the lot. (Note: This does not generally include items such as grass, trees, flowers, shrubs and natural areas, unless the placement or removal of such items "significantly" changes the character of the lot. For example, complete removal of the front hedge and failure to replace it, failure to maintain any type of grass, i.e...dirt yards, or a natural area that encompasses the entire front yard).

S. Tree cutting of any kind (unless approved by the ARC)

T. "Above Ground" sprinkler systems (unless approved by the ARC)

5. Particular to Fences:



**Material:** All fences shall be made of wood, however fence support posts can be made of metal galvanized posts or wood “4x4” posts. Wood fences or wood gates cannot be of “open” or picket design, but must be solid in appearance. (Law enforcement prefers that fences NOT be solid and that there should be spaces between the pickets –see item C above.) Fences made of other materials, such as metal or masonry shall also need to be approved by the ACC Committee or Board of Directors. All rails and posts should be placed so in a manner so that the finished planks are viewed from the street and the adjoining Lot Owners, rather than the structural supports.

**Height:** No fence shall be higher than six (6) feet.

**Location:** Fences may be placed along a Lot’s property lines, with a one-inch (1”) setback from the line. Adjoining Lot Owners are expressly allowed to connect their fencing to the neighboring fence, provided the neighboring fence is no more than fifteen inches (15”) inside the property line. Fences may be located in the rear yard and must not extend toward the front of the house past the rear corner of the house. Corner lots are subject to setback requirements along the front of the lot and the side of the lot that joins the street right of way. Fences may not block access to sanitary sewer manholes. Fences may not block the flow of surface drainage or interfere with storm drain structures.

**Color:** Wood fences shall be left natural or may be finished with a clear preservative, stain or sealant. In order to clarify the term “clear” for the purpose of this guideline, the Board of Directors has determined that this requirement is designed to prohibit the painting of wood fences. A preservative, sealer or stain is considered to meet the requirements if the wood grain is clearly visible through the stain and no obvious color pigment is visible. The following stains are pre-approved for use.

<b>BEHR NATURAL SEAL PLUS #</b>	<b>BEHR SEMI-TRANSPARENT #</b>	<b>OLYMPIC MAXIMUM#</b>
31-92 CLEAR TINT	DP-533 CEDAR NATURAL TONE	CLEAR
31-80 WHITE CEDAR TINT	DP-534 REDWOOD NATURAL TONE	HONEYGOLD
31-81 REDWOOD TINT	DP-310 CHESTNUT	CEDAR NATURALTONE
31-82 FIR, PINE, SPRUCE TINT	DP-537 ROYAL HAYDEN	REDWOOD NATURALTONE

All other color choices require ACC approval.

**Maintenance:** All fences constructed shall be kept in good repair. Damaged or loose boards, framing or gates shall promptly be repaired or replaced as necessary. Fence treatments such as stains or sealants shall be maintained in good repair and any peeling, cracking, etc. shall be treated in a timely manner. The ACC committee and/ or the board of Directors reserves the right to determine if a fence is in need of repair.

6. Particular to Basketball Goals and other sports equipment, the following guidelines apply:

**Material:** Professional metal pole with fiberglass or Plexiglas backboard. Portable basketball goals are permitted provided that they are not placed in the street (including at the end of dead-ends or cul-de-sacs), not placed where play would occur in the street and are stored behind the house (screened from street view) or in the garage when not in use.

Trampolines and swing sets – must be situated behind the home as to not be visible from the street. ARC approval is required prior to installation.

Bike ramps and other sports equipment or children's toys must be stored out of sight when not in use.

7. Particular to the construction of outbuildings (storage sheds), the following guidelines apply:

Size: No greater than 10' x 10', unless approved by committee.

Height: Overall - no greater than 8 ½'.

Roof Design: "A Frame" and single pitch (shed) roofs are not permitted.

Roof Materials: All outbuilding roofs must be constructed of shingles that match those on the home.

Quantity: Only one outbuilding is permitted per lot.

Wall Material: Exterior walls should be constructed of either hardboard or vinyl siding to match the home, T-111 exterior plywood (or other exterior siding with 6-8" on-center exterior grooves similar to T-111 plywood painted the same color as the home. No particleboard, standard plywood, cinder block, or metal material is allowed. –Current rules says: All portable storage buildings must be constructed of wood products or metal materials.

Any applicable building permits are the responsibility of the homeowner.

Exterior Finish: All outbuildings must be trimmed and painted, in their entirety, in the same quality materials and colors of the home.

Utilities: Any utility facilities (electric, water, sewer, etc.) providing service to an outbuilding must be underground and adhere to standard building code for such facilities.

Foundation: A poured concrete foundation is preferred. Concrete blocks are acceptable if screened with lattice underpinning and/or landscaping. No vegetation shall be allowed to grow under the building. Buildings must not impede the drainage flow on the lot, or alter the drainage flow to adjacent lots.

Location: Outbuildings are to be placed in the rear yard of a lot and are subject to the following restrictions:

1) If an outbuilding is to be placed in the rear of a lot, the rear property line must be at least three (3) times larger than the outbuilding dimensions. For example, a 10' x 10' outbuilding placed in the rear of a lot requires a minimum of 30' rear property line. Current says: Outbuildings are limited to a surface area of not more than two (2%) percent of the entire lot in area.

2) Outbuildings should be placed at least 5' from any property boundary as provided by zoning regulations, and should contain sufficient clearance around all sides to permit appropriate maintenance. All portable buildings must be free-standing (no lean-to

structures).

3) Outbuildings should be placed no less than 50' from the property line adjacent to the street side of a corner lot.

4) Outbuildings should not be placed within the rear set back line on reverse frontage lots.

5) Outbuildings may not be placed within designated utility easements. It is the responsibility of the lot owner to ensure that the placement of any building does not interfere with the access to easements or any equipment within such easements by utility companies authorized to maintain equipment or systems within such easements.

Size: Must not exceed eight and one half (8) feet in height, and are limited to a surface area of not more than two (2%) percent of the entire lot in surface area.

Inspection: Before issuing final approval for the building, the ACC Committee and/or Board of Directors must inspect the finished building to ensure that it is in compliance. Property owners are requested to contact the management office to schedule an appointment with the ACC Committee and/or Board of Directors.

8. Particular to Doghouses, the following guidelines apply:

Material: Should be constructed of materials as described for outbuildings. (No plastic doghouses are allowed.)

Quantity: No more than two (2) doghouses are permitted on any lot without approval of the Architectural Committee.

9. Particular to Storm Doors, the following guidelines apply:

a.) All storm doors must be installed in accordance with current industry standards (your selected vendor should be familiar with these standards)

b.) The color must match and correspond with color scheme of home.

c.) Must be kept in good condition.

d.) Storm door must be "full" glass. Screen doors are not acceptable for placement on front doors.

e.) ARC/ACC approval is required prior to installation of any storm door.

10. Particular to Underground Irrigation Systems, the following guidelines apply:

ARC/ACC approval is not required for the installation of underground Irrigation Systems provided proper permitting is obtained from the City of Charlotte prior to installation and provided the system is maintained in accordance to guidelines set by the City of Charlotte and any other governing bodies.

#### *IV. Parking Policies*

1. **Commercial Vehicles** must be stored wholly within the garage and can not be parked in the driveway or on the street.
  - a. A commercial vehicle as defined by the Architectural Review Committee is as follows: A vehicle with permanent markings and/or attachments such as ladders or other devices. (Vehicles with removable signs or attachments must remove said items within 1 hour from time vehicle is parked.)
  - b. Police and Fire vehicles are not classified as commercial and are not restricted by this document.
2. **Boats/Trailers/RV's/Etc.** No boat, other watercraft, trailer motorcycle, recreational vehicle, golf cart, or camper shall be parked, stored or left on any part of the common area or on any part of a lot unless the same are fully enclosed within the garage located on the lot.
3. **Street parking is not encouraged.** Each lot has garages that will accommodate 1-2 cars, and a driveway that will accommodate 2-4 cars. Vehicles are to be parked at least 30' from stop signs and intersections per City Code Section 14-216. The average fire truck requires a minimum of ten feet of clearance. Vehicles should NOT be parked on both sides of the street as it inhibits the ability of emergency to pass.
4. **Parking on the grass or sidewalks is strictly prohibited.**
5. Unlicensed or vehicles incapable of being operated on a public highway must be stored in the garage or removed from the property
6. Assembly, disassembly, repair or maintenance of motor vehicles is not permitted in the community. Driveways must be kept clean and in good repair. Oil stains must be removed promptly.

#### *V. Pet Policies*

1. All pets must be properly vaccinated and licensed according to county laws
2. All animals must be properly supervised when outside
  - a. Any pet off your property must be on a leash
3. No animal shall be raised, bred or kept except dogs, cats and other household pets
4. If the board receives a complaint that the animal constitutes an unreasonable annoyance, inconvenience, nuisance or danger, the owner will be notified by the Board. If the board finds that the animal does constitute an unreasonable annoyance, inconvenience, or danger, the board may require such animal be removed from the property.
5. Owners must immediately remove and properly dispose of the bodily waste of their pets on any lot or common area.
6. Exterior pens and houses for household pets must be approved by the ACC/ARC prior to construction.