

BK1066PG0764

Filed for record
Date 3.9.98

Time 10:40 o'clock Q. m

JUDY G. PRICE, Register of Deeds
Union County, Morrice, North Carolina

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BRANTLEY OAKS SUBDIVISION

[Signature]
S.T.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BRANTLEY OAKS SUBDIVISION is made of this 26th day of February, 1998 by Waxhaw Development Group II, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant", and any and all persons, firms, or corporations hereinafter acquiring any of the within described property or any of the property hereinafter made subject to this Declaration.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Union County, North Carolina, known as Brantley Oaks Subdivision, as more particularly described by one or more plats thereof recorded in the following plats (the "Plats") in the Office of the Register of Deeds for Union County Plat Calhoun F, filed 004, 005, 006 to which Plats reference is hereby made for more complete descriptions;

WHEREAS, Declarant has agreed to establish a general plan of development as herein set out to preserve the values and amenities of the Property (as herein described) and to promote its desirability and attractiveness, and to restrict the use and occupancy of the Property made subject to this Declaration for the benefit and protection of the Property and for the mutual protection, welfare and benefit of the present and the future owners thereof;

Declarant hereby establishes a general plan of development as herein set out to preserve the value of Brantley Oaks and to promote its desirability and attractiveness, to restrict its use and occupancy for the benefit and protection thereof and for the mutual protection, welfare and benefit of its present and the future owners, and for the preservation and maintenance of the Common Property established by the Declaration and by the supplements hereto.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described on the recorded

Declaration by recorded supplements hereto referencing subsequently recorded plats, 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 Brantley Oaks as it now exists and is hereafter expanded and that such easements, restrictions, covenants and conditions shall burden and run with said real property and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties now or hereafter subjected to this Declaration or any part thereof, and shall inure to the benefit of each owner thereof and burden each owner's real property that is subjected to this Declaration.

*After Recording mail to:
Sunbelt Financial Group, Inc.
c/o 401 Carmel Rd., suite 105
Charlotte, N.C. 28226*

RECORDED
AND
VERIFIED
MKH

Article 1 - Definitions

Section 1. "Association" shall mean and refer to Brantley Oaks Homeowners Association, Inc., a not-for-profit North Carolina corporation, its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 3. "Committee" shall mean the Architectural Control Committee as provided in Article 5 of this Declaration.

Section 4. "Common Property" shall mean all property (i) owned by the Association or to which the Association may hold legal title, whether in fee or for a term of years, for the common, non-exclusive use and enjoyment of all members of the Brantley Oaks Homeowners Association, or (ii) that portion of any real property owned by one or more of the Owners that is subject to an easement granted in favor of all of the Owners or the Association. Common Property includes, by way of example but without limitation, all existing and future roads and rights-of-way (including bridges) and all greenways, erosion ponds, easements, median strips, cul-de-sac centers, planting areas and recreational areas (including, without limitation, open space, retaining berms, slopes, swales, earthen-works and related facilities, walking trails, and children's play grounds to the extent the same are developed on the Common Property), and all entry way, directional and informational signs (and the areas set aside for their location) and any other property as may be purchased or provided for the common use and benefit of the Declarant and the Owners, including, without limitation, such Common Property as may be shown on the recorded plats of the Property; provided however, it is expressly understood that this enumeration is by way of description of the type of facilities that may be developed and in no way shall bind or obligate the Declarant or the Association to provide any of the described facilities.

Section 5. "Declarant" shall mean Waxhaw Development Group II, LLC, a North Carolina limited liability company, and its successors and assigns if such successors and assigns acquire one or more undeveloped Lots from the Declarant for the purpose of development and if the rights and obligations of the Declarant hereunder are expressly assigned to and assumed by such successors and assigns.

Section 6. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and any Restrictive Covenants that (i) incorporate this Declaration by reference and (ii) are subsequently recorded in the Union County Public Registry.

Section 7. "Dwelling Unit" shall mean and refer to the completed single family home located upon a Lot.

Section 8. "Lot" shall mean and refer to any improved or unimproved building lot shown upon any recorded subdivision plat of the Property.

Section 9. "Mortgage" means any deed of trust or mortgage that encumbers one or more Lots.

Section 10. "Owner" shall mean and refer to any contract buyer and/or the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of any of the property made subject to this Declaration, but excluding those having such interest merely as security for the performance of an obligation, provided, however, the Declarant shall not be deemed an Owner.

Section 11. "Person" means any natural person, firm, corporation, partnership, trust, association or other legal entity.

Section 12. "Property" shall mean and refer to that certain property shown on the recorded maps referenced in the recitals to this Declaration.

Article 2 - Rights and Duties of Owners and the Association; Assessments and Liens; Use of Common Property

Section 1. Easements of Enjoyment. The Declarant and, to the extent provided by this Declaration, every Owner and such Owner's invitees shall have a non-exclusive right and easement of ingress, egress, and regress over and across the Common Property and over the roads within the Subdivision, for the purpose of providing access to and from the Lot(s) owned or Dwelling Unit(s) and for the purpose of his, her and their non-exclusive use and enjoyment of the Common Property, subject however to the limitations on such use and enjoyment of Common Property as provided for in this Declaration and by such reasonable rules and regulations as are promulgated by the Board. Every Owner, and the members of such Owner's family who reside with such Owner or are overnight guests of such Owner, shall have the right to use the recreational areas within the Common Property, subject however to such Owner paying when due the dues and assessments of the Association and abiding by all rules and regulations of the Association, including without limitation those governing the use of the recreational areas and the Common Property; provided that the Association, acting through its Board, shall have the right to suspend the voting rights (as hereinafter provided for) and the right to use and enjoy the Common Property during any period for which any assessment remains unpaid. The rights and easements hereby granted Owners may be delegated by an Owner to his or her tenants and contract purchasers who reside upon the Dwelling Unit upon such Owner's Lot.

Section 2. Association Duties: Maintenance Assessments: Use of Assessments: Exempt Property.

(a) The Association shall have the duty to repair, replace and maintain all Common entrance-ways, streets, roads, road rights-of-way, street lamps and lighting, entrance-way lamps and lighting, detention/retention ponds, dedicated slope easements, dams, spillways, berms, and other man-made improvements creating such retention ponds (if any) or governing their flow, restrictive development easements and shall have the right to pay the salaries, administrative office and other expenses necessary or useful to maintain and operate the Association, the Common Property and the recreational facilities.

(b) The Association, from time to time, shall have the right to establish an annual assessment that shall be payable by each Owner, in such periodic installments as the Association may determine, to be used to pay the costs and expenses of:

- (1) performing the obligations of the Association provided for by Section 2 (a) above;
- (2) the operating and administrative expenses of the Association, including without limitation, the procuring, maintaining and paying the costs of (i) liability and other insurance related to the Common Property, (ii) surety and other bonds related to the management of the Common Property and the Association, and (iii) such liability insurance for the benefit of officers, directors and employees, all as may be authorized by the Board of Directors of the Association;

(3) the maintenance, upkeep, replacement and repair of improvements, equipment and facilities within the Common Property; the seeding and re-seeding, fertilizing and mowing of grassed areas along and within road rights-of-way and other grassed portions of the Common Property; erosion control; repairing of road shoulders; surfacing, patching and resurfacing of parking lot and road pavement; placement of gravel; planting and maintenance of shrubs, trees and seasonal flowers; stocking with fish and maintenance and repair of any lakes (including the dredging of lake beds and the repair, replacement and repair of any lakes when required, of dams and their component parts such as drain pipes, spillways, earthen-works, grassed berms, etc.) and of dedicated slope easements and restrictive development easements, if any; the erection, maintenance, repair and replacement of street lamps and street lighting and entrance-way lamps and lighting, some or all of which may be undertaken by the Association entering into a lease or rental contract with one or more vendors for such purposes;

(4) creating or adding to the recreational facilities by constructing buildings and other improvements, including, without limitation, the erection, equipping and furnishing of club houses and bathrooms and for the purpose of erecting and constructing athletic courts, fields and areas, jogging trails, and swimming and wading pools; and the Board shall have the right and authority to borrow funds on behalf of the Association, evidenced by one or more promissory notes, to pay the costs incurred in adding to such recreational facilities and to secure the obligation to repay borrowed funds by encumbering the property of the Association

with one or more deeds of trust. Such loans shall be at such interest rates and upon such repayment terms as the Board approves, provided the Association at a called meeting may grant authorization that limits the authority of the Board in these matters, and provided further, the Association shall not be required to make, nor shall the Board have authority to require, any principal payment to any such Lender in any calendar year prior to the time the Board has collected and set aside, as a sinking fund, an amount reasonably budgeted by the Board for payment of the operating costs of the Association for the calendar year in question.

(c) Commencing January 1, 1999, the annual assessment shall be \$250.00 per Lot payable by the Owner thereof, which annual assessment shall be due and payable in such installments and at such times as shall be determined by the Board. This assessment will be prorated, on a calendar year basis, from the date title to each Lot, for which an assessment is payable, is transferred to the Owner.

(d) The annual assessment may be increased or decreased during any calendar year by the Board without a vote of the membership, to an amount not more than ten (10%) percent in excess of the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease exceeds the assessment for the previous year by more than ten (10%) percent.

(e) Annually, the Board shall have determined and shall have given written notice to each Owner of the annual assessment affixed against each Owner for the immediately succeeding calendar year.

(f) The assessments, charges and liens provided for by this Declaration shall not apply to the Common Property or any property owned by the Declarant.

Section 3. Special Assessments.

(a) In addition to the annual assessment referred to above, a one-time special assessment of \$250.00 shall be payable to the Association for every Lot purchased from the Declarant whether by deed or by land sales contract, such assessment to be due and payable upon the earlier of the date of closing of such purchase, or the date the contract purchaser takes possession of the Lot that is described in the land sales contract. The special assessment may be used to defray the costs of architectural review as provided for by Article 5 hereof. Any portion of the special assessment that is not required for architectural review shall not be refunded but shall be made a part of the general funds of the Association. All builders who purchase Lots shall pay the Special Assessments. The Declarant reserves the right to increase this special assessment at any time and from time to time as may be needed to pay the actual costs of architectural review and administration. This one-time special assessment shall be transferable in that: (1) upon the payment of the special assessment by the original purchaser of a Lot from the Declarant, the Association shall deem the special assessment satisfied so that no subsequent Owner of that Lot shall be obligated to pay such special assessment again, and (2) the original Lot purchaser from the Declarant and every seller of that Lot thereafter shall have the right to seek from the purchaser from such seller the

reimbursement of this special assessment. Neither the Declarant nor the Association shall have any duty to seek such reimbursement for the benefit of any person or party.

(b) In addition to the assessments specified hereinabove, the Association may levy against each Lot owned by an Owner yearly special assessments in any calendar year for the purpose of supplementing the annual assessment if the same are inadequate to pay the reasonable maintenance expenses and operating costs of the Association as described in Section 2 hereof, provided that any such special assessments shall have the assent of a majority of each class of the voting members of the Association at a duly called meeting. A special assessment may differ in amount as between Owners of Dwelling Units and Owners of unimproved Lots, provided that any difference is reasonable and equitably determined.

Section 4. Removal of Obstructions and Unsightly Growth, Debris and Materials.

(a) The Association, without notice, may remove any obstructions of any nature located within road rights-of-way or other Common Property (including but not limited to building materials, trees, shrubs, and mailboxes) which, in the opinion of the Association, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads. The Association shall have the right to use assessments collected for maintenance of the roads, road rights-of-way and all other Common Property (as such assessments are provided for elsewhere herein) for taking steps which are reasonably necessary or desirable to accomplish the removal of such obstructions.

(b) The Association shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Owner who directly or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way or other Common Property, and such Owner shall indemnify and save the Association harmless from all liability, claims, damages and expense imposed upon the Association, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way or other Common Property. In the event that the Owner responsible for such charge or liability, as aforesaid, fails and refuses, after demand by the Association to pay said charge or liability, as the Association shall have a lien against his Lot thereon and may enforce collection of the charge or liability, together with reasonable attorneys fees, by any and all remedies afforded by law or in equity, including without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said Lot or Dwelling Unit.

(c) If the Association, in its sole discretion, determines that any Lot has become unsightly due to grass or weeds that have not been mown, or due to debris of any nature having accumulated on the Lot, then the Association shall have the right from time to time to enter the said Lot, for the purpose of mowing the grass or removing the debris. At least ten (10) days prior to entering a Lot for said purpose, the Association shall advise the Owner by letter, sent to his last-known address, of the action to be taken if the Owner does not remedy the problem within the said ten (10) day period. The Association shall take reasonable steps to avoid damage to any trees planted on such Lot, to the extent that the association has been put

on written notice in advance by the Owner of the approximate location on a chart or map of such Lot showing the location of planted trees to be avoided.

(d) The Association shall have the right, in its sole discretion, to pay from the above-described assessments, such costs as are reasonably necessary to allow it to cut the grass, weeds and underbrush and to remove construction materials, construction in progress, building improvements, debris and grade and fill Lots and to charge the Owner of the Lot with the actual cost thereof to the Association. In the event that such Owner fails or refuses, after demand by the Association, to pay such cost, then the Association shall have a lien against said Lot for such cost and may enforce collection of said cost, together with reasonable attorneys fees by any and all remedies afforded by law or in equity, including, without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such unpaid cost and said associated collection expenses shall be a charge and lien against said Lot.

Section 5. Duty to Make Repairs. The Association shall have the responsibility for the repairs, maintenance and improvements of the roads that are located on Common Property and the roads that are shown on the aforesaid plat or plats until the roads on such plat(s) are accepted for maintenance by governmental authority.

The decision to expend Association funds to repair and maintain the roads or other Common Property shall be made by a majority of the Board. By such vote, the Board may delegate such authority to any committee of the Board. No Owner may escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

Notwithstanding the foregoing, each Owner of a Lot shall be solely responsible for any repairs to a road right-of-way or other Common Property caused by the negligence of said Owner, or his or her invitees, agents, licensees, or guests. For these purposes, it shall be a negligence for any building material to be unloaded or otherwise deposited on any road or road right-of-way.

Section 6. Personal Obligation for Assessments: Late Charges and Interest.

(a) The Owner of each Lot except as provided herein, shall be responsible for payment of the assessments levied by the Association, which assessments shall be the personal obligation of the Owner of each such Lot.

(b) Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the Board, which interest rate shall not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is 4% of the amount of the payment that is past due and shall be charged as to any assessment that is not paid within 30 days of its due date.

(c) The initial interest rate for late payment is the maximum rate of interest published by the Commissioner of Banks of North Carolina as provided for by § 24-1.1 of the North Carolina General Statutes (such rate being the latest published noncompetitive rate for U. S.

Treasury bills with a six month maturity as of the most recent fifteenth day of the month prior to the date of such interest charge) which shall commence to accrue on any assessment or other account balance that is not paid within 14 days of the date due.

Section 7. Lien for Unpaid Assessments.

(a) In the event that the Owner of any Lot fails and refuses, after demand by the Association, to pay any annual or special assessment, then the Association shall have a lien against said Lot and may enforce collection of said assessment, together with reasonable attorneys fees, by any and all remedies afforded by law or in equity, including, without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such unpaid assessment together with the costs and expenses of collection, including without limitation, reasonable attorneys fees, shall be a charge and lien against the said Lot.

(b) To secure the payment of the annual and special assessments as are levied by the Association, together with the costs of collection, including attorneys fees, all such charges shall be a continuing lien upon the Lot against which the assessments are made. Such charges shall also be the personal obligation of the person(s) who were the Owner or Owners of such Lot at the time the assessment came due. The personal obligation shall remain a lien upon the Lot upon transfer of title but shall not become the personal obligation of the purchasers thereof unless expressly assumed by them.

(c) The initial date upon which liens may be filed for failure to make payment of assessments and other charges is 30 days after the due date. The Board may change the initial late charge, interest rate, due dates and lien assessment dates by majority vote of the Directors.

Section 8. Subordination of Liens to Mortgages. The liens provided that are assessed or arise after the date that any Mortgage is filed for record shall be subordinate and junior to such Mortgage, if, and only if, the assessments that arise and fall due prior to the recording of such Mortgage are paid. As to such subordinate assessments and liens, the sale or transfer of any Lot pursuant to foreclosure or under a power of sale or by way of any proceeding in lieu of foreclosure shall result in the subordinated lien attaching to the proceeds of such foreclosure or sale junior only to the entitlement of the holder of such senior mortgage to proceeds but senior to the rights of the Owner of such Lot or other holder or holders of the equity of redemption. No such sale or transfer shall relieve or exempt the transferee who acquires the Lot so foreclosed or sold under a power, or exempt or relieve such Lot, from liability of payment assessments, and the lien for payment thereof, that arise from and after the date that the foreclosure sale is confirmed.

Section 9. Other Association Programs and Benefits. The Association shall have the right and duty to enforce the restrictions relating to the restrictive development easements and the slope restriction easements, if any. Additionally, the Association shall provide such other programs and benefits for the Owners approved by a majority vote of a quorum of each class of members present in person or by proxy at meeting duly called for such purpose at which a quorum was present and acting throughout.

Section 10. Declarant's Obligation To Pay Assessments. The Declarant shall have no obligation to pay any annual or special assessments or other costs or expenses with regard to any Lot owned by it or with respect to assessments accrued as to any Lots to which Declarant obtains title, either due to breach of sales contracts, deeds in lieu of foreclosure, or by foreclosure.

Section 11. Prohibited Activities On Common Property. No hunting nor trapping of any wild life, including but not limited to, birds, ducks, geese, turkeys, or deer shall be permitted. The discharging of firearms is strictly prohibited from any of the property shown on the aforesaid plats. The owner of the Common Property, whether the Declarant or the Association, as the case may be, shall have the right to establish other reasonable rules and regulations governing the use of the Common Property.

Article 3 - Membership, Voting Rights, Officers and Meetings

Section 1. Membership. Every Owner of a Lot which is subject to this Declaration shall be a member of the Association. Membership is appurtenant to each Lot and may not be sold or otherwise transferred except in concert with the sale and transfer of the Lot to which it is appurtenant. If and when Declarant develops additional phases in the Subdivision the Owners of those Lots shall be members of the Association. The Declarant shall also be a member so long as it owns property within this expandable Subdivision.

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

Class A and Class B

Initially, Class A members shall be all Lot Owners with the exception of Declarant and shall be entitled to one vote for each Lot owned. When more than one (1) person owns an interest in a Lot all shall be members but the vote shall be exercised as such persons shall determine in writing, which writing shall be filed with the Secretary of the meeting prior to voting, but in no event shall more than one vote be case with respect to any Lot.

Class B members shall be entitled to vote ten (10) votes for each Lot owned. Class B membership shall consist of the Declarant, provided that Class B membership shall automatically be converted to Class A membership upon the happening of the earliest of the following:

- 1) The earlier of four months after seventy-five (75%) percent of all the Lots in the Subdivision are sold and conveyed by the Declarant to unrelated third parties or the fifth anniversary after the formation of the Association; or
- 2) At such time as Declarant voluntarily relinquishes majority control of the Association by a duly recorded instrument.

Upon the happening of the earliest of the above-described events, Class B membership (described hereinafter) shall cease and terminate and shall be converted to Class A membership.

Section 3. Number and Composition of the Board of Directors. There shall be five (5) members of the Board who shall serve until such time as their successors are duly elected and agree to serve. The Directors shall have annual meetings and such other meetings as may be called at the request of the President of the Association or by any two (2) directors. So long as the Declarant, or its successors or assigns, is the Class B member, it shall select the Board, provided it must select at least two (2) of the members from the Lot Owners other than the Declarant.

Section 4. Suspension of Voting Rights. The Association, acting through its Board, shall have the right to:

- (a) Suspend the voting rights (if any) of an Owner for any period during which assessment on his, her or their Lot(s) remain unpaid and enforce collection of the same; and
- (b) Suspend the voting rights (if any) of each Owner who is a contract buyer for any period of time during which payments to the Declarant pursuant to terms of said contract are delinquent during which period of time the Declarant shall succeed to the voting rights of said contract buyer.

Article 4 - Conveyance of Common Property

From time to time, Declarant by one or more deeds will convey its right, title and interest in and over the road rights-of-way and any other Common Property within the Subdivision to the Association. Such conveying shall be completed not later than the date that Declarant has sold and conveyed 75% of the Lots that are shown on the particular recorded plat that shows thereon the Common Property to be conveyed to the Association.

Article 5 - Architectural Control; Construction Limits

(a) In order to control design and location of the houses and other improvements to be constructed, erected, placed or installed (the "improvements") upon the Lots in the subdivision, the Declarant hereby creates an Architectural Review Committee for the purpose of reviewing, approving, suggesting changes to, and rejecting plans and specifications for such improvements.

(b) The Committee shall be controlled by the Declarant until a certificate of occupancy is issued for the residences on all the Lots in the subdivision, provided Declarant, by written notice to the Association, may elect to relinquish control of the Committee to the Association at an earlier date, and in either case the control of the Committee shall then automatically devolve and pass to the Association. During the period of control by Declarant,

the Committee shall be comprised of such members, not to exceed three, as Declarant designates. The Committee shall be composed of three members upon the Association taking control who shall be elected by a majority vote of the members of the Association at a meeting of the members called for this purpose. At any time, the Committee may, but shall not have the duty to, retain one or more architects or other house designers and land planners as it deems advisable to assist the Committee in performing its review responsibilities.

(c) No building, fence, wall, outbuilding or any other accessory feature to the dwelling or any other structure upon any Lot shall be commenced, erected, placed, maintained or altered on any Lot or combination of contiguous Lots, until the Complete Construction Plans (the "Plans") are approved, in writing, by the Committee or its designated agents.

(d) The Plans include the complete construction/building plans and specifications, including, without limitation, the plot plan (showing proposed location and elevation of such buildings [including exterior colors, materials and finishes], fences, walks, drives, parking areas, water well and septic tank and drain field, etc.). The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure, and all accessory buildings, the location of the principal residential structure, and the septic tank and septic drain field(s) and all accessory buildings, structures and improvements on the Lot, the size and plan of the garage or carport, location and manner of construction of each driveway, swimming pool, utility building, patio, tennis court and manner of improvements for athletic, recreational or gymnastic purposes and all other exterior improvements, the composition and color of raw and finished materials used on the exterior of all structures, and the location and type of any landscaping, shrubbery and other plantings.

(e) The Committee or its designated agents shall have fifteen (15) days after physical receipt of the Plans to accept or reject the same in whole or in part. If no response by the Committee has been made in writing within said 15 days, the Plans shall be deemed to be approved as submitted. After the Plans are approved and after the Committee gives written permission for construction to begin, or after the passage of the 15th day following the physical receipt of the Plans by the Committee without its action thereon, whichever may be the operative condition, the actual construction shall be commenced and completed in accordance with the approved Plans, together with the requirements of the Declaration. The Committee shall have the right to waive minor setback violations, not to exceed a variance of ten (10%) percent in any single instance, when the remedial costs of correcting such violation, in the Committee's opinion, would impose undue hardship upon the violator.

(f) The actual construction shall be the responsibility of the Owner of the Lot and his builder. Any permission granted for construction under this covenant shall not constitute or be construed as an approval, warranty or guaranty, express or implied, by the Declarant or the Committee or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such buildings or other improvements.

(g) Construction of dwellings must be completed within the following time limits:

1) With the exception of dwellings, the construction of which is interrupted or delayed due to physical damage to the work in progress (such as damage due to fire, lightning, windstorm, hail, riot or civil commotion, explosion, or theft), each dwelling under construction must be completed within one (1) year after construction begins, unless a longer time for construction is permitted with the written consent of either the Declarant or, if the Declarant so designates, by the Committee.

2) As to construction that is delayed due to such physical damage, the Owner shall have 180 days from the date of such damage or destruction to recommence construction and upon such recommencement, shall have an additional 180 days to complete construction.

In the event that completion of the dwelling on any Lot is not completed within the applicable time limit set out above or is being constructed in a manner that does not comply with the plans as approved by the Committee, and it is determined that construction progress has diminished to such an extent that completion of the dwelling is unlikely within 120 days, the Board will be advised of this determination. The Board shall then have the right to give notice to the Owner that the Owner has the obligation, within 30 days, to complete the removal of all the construction work in progress, including, without limitation, the foundation and all building improvements and all stored building materials and fill and grade the [Lot] so that it is restored to its natural grade level. The Association shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and place a lien upon the Lot on Owner's failure to pay these charges.

Article 6 - General Use Restrictions

Declarant does hereby covenant and agree with all persons, firms or corporations hereafter acquiring title to any portion of the Property, that the Property shown on the recorded plats herein referred to shall be subject to general use restriction as to the use thereof, which restrictions are set forth herein as to the properties that are initially subjected to these Covenants, and, as to additional phases of Brantley Oaks Subdivision, such general use restrictions shall be recorded separately by way of Restrictive Covenants that refer to this Declaration and incorporate it by reference.

(a) Residential Purposes. Except as otherwise provided in this Declaration, the Lots shall be used for residential purposes only, and no structure shall be erected, placed, altered or permitted to remain on any Lot other than one detached, single-family dwelling, together with outbuildings customarily incidental to the residential use of the Lot, except that Declarant reserves the exclusive right to construct a roadway over any Lot owned by it in order to grant access to other property now owned or hereafter acquired by Declarant and in such cases, the remainder of any such Lot not used for the roadway shall still be subject to this Declaration.

(b) Dwelling Area. Each single family dwelling shall have an enclosed, heated living area of the main structure, exclusive of open porches, garages, and other unheated spaces, of not less than two thousand (2,000) square feet of minimum heated area for one-story dwellings,

not less than two thousand four hundred (2,400) square feet of minimum heated area for one and one-half story dwellings and a minimum heated area as aforesaid of not less than two thousand eight hundred (2,800) square feet for dwellings with two or more stories. One guest house shall be permitted per Lot provided it is attached to the primary residential building or is otherwise approved by the Committee.

(c) Garages. All Dwelling Units must have a primary garage accommodating at least two (2) vehicles under roof. The garage shall have an exterior of similar materials as the primary residence and shall be completed no later than the issuance of the certificate of occupancy for the primary residence. Primary garages shall have only side or rear vehicle entrances in relation to the "front line" of the primary residence. The vehicle entrance into any secondary garage shall be determined by the Committee. All driveways shall be constructed of either concrete, asphalt, or other decorative type of material as approved by the Committee.

(d) Fences and Walls. No fence or wall shall be constructed without the Committee first reviewing and approving the plans for such structures, which plans must show the location, height, design and material composition of such structures.

(e) Combination and Subdivision of Lots. More than one (1) Lot (as shown on said plats) or parts thereof, may be combined to form one (1) or more Lots by (or with the written consent of) Declarant, or its successors or assigns, and in such event the building line requirements prescribed herein shall apply to such Lots, as combined. No Lot may be subdivided by sale or otherwise, except Declarant, its successors and assigns, reserves the right to subdivide any Lot which it owns. Upon combination or subdivision of Lots, the easements reserved herein shall be applicable to the rear, side and front lot lines of such Lot as combined or subdivided.

(f) New Construction. Construction of new residential buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building or portion thereof on a Lot and remodeling or converting the same into a Dwelling Unit in this subdivision excepting however Declarant's mobile offices provided for hereinbelow. Any dwelling constructed upon a Lot must be completed within one (1) year subsequent to commencement of construction, except with the written consent of Declarant, its successors or assigns.

(g) Offensive Activities. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No hunting nor trapping of any wild life, including but not limited to, birds, ducks, geese, turkeys, or deer shall be permitted. The discharging of firearms is strictly prohibited from any of the property shown on the aforesaid plats. No animals or poultry of any kind may be kept or maintained on any of said Lots, except a reasonable number of dogs and cats and other indoor household pets that shall be kept as household pets. Dogs must be kept on leashes when off the Owner's Lot. No dogs shall be permitted to roam the Property and the Association may have strays and dogs that are not leashed and are found off their Owner's Lot picked up by governmental authorities.

(h) Sales and Construction Offices. Declarant shall be permitted to erect one or more mobile offices or houses on any Lots that it owns for the purpose of maintaining sales information centers and construction coordination offices.

(i) Location of Water Wells. Each Owner shall locate the well drilled on such Owner's Lot so as to comply with all the governmental regulations regulating the minimum distance between such well and septic fields proposed or approved for all Lots adjoining such Owner's Lot. As with other use restrictions, the Declarant or any other owner shall have the right to obtain an injunction prohibiting the use of any well in violation of this restriction.

(j) Dumping of Refuse. No portion or part of any Lot shall be used or maintained as a dumping ground for rubbish or other refuse. Trash, garbage, or other waste shall not be kept, except in sanitary containers screened from view from all roads. This regulation shall not pertain to burial or "stump" pits, the location of which is governed by land use law and shown on the recorded plats of Brantley Oaks Subdivision.

(k) Easements for Utilities and Drainage. Easements ten (10) feet in width along the Lot lines of all Lots are reserved for installation, repair, replacement and maintenance of utilities, including storm water drainage, and including the right to keep said easements free and clear of all obstructions. An easement of fifteen (15) feet is reserved for such purposes along the rear line of all Lots that do not adjoin other Lots or properties within the Subdivision.

(l) Outside Clothes Lines and Satellite Dishes. No outside clotheslines shall be permitted. No satellite dishes shall be permitted unless screened from view. The design of such screening must be approved by the Committee prior to installation.

(m) Prohibition Against Parking Trucks and Trailers on Lots. Unless located within enclosed garages, no house trailer, travel trailer, motor home, tractor trailer trucks or any other such vehicle shall be kept or maintained or located upon any Lot; provided, however, the Architectural Control Committee, at its sole discretion, may waive this requirement in any instance when an Owner presents to the Committee plans for permanent screening that the Committee finds aesthetically acceptable for the purpose of permanently screening the aforesaid vehicle or vehicles from view from all other Lots and from the streets that are within view of the Lot in question. The Committee shall have no duty to waive such requirement, but in the event it does, the Committee shall have the right to enforce the construction of the screening to conform to the plans that it approves. No vehicles that are disabled or under repair shall be kept upon any Lot unless located within enclosed garages. No Lot shall be used for storage of building materials prior to the issuance of the building permit for the Primary Residence.

(n) Signs. No signs of any description shall be displayed upon any Lot with the exception of rental or sales signs which must be approved by the Committee in advance as to size, content, color and materials.

(o) Mail Box Design. The Committee shall have the right, at its option, to specify the style, design, color, size and materials for all mail and newspaper receptacles.

(p) Horses. To the extent permitted by Union County ordinances and regulations, horses are permitted to be maintained on any Lot within the Property having a minimum size of 3.5 acres. Each Lot Owner shall have the affirmative obligation to comply with all such county ordinances and regulations.

(q) Limitation on Scope of Restrictions. Nothing herein contained shall be construed as imposing any covenants and restrictions on any property of the owner of this subdivision other than the Property that is subjected to the Declaration.

Article 7 - General Provisions

Section 1 - Gender. Whenever the context and construction so require, all words used in the singular number herein shall be deemed to have been used in the plural, and vice versa, and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

Section 2 - Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

Section 3 - Methods of Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In the event it is necessary to enforce this Declaration by appropriate legal or equitable proceedings, the party or parties violating or attempting to violate the same shall be liable for the cost of such proceedings including reasonable attorney's fee.

Section 4 - Severability. Invalidation of any one or more of these covenants by judgment or court shall not adversely affect any of the other provisions of this Declaration or the application of the covenants so invalidated to facts or circumstances that differ from those facts or circumstances under which such invalidity was determined, to the end that the Declaration shall remain in full force and effect to the extent permitted by law.

Section 5 - Amendment. The Declarant reserves the right to amend this Declaration from time to time without joinder of any of the Owners for the following purposes:

- (a) To clarify the meaning of or to correct clerical errors in the Declaration; and
- (b) To correct grammar, spelling, capitalization and other matters of syntax.

The execution of Restrictive Covenants adding additional properties to the Declaration and expanding the Subdivision as provided herein may be made by the Declarant acting alone. All other amendments to this Declaration shall require an affirmative vote of at least seventy-five (75%) percent of the Owners.

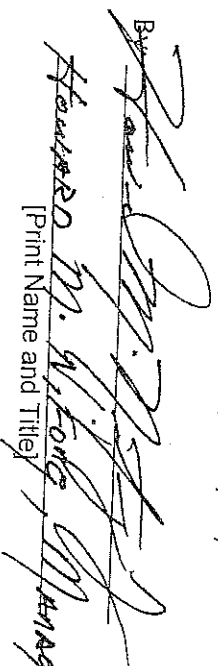
Section 6 - Term. This Declaration shall remain in full force and effect for a period of fifty years from the date this Declaration is filed for record, after which term, this Declaration shall be automatically extended for consecutive additional terms of ten (10) years unless and until an instrument signed by a majority of the Owners is recorded in the Union Public Registry, which instrument modifies or cancels this Declaration.

Article 8 - This Declaration Runs With the Land

These covenants are to run with the land and shall benefit and be binding on all parties and persons (and their respective heirs, representatives, successors and assigns) claiming title to any of the Property herein described for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a seventy-five (75%) percent majority of the then Owners of the Lots has been recorded agreeing to change said covenants in whole or in part.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed this 26 day of February, 1998

WAXHAW DEVELOPMENT GROUP II, LLC, (SEAL)
a North Carolina limited liability company

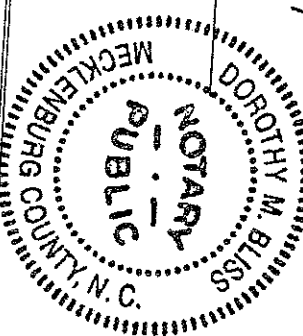
 (SEAL)
Howard M. N. King, Manager
[Print Name and Title]

STATE OF NORTH CAROLINA; COUNTY OF MECKLENBURG

I, a Notary Public of the County and State aforesaid, certify that Howard M. Nifong, Jr. personally came before me this day and upon being duly sworn did acknowledged that he is the Manager of Waxhaw Development Group II, LLC, a North Carolina Limited Liability Company, and that the foregoing instrument was signed in its name by him as its Manager, sealed with the company seal of the said Limited Liability Company, and the said Howard M. Nifong, Jr. acknowledged the due execution of the within instrument by him in his capacity as the Manager of Waxhaw Development Group II, LLC and as the act and deed of the said Limited Liability Company. Witness my hand and official stamp or seal, this 26th day of February, 1998.

My Commission Expires: 3/26/00 Notary Public

Affix Notary Seal/Stamp



The foregoing Certificate(s) of Dorothy M. Bliss, N.P. of Meck. Co., NC is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

JUDY G. PRICE

REGISTER OF DEEDS FOR UNION COUNTY

By Shelena Cicea

Deputy/Assistant Register of Deeds:

DATED: _____