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FOR MULTIPLE PIN SHEET

SEE BOOK S139 PAGE 148-149

FILED Deborah B. Brooks  
Register of Deeds, Orange Co., NC  
Recording Fee: \$32.00  
NC Real Estate TX: \$.00



STATE OF NORTH CAROLINA : AMENDMENT  
TO  
COUNTY OF ORANGE : DECLARATION

Prepared by and Return to: Alison R. Cayton, Manning, Fulton & Skinner, P.A.  
Post Office Box 20389, Raleigh, North Carolina 27619-0389

THIS AMENDMENT TO DECLARATION is made this 1st day of APRIL, 2011 by HEFFNER PROPERTIES, INC., a North Carolina corporation (the "Declarant"); WESTHAMPTON INVESTORS LLC, a North Carolina limited liability company ("Westhampton"); MICHELLE A. HICKERSON and husband, WEAVER D. HICKERSON ("Hickerson"); MICHAEL FENTON and wife, YOUNG FENTON ("Fenton"); KEVIN M. McNEILLY, Trustee of the Kevin M. McNeilly Revocable Trust dated 3/2/05 ("McNeilly Trust"); and KENNETH EDWIN LENTZ and wife, CAROL CARRACCIO LENTZ ("Lentz").

WITNESSETH

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions and Restrictions of Westhampton recorded August 14, 2008 in Book 4588, page 424 Orange County Registry (herein together the "Declaration"); and

WHEREAS, Declarant desires to amend the Declaration and pursuant to Article XI, Section 5 of the Declaration, 2/3 of each class of members must approve the amendment; and

WHEREAS, Westhampton, Hickerson, Fenton, the McNeilly Trust and Lentz (together the "Owners") are all of the owners of lots in Westhampton other than the Declarant, and along with the Declarant have executed this Amendment.

NOW THEREFORE, in consideration of the benefits to the Property, Declarant and the Owners do hereby amend the Declaration as follows:

1. Article IX, Section A is hereby deleted in its entirety and the following is inserted in lieu thereof:

"A. All dwelling units shall have a minimum of 3,000 square feet of finished and



heated enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas."

IN WITNESS WHEREOF, the undersigned, being the Declarant and the Owners being duly authorized to do so, have duly executed this Amendment.

HEFFNER PROPERTIES, INC.

By: Thomas H. Heffner  
Thomas H. Heffner, President

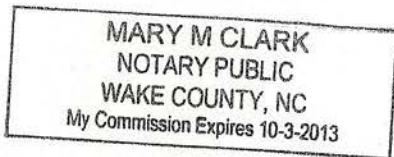
STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public, certify that **Thomas H. Heffner** personally came before me this day and acknowledged that he is President of **Heffner Properties, Inc.**, a North Carolina corporation, and that he as President, being so authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal on this the 5<sup>th</sup> day of December, 2010.

[NOTARY SEAL]



Mary M. Clark  
Mary M. Clark, Notary Public  
My Commission Expires: 10-3-2013

STATE OF NORTH CAROLINA :  
COUNTY OF ORANGE :

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF WESTHAMPTON

Prepared by and Return to: Alison R. Cayton, Manning, Fulton & Skinner P.A.,  
Post Office Box 20389, Raleigh, North Carolina 27619-0389

**THIS DECLARATION**, made the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by **Heffner Properties, Inc.**, a North Carolina corporation, hereinafter referred to interchangeably as “Declarant” or “Developer”;

W I T N E S S E T H :

**Whereas**, Declarant is the owner of certain real property located on Hatch Road, Orange County, North Carolina, (hereinafter referred to as the “Property”) which is more particularly described on Exhibit A attached hereto and made a part hereof;

**Now, therefore**, Declarant hereby declares that all of the Property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**Article I.**

**DEFINITIONS**

Section 1. “Association” and “HOA” shall be used interchangeably to mean and refer to Westhampton Owners Association, Inc, Its Successors And Assigns, a private non-profit corporation formed or to be formed by the Declarant for the mutual benefit and protection of the Property and the owners of the lots in Westhampton, all of whom shall be members of the Association.

Section 2. “Common Area” shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, which shall include any real property, improvements thereon, and other amenities conveyed to the Association by the Developer. The Common Area to be owned by the Association is set forth in the plat of Westhampton, as recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Orange County Registry and shall include but not be limited to the following: open space, a forty foot (40’) buffer easement located along the front line of each Lot and containing a sidewalk, the trail, street lighting, and subdivision signage and associated landscape area.

Section 3. “Declarant” shall be used interchangeably with “Developer”, and shall mean and refer to Heffner Properties, Inc. or its successor in interest if such successor should acquire undeveloped property from the Declarant for the purpose of development.

Section 4. "Declaration" shall mean this instrument as it may be from the time to time amended or supplemented.

Section 5. "Architectural Committee" shall mean and refer to a committee of Owners appointed by the Board of Directors of the Association, which committee shall be responsible for the review and approval of all plans and specifications for the construction of dwellings and improvements on Lots.

Section 6. "Lot" shall mean and refer to any of the numbered lots as shown on the plat of Westhampton, recorded in the Orange County Registry. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Areas; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority and no lot may be reconfigured without the prior approval of the local governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 7. "Membership" shall mean and refer to the rights, privileges, benefits, duties, and obligations, which shall inure to the benefit of and burden each member of the Association.

Section 8. "Member" shall mean and refer to every person or entity who has a membership in the Association.

Section 9. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties.

Section 11. "Property" shall mean and refer to that certain property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## **ARTICLE II.**

### **PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in addition to the Common Areas and all access easements thereto which

shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a. The right of the Association to limit the number of guests of members.
- b. The right of the Association to suspend the voting rights and privileges by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- c. The rights of the Declarant as set forth herein.
- d. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon which regulations may further restrict the use of the Common Area.
- e. The right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of use and enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all such property included in subsequent phases.

Section 2. Delegation of Use. An Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Area and facilities to any member of his family, his tenants, or contract purchasers who reside on the property.

### **ARTICLE III.**

#### **EASEMENTS**

Section 1. Easements are reserved and may be granted by Declarant or the Association as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

Section 2. In case of an emergency originating in or threatening any lot or the Common Areas and facilities, regardless of whether any Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter upon any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Section 3. The Declarant reserves unto itself, its successors and assigns, a perpetual and alienable easement and right on, over, and under the ground to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, cable television or other public conveniences or utilities on, in, or over each lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Register of Deeds of Orange County; provided further, that the Declarant may establish drainage ways for surface water whenever such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easement rights expressly include the right to cut any trees, bushes, or shrubbery, grade the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Each Owner shall not allow the diversion or concentration of stormwater runoff, without the prior written approval of the Architectural Committee, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 4. The Declarant reserves unto itself, its successors and assigns, the right to subject the real property in this Subdivision to a contract with Piedmont Electric Membership Corporation or other electricity generating company for the installation of street lighting, which contract requires a continuing monthly payment to Piedmont Electric Membership Corporation by the Association for street lighting service.

Section 5. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

## **ARTICLE IV.**

### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

- a. CLASS "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Owner. When more than one

person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

b. CLASS "B". The Class B member shall be the Declarant or Developer and Declarant or Developer shall be entitled to six (6) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in Class A membership equals the total votes outstanding in the Class B membership, but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (2) below, there are added additional Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to six (6) votes for each Lot that is owned by Declarant or for which Declarant holds a contract right to purchase) greater than those of the Class A membership, or

(2) Ten (10) years from the date of recordation of this Declaration

## **ARTICLE V.**

### **MANAGEMENT AND CONTROL**

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with this Declaration and the By-Laws. PROVIDED HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as all of the lots in Westhampton have been sold and conveyed by the Declarant to purchasers or until earlier of the date that is ten (10) years from the date of recordation of this Declaration, whichever occurs first. Management and control may be transferred to the Owners at any time by Declarant in its sole discretion.

## **ARTICLE VI.**

### **COVENANTS FOR ASSESSMENTS**

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

a. Annual assessments or charges;

- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- c. Insurance assessments;
- d. To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area, if any;
- e. A working capital assessment; and
- f. Penalty assessments, such assessments to be established and collected as hereinafter provided.

The annual, special, insurance and property assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for the improvement and maintenance of all easements, utilities, and the Common Area, as conveyed to the Association and as shown on the recorded plat of Westhampton, and repair of any other amenities located upon the common areas, the costs of enforcing this Declaration, and the payment of all other expenses associated with the common areas, including the prompt and full payment of all ad valorem property taxes and insurance for said common area(s), and, in addition, for the Association to keep the property in neat and good order, and to provide for the health, welfare, and safety of the Owners and residents of Westhampton.

Section 3. ANNUAL ASSESSMENTS. A lot shall become subject to annual assessments from the day following the day of conveyance by the Declarant or Developer to the Owner. The annual assessments shall be determined as follows:

- a. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual assessments shall be in the amount of \$900.00 (and shall be in addition to a one-time capital contribution of \$500.00 payable to the Association at the closing of the purchase and sale of each Lot pursuant to Section 7 of this Article) in order to carry out the responsibilities of the Association.
- b. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the membership.



- c. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above ten (10%) percent by vote of the owners of 2/3 of the Lots within the subdivision who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the owners of 2/3 of the lots who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. INSURANCE. The Board of Directors, on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards or other such risks, including, but not limited to, director's liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Property and Common Area, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at this own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

Section 6. INSURANCE ASSESSMENTS. All insurance policy premiums on the Common Areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense, and the Association shall levy against the Owners equally as an additional annual assessment, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for of all such insurance premiums.

Section 7. WORKING CAPITAL ASSESSMENT. At the time title is conveyed to an Owner, each Owner shall pay to the Association as a working reserve an amount at least equal to two (2) months assessment on that Lot. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the common areas and facilities furnishings and equipment, etc. Amounts paid into the working capital fund area shall not be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

Section 8. PENALTY ASSESSMENT. The Association may assess a penalty assessment against any Owner for violation of any provision of this Declaration or any rule or regulation promulgated by the Board of Directors of the Association in regard to the use of the common areas. A schedule of penalty assessments to be assessed for a restriction violation or

rule violations shall be established annually by the Board of Directors at their annual meeting and the collection of such assessments shall be enforced in the same manner as the collection of annual, special and insurance assessments.

Section 9. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast two-thirds of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND DUE DATES. The annual assessments provided for herein shall commence as to all lots on the first day following the date of conveyance of the lot by the Declarant or Developer to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 11. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed twelve (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, late charges, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be

signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 12. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien of such assessments.

## ARTICLE VII

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided in Section 2 of this Article VI, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 15 days nor more than 30 days in advance of the meeting setting forth the purposes of the meeting. The presence of Members or of proxies entitled to cast forty percent (40%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to a notice requirement of a minimum of seven (7) days and a maximum of twenty-one (21) days and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

Section 2. If within ten (10) years of the date of conveyance by Declarant of the first Lot, the Declarant should develop additional land as Declarant may hereafter acquire contiguous thereto, such land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights of way of public or private roads and utilities, shall be deemed not to separate otherwise contiguous property.

Section 3. Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above, (and by the Association and landowner of the annexed tract if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or

consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

Section 4. Subsequent to recordation of the Declaration of Annexation by the Declarant, or any other persons annexing land in accordance with this Article, the Declarant or any other person annexing land in accordance with this Article shall deliver to the Association one or more deeds conveying any Common Area as such Common Area is developed.

## **ARTICLE VIII.**

### **FIDELITY BONDS**

Section 1. GENERAL. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. AMOUNT OF COVERAGE. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

Section 3. OTHER REQUIREMENTS. Fidelity bonds required herein must meet the following requirements:

- a. Fidelity bonds shall name the Association as an obligee.
- b. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees”, or similar terms or expression.
- c. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agent) shall be paid by the Association as a common expense.
- d. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Associate, to any insurance trustee and each Eligible Mortgage Holder.

## **ARTICLE IX.**

## **ARCHITECTURAL CONTROL**

Section 1. **BUILDING AND SITE IMPROVEMENTS.** No dwelling, wall or other structure shall be commenced, erected, or maintained upon any lot in the Properties, nor shall any exterior addition to or change in or alteration therein (including color of paint or finish) be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all lots by the Declarant, by the Board of Directors of the Association, or by the Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee or, if applicable, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided that such addition, change, or alteration is in general conformity with the overall plan, design, and appearance of the subdivision in general. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant or the Architectural Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant or the Architectural Committee as the case may be, for its records. Neither the Declarant nor the Architectural Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Section 2. **LANDSCAPING PLANS.** All landscaping plans must first be approved by the Declarant, or the Architectural Committee. The removal of any tree in excess of eight (8") inches in diameter on any lot in the subdivision shall require the prior approval of the Declarant or the Architectural Committee. No landscaping shall be commenced or maintained upon any lot in the subdivision until the plans and specifications showing the nature, kind, and location of the same shall have been submitted to and approved in writing as to harmony of design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all lots by the Declarant, by the Board of Directors of the Association, or by a the Architectural Committee. In the event the Declarant, or its designee, or, if applicable, the Board, or the Architectural Committee, fails to approve or disapprove such landscape plan within thirty (30) days after said plan has been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided that such plan is in general conformity with the overall plan, design, and appearance of the subdivision in general. Refusal or approval of any such plan may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant or Architectural Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant or Architectural Committee, as the case may be, for its records.

Section 3. **DEVELOPER'S RIGHTS.** All duties and responsibilities conferred upon the Board or the Architectural Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any

lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

Section 4. APPROVAL OF PLANS:

A. All dwelling units shall have a minimum of 3,500 square feet of finished and heated enclosed dwelling area. The term “enclosed dwelling area” as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

B. No dwelling erected on a detached single-family residential Lot (including garage) shall be constructed nearer than fifty (50') feet to the front Lot line, twenty-five (25') feet to any side Lot line, and fifty (50') feet to the rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements may be granted by Declarant or the Board of Directors of the Association, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property. Roof overhangs, decks, stoops, steps and patios shall not intrude into any setback area.

C. No structure shall be erected, altered, placed or permitted to remain on any lot, except one single family dwelling not to exceed two and one-half stories of heated living space in height, unless the Declarant or the Architectural Committee, as the case may be, approves in writing a structure of more than two and one-half stories, and one or more small accessory buildings (which may include guest facilities) provided that the use of such dwelling or accessory building does not in the opinion of the Declarant or Architectural Committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business.

D. No mobile homes, manufactured homes, modular homes, or other similar pre-manufactured home shall be constructed, placed, located, or allowed to remain on any lot within the subdivision. It is the intent of the Declarant to only allow “stick-built” houses to be constructed on the lots within the subdivision.

E. All service utilities, trash containers, fuel tanks, clothes lines and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant or the Architectural Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision. All mail and newspaper boxes shall be uniform in design, and the design for mail and newspaper boxes shall be furnished by the Declarant. No fences shall at any time place or permitted to remain on any lot without approval of the Declarant or the Architectural Committee.

F. Off street parking within an enclosed garage for not less than two (2) passenger automobiles must be provided on each lot prior to the occupancy of any dwelling constructed on said lot which parking areas and the driveways connected thereto shall be constructed of a material approved by the Declarant, or its designee. No owner or invitee of any owner shall be allowed to park on any common areas, on any roadway or street right of way, or on any yard areas.

G. There shall be a forty foot (40') landscape buffer located along the front of all Lots in order to maintain and enhance a consistent natural look along the neighborhood streets. Trees, bushes, shrubs, grass or other vegetation contained therein shall not be installed or removed except upon written approval by the Architectural Committee.

H. Minimal and selective clearing of trees and vegetation for the installation of septic fields and septic repair areas shall be permitted pursuant to the approval and guidelines of the Orange County Health Department. It is the intent of the Declarant that septic fields and septic repair areas be maintained in a generally natural condition, however, this requirement shall not be interpreted to prevent installation of a septic tank on any Lot.

Section 5. MAINTENANCE BY ASSOCIATION The Association shall maintain all common areas, including all roadways, road lighting fixtures, entryway plantings, sidewalks, and shall pay all costs of operation thereof including premiums associated with general liability insuring the Association from liability arising from the ownership and operation thereof.

## **ARTICLE X.**

### **USE RESTRICTIONS**

Section 1. LAND USE AND BUILDING TYPE. Except for the Common Areas, which may be used for recreational purposes, all lots shall be used for residential purposes only except that so long as the Declarant or the Developer shall retain ownership of any lots, it may utilize and such lot for models for the purpose of selling or renting lots within the subdivision including the right to place "For Sale" or "For Rent" signs on such lot. The Declarant may assign this limited commercial usage right to any other person or entities at it may choose; provided, however, that when all lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. Co-ownership of lots shall not be prohibited. Except as herein provided, any building erected, altered, placed, or permitted to remain on any lot shall be subject to the provisions of Article IX of this Declaration relating to Architectural Control.

Section 2. NUISANCES. No noxious or offensive activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on such lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specified area.

Section 3. LOT MAINTENANCE. In the event that any Owner shall fail or refuse to keep such premises free from weeds, underbrush or refuse piles, or unsightly growth or objects, then, after thirty days notice from the Architectural Committee, the Association or its designee

shall enter upon such lot and remove the same at the expense of the Owner, and such entrance shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs, and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefore. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

Section 4. JUNK VEHICLES AND TRACTOR TRAILERS. No inoperable vehicle or vehicle without current registration, current state inspection sticker, current license plate, and current insurance will be permitted on the premises, and no tractor-trailers will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

Section 5. SIGNS. No signs shall be permitted on any lot or in the common areas without permission of the Board of Directors, except that "For Sale" signs conforming to Orange County Sign Ordinances may be displayed by an Owner on the Owner's Lot

Section 6. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot any time as a residence either temporarily or permanently. Provided however, that this provision shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any lot or in the Common Area until the construction of dwellings on all lots in the subdivision is completed.

Section 7. RECREATIONAL VEHICLES. No boat, motor boat, camper trailer, or mobile home shall be permitted to remain on any lot or on any street in the Properties at any time, without the written consent of the Developer or the Association or its designee. If allowed by the Developer or the Association or its designee, such boats or other vehicles must be screened or otherwise hidden from view from the street.

Section 8. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are at all times properly leashed or under the control of their owner and do not become a nuisance to the neighborhood.

Section 9. TV SATELLITE DISHES AND OUTSIDE ANTENNAS. No TV satellite signal receiving dishes will be permitted on any lot and no outside radio or television antennas shall be erected on any lot within the Properties unless and until permission for such dishes or antennae has been granted by the Board of Directors of the Association or its Architectural Committee in regard to size and location.

Section 10. WINDOW COVERINGS. All drapes, curtains, or other similar material hung at windows, or in any manner as to be visible from the outside, or any building erected upon any Lot shall be of a white or neutral background material unless an alternate material is approved by the Architectural Committee.



Section 11. EXTERIOR LIGHTS. All light bulbs or other lights installed in any fixtures located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs. No “area lights” or similar flood lights shall be allowed within the subdivision.

Section 12. VEHICLE REPAIRS. No repairs to any vehicle may be made in driveways, only in garages and not be visible from the street. No inoperable or immobile vehicle, whether or not containing current registrations, shall be permitted to remain in any driveway or on any street.

Section 13. ALTERATIONS. No person shall undertake, cause, or allow any alteration of construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association.

Section 14. SUBDIVIDING. No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any two (2) or more lots shown on the plat of the subdivision of the Property in order to create one or more modified lots; to further subdivide tracts shown on any such subdivision plat into two or more lots; to recombine one or more tracts or lots or a tract and lots to create a larger tract; to eliminate from this Declaration lots that are not otherwise buildable or are needed for access to any area of the Properties or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted lots or tracts suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said re-platted lots. In no event may a lot be subdivided or reconfigured without the approval of the appropriate local governmental authority.

Section 15. SWIMMING POOLS. No above ground swimming pools shall be permitted within the subdivision. Swimming pools, spas, and hot tubs shall be located on a Lot in a place specified by the Architectural Committee, and in any event shall not be located on the street side of a Lot. All fencing surrounding swimming pools, spas, and hot tubs shall be approved by the Architectural Committee.

Section 16. OPEN SPACE MAINTENANCE. The Open Space owned by the Association is intended to remain in its natural state. Hence, removing, destroying or cutting trees and vegetation within the Open Space is strictly prohibited except for: (a) selective removal of trees or vegetation for the prevention or treatment of disease, (b) removal of dead or fallen trees posing a hazard, (c) removal of invasive, non-native or noxious plants that threaten indigenous plant species, (d) relocation of exposed root balls to their original position, and (e) minimal and selective clearing necessary to maintain best forestry practices in the management of wooded areas. Trees and limbs from trees may be removed from the Open Space only with the prior approval of the Architectural Committee to determine if a tree has fallen or constitutes a hazard. The method of removal shall be approved by the Architectural Committee, and may include on-

site chipping or grinding, provided the methods and machinery used shall not result in erosion or compaction of soil.

## **ARTICLE XI.**

### **GENERAL PROVISIONS**

Section 1. **ENFORCEMENT.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing, the Association shall have the right, at its option, whenever there shall have been built on any Lot any structure which is in violation of these restrictions, to enter upon such Property were such violations exist, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry, abatement, or removal shall not be deemed a trespass. The failure to enforce any covenants, restrictions, reservations or conditions contained in these Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 2. **COST OF ENFORCEMENT.** Should the Association employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or re-entry, by reason of such breach, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots, and the Association shall have a lien upon such Lot to secure payment of all such claims.

Section 3. **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions which shall remain in full force or effect.

Section 4. **LOTS SUBJECT TO DECLARATION.** All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made apart of each and every deed of conveyance or lease. The covenants and restrictions of this Declaration are to run with the land and be binding on all persons and parties with an interest in the Property.

Section 5. AMENDMENT OF DECLARATION. Except as herein provided, the covenants and restrictions of this Declaration may be amended by an instrument signed by two-thirds (2/3) of each class of Members recorded in the Orange County Register of Deeds. Declarant's power to amend this Declaration as provided in Section 6 of this Article shall not require the consent of the Class A members and shall be valid when signed by the Declarant and recorded in the Orange County Register of Deeds.

Section 6. AMENDMENT BY THE DECLARANT. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members;

A. Prior to the sale of the first lot, this Declaration may be amended by the Declarant.

B. The Declarant or the Board may amend this Declaration to correct any obvious error or inconsistency in drafting, type or reproduction.

C. The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property, or to qualify the property or any lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency, or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina regarding purchase or sale of such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare.

D. The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

E. The Declarant, for so long as it has control of the Board, may amend this Declaration to include any platting change of the Property as permitted herein.

(SIGNATURE AND NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

IN WITNESS WHEREOF, the Declarant has hereunto executed this Declaration on the day and year first above written

HEFFNER PROPERTIES, INC.

By: \_\_\_\_\_  
Thomas H. Heffner, President

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, the undersigned Notary Public, certify that **Thomas H. Heffner** personally came before me this day and acknowledged that he is President of **Heffner Properties, Inc.**, a North Carolina corporation, and that he as President, being so authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal on this the \_\_\_\_ day of \_\_\_\_\_, 2007.

[NOTARY SEAL]

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My Commission Expires: \_\_\_\_\_