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DRAWN BY AND RETURN TO: Lewis R. Fisher

STATE OF NORTH CAROLINA
COUNTY OF UNIONFiled for record
Date 8.30.2001 o'clock P m
Time 12:40
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North CarolinaAMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR LOXDALF FARMS SUBDIVISION

WHEREAS, R. L. Rushing & Co., A North Carolina Corporation of Union County, North Carolina, is the developer of certain real estate, known as Loxdale Farms Subdivision, which is located in Union County, North Carolina, and shown on that map entitled "Loxdale Farms Subdivision" recorded in the Office of the Register of Deeds of Union County, North Carolina, in Plat Cabinet G, at File Numbers 523 and 524.

AND WHEREAS, R. L. Rushing & Co., has heretofore imposed on the lots of Loxdale Farms Subdivision as shown in Plat Cabinet G, at File Numbers 523 and 524, those restrictions are found in Deed Book 1580 at page 776, Union County Register of Deeds,

AND WHEREAS, R. L. Rushing & Co. has reserved unto itself pursuant to paragraph 17.12 of that Declaration of Covenants, Conditions, and Restrictions, the right to amend the subject Restrictive Covenants without the joinder of other parties.

AND WHEREAS, R. L. Rushing & Co. has determined that it is necessary and appropriate to amend the subject restrictive covenants as follows.

NOW, THEREFORE, in consideration of the premises herein, the undersigned, for itself, its successors, assigns and current property owners and future grantees, does hereby amend paragraph 7.01 Residential Use of the Declaration of Covenants, Conditions, and Restrictions as follows:

By deleting the sentence "Said garages shall have either a side or rear vehicular entry" and replacing same with the following sentence " Said garages shall have either a front, side or rear vehicular entry."

THIS the 4th day of August, 2001.

R. L. Rushing & Co.
A North Carolina Corporation

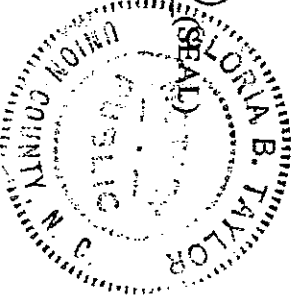
By: 
Ronnie L. Rushing, President

STATE OF NORTH CAROLINA
COUNTY OF UNION

I, Gloria B. Taylor, Notary Public, certify that Ronnie L. Rushing personally appeared before me this date and acknowledged that he is President of R. L. Rushing & Co., and that he, as President being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this 27 day of August, 2001.

Gloria B. Taylor
Notary Public



My commission expires: November 1, 2005

NORTH CAROLINA - UNION COUNTY
The foregoing certificate(s) of
Gloria B. Taylor

Notary Public
of is/are certified
to be correct. Filed for record this 28th day
of Aug 2001 at Union

JUDY G. PRICE, REGISTER OF DEEDS
BY: mona griffin
Asst. Regt.

RL
590

Filed for record
Date 10.18.2001
Time 12:30 o'clock Pm
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LOXDALE FARMS SUBDIVISION

THIS DECLARATION is made as this 11th day of June, 2001, by R. L. Rushing & Co., A North Carolina Corporation, hereinafter referred to as "Declarant" with reference to the following facts:

RECITALS

A. Declarant is the owner of certain real property in Union County, North Carolina, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference comprising a subdivision to be known as Loxdale Farms Subdivision (the "Property"). Declarant intends to improve Loxdale Farms as a planned residential development by dividing such property into Lots appropriate for single-family dwellings; and

B. Declarant intends to develop the Property under a common scheme and general plan for the improvement and maintenance thereof.

C. For this purpose, Declarant intends to subject the Property shown on Exhibit "A" attached to the limitations covenants, conditions, restrictions, easements, licenses, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of the Property and the future owners of Lots therein.

D. Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate Loxdale Homeowners Association, Inc., as a non-profit corporation under the laws of the State of North Carolina for the purposes of administration and enforcing the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant hereby declares as follows:

ARTICLE 1
DEFINITIONS

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

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

0777 Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

1.03. Association. "Association" means Loxdale Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

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

1.05. Builder. "Builder" means any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale on the Property.

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

1.07. Common Area. "Common Area" means all real property owned by the Association for the common use and enjoyment of its Members, and all improvements and facilities constructed thereon for such purposes including but not limited to signage, irrigation and/or drainage facilities, pond, water feature, landscaping, lighting, or other amenity constructed on portions of property designated "Common Open Space", "Common Area" or other similar designation, but does not include real property over which the Association has only an easement.

"Common Area" shall also include (i) any public road, the right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the County but not accepted for public maintenance by the appropriate governmental entity, and (ii) any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sac within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

1.08. Completion of Sales. "Completion of Sales" means the earlier of (1) conveyance of all Lots to purchasers other than a successor Declarant hereunder or the later of (i) ten (10) years from the closing of the first sale of a Lot to a purchaser other than a Builder or a successor Declarant (ii) three (3) years from the conveyance of the first Lot in the Phase most recently made subject to this Declaration (provided, however, if Declarant is delayed in developing the Property, constructing improvements or selling Lots and dwellings due to strikes or work stoppages; shortages of materials, supplies, fuel, power, or energy; moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services; inclement weather; civil strife; major disaster or other cause beyond Declarant's reasonable control, said ten (10) year period shall be extended by the period of any such delay) or (iii) at such time as Declarant records a Notice of Termination of Sales in the public records of Union County.

1.09. County. "County" means Union County in the State of North Carolina.

1.10. Declarant. "Declarant" means, R. L. Rushing & Co. a North Carolina Corporation, and any successor or assign to whom Declarant assigns its rights and interests as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

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

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

1.13. Lot. "Lot" means any numbered single family lot or plot of land, together with any improvements thereon, as shown upon any recorded final subdivision map covering the Property or a part thereof, which is not a dedicated street or Common Area.

1.14. Map. "Map" means a recorded subdivision plat of a portion of the Property located in the Union County Public Registry.

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

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

1.17. Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage or Deed of Trust.

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

1.19. Owner. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant or Builder unless otherwise qualified herein. "Owner" shall not include any person or entity that holds an interest in a Lot merely as security for the performance of an

1.20. Permit. "Permit" shall mean and refer to that Subdivision Approval issued by the County of Union.
1.21. Person. "Person" means an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.22. Phase. "Phase" means the real estate shown on each Map of the Property, including the portion of Loxdale Farms described on Exhibit "A", as recorded in the Union County Public Registry.

1.23. Property. "Property" means the real property described on Exhibit "A" hereto and when and if subjected to the terms and provisions of this Declaration by Declarant acting in its sole discretion.

1.24. Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time including but not limited to this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and Declaration, then, the provisions of this Declaration shall prevail. In the event that anything on a recorded final subdivision map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of the final recorded plat shall prevail. If a dispute arises among Owners in regard to the administration of the Property, then Provisions of this Declaration shall prevail. Association provided notice of such rules and regulations shall be given to owners in accordance with the requirements of this Declaration.

1.25. Special Declarant Rights. "Special Declarant Rights" means, without limitation, the rights as defined in Section 47F-1-103(28) of the Act for the benefit of Declarant, including but not limited to the following: the right to complete, repair, maintain, replace, and operate improvements indicated on Maps of the Property (and Additional Land, if any) the right to exercise any development right, the right to maintain sales offices, management offices, models and signs advertising the Property, the right to use easements through Common Area and through any Lot or Lots for the purpose of making, repairing, maintaining, replacing and operating improvements within the Property (and Additional Land, if any) and the right to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

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

1.27. Town "Town" means the Town of Unionville in Union County, North Carolina.

1.28. Voting Power. "Voting Power" means the total number of votes held by all Members (and if there is more than one class of Members, the total of each class of Members) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.

ARTICLE 2

SUBMISSION AND TERM

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

2.02. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be

1580 it to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, as amended from time to time whether or not the deed makes reference hereto.

2.03. Term. This Declaration shall remain in force until terminated by the affirmative vote of eighty (80%) percent of the total Voting Power of the Association and the written consent of eighty percent (80%) of the Mortgages, or such lesser percentage as may be required or permitted by the Act.

ARTICLE 3 **COMPLIANCE WITH MANAGEMENT DOCUMENTS**

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

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

3.03. County of Union Zoning Ordinance. The provisions of the zoning and subdivision ordinances for the County of Union, North Carolina and any amendments thereto and the conditions and requirements set forth in the permit(s) issued by the County of Union shall at all times be paramount to the provisions of this Declaration and in the event of a conflict, the said zoning and subdivision ordinances shall be controlling over the Declaration.

ARTICLE 4 **PROPERTY RIGHTS**

4.01. Common Area Easements. Each Owner shall have, a nonexclusive right and easement of use and enjoyment in and to the Common Area and of access to and from his Lot on any streets comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to any such Lot and subject to the following rights and restrictions:

(A) The right of the Association to suspend the right of an Owner to use any Common Area facilities (1) for any period during which a fine against a Member or assessment against such Owner's Lot remains unpaid; and, (2) after Notice and, Opportunity for Hearing, for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations;

(B) The right of the Association to grant easements, leases, licenses, and concessions over all or any part of the Common Area as provided in this Declaration;

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

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

(E) The right of the Association to grant easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Declarant and the Association or any successor Declarant.

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

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

4.02. Delegation. Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing on his Lot and to his guests and invitees while he is in possession of his Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Provided, the notice required by Section 4.03 of this Declaration has first been given to the Association, a tenant of Owner, while residing on such Owners Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay regular and special assessments. Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.03. Tenants.

(A) Any Owner who rents or Leases his Lot to a tenant shall not be entitled to use and enjoy any common facilities on the Common Area during the period the Lot is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Lot and no more than one family related by blood or marriage shall live on any one Lot. Except as provided in Section 7.23, the Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than sixty (60) days. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

(C) In the event an Owner shall rent or lease his Lot such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Lot rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement; and
- (4) the certification of the Owner that the tenant has been given a copy of this Declaration, any Applicable Amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(D) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

~~§ 7.8.1. Reciprocal Easements. There shall be reciprocal appurtenant easements between adjacent lots for the flow of rainwater from portions of the Common Area as may be adjacent thereto and between adjacent lots for the flow of rainwater from gutters and downspouts; provided, however, that no such easement shall unreasonably interfere with the quiet and peaceful enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot improvement encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, including a driveway, an easement for the encroachment and for its maintenance shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between the Common Area and the Lot or between Lots, as the case may be, along a line perpendicular to such boundary at such point provided, however that in no event shall such an easement exist for willful encroachments. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains.~~

4.05. Utility Easements. In addition to easements shown on the recorded plat(s) of Loxdale Farms Subdivision, perpetual easements are reserved over the front and rear ten (10) feet and side five (5) feet of each Lot as shown on all recorded subdivision plats of the subdivision development for the installation, maintenance use or repair of public (or quasi-public) utilities, cable television or public (quasi-public) storm drainage. All easements for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television, or public or (quasi-public) storm water or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage facilities which are dedicated on any final subdivision map of the Property or created in some other way and extend over the front and rear ten (10) feet and each side five (5) feet of every Lot shall be kept free of buildings, and within such easements no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public (or quasi-public) utilities, cable television or drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Any portion of a Lot that shares a berm with the Common Area shall be subject to an easement in favor of the Association for landscaping, mowing and maintenance of the berm. All such easements at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities, cable television and drainage facilities. The easement area for each Lot and all improvements on it shall be maintained continuously by the Owner of such Lot, except for those improvements for which a public (or quasi-public) authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of -way over unsold Lot(s) for street, drainage, and utility installation purposes by the recording of appropriate instruments, which instruments shall not be construed to invalidate any of these covenants.

4.06. No Subdivision of Lots. No Time Sharing. Apart from any subdivision effected by the Declarant in preparing and recording maps, there shall be no further subdivision or partition of any Lot nor shall any Owner or any other person other than Declarant acquiring any interest in a Lot seek any partition or subdivision thereof. There shall be no timesharing or other co-ownership that allows multiple Owners sequential possessory interests in a Lot. Realigning property lines, wherein no new lot is created does not constitute a subdivision of lots as defined in this provision, provided the resulting lots otherwise meet governmental regulations.

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

4.08. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon) and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations shall not be effective until written notice thereof has been given by mailing a copy of the Rules and Regulations, postage prepaid, at least ten (10) days before the effective date of the

4.09. Enforcement. Unless otherwise limited by the terms and provisions of the Act, the Association shall have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided (i) the Member shall have been warned in writing of a previous infraction within the preceding one (1) year, and (ii) the fine conforms to the provisions of Section 9.11. The Homeowners Association shall be entitled to attorney's fees in the amount of fifteen (15%) percent of any sum due the Association by any Lot owner(s).

ARTICLE 5 COMMON AREA EASEMENTS AND RIGHTS OF WAY: ENCUMBRANCES

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

5.02. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes (a) if a two-class voting structure is in effect, upon the written consent of eighty percent (80%) of the Voting Power of each class of Members of the Association, or (b) if a two-class voting structure is not in effect, upon the written consent of eighty percent (80%) of the total Voting Power of the Association and the written consent of eighty percent (80%) of the voting power of the Association residing in Members other than Declarant; or such lesser percentage as may be required or permitted by the Act.

ARTICLE 6 COMMON AREA AND LOT MAINTENANCE

6.01. Maintenance by Association. The Association shall maintain the Common Area and any improvements, utilities and facilities located on the Common Area as the same, or any portion thereof, are completed. The Association may, but shall not be obligated to provide enhanced landscaping and maintenance to those areas and medians located within the rights of way for major streets located within the Property. The Association shall also maintain and repair all signage, irrigation facilities, lighting and landscaping that may be installed on or within public street medians throughout the Property. Any maintenance or enhancement permitted herein shall be subject to applicable governmental authorities' rules and regulations.

The Association shall contract with a gas utility for the installation and thereafter continuous operation of decorative streetlights to be located within the public streets on the Property and such fees charged by the utility shall be paid from

6.02. Maintenance by Owners. Each Owner, at all times, shall maintain, repair and otherwise be responsible for his "Lot" and the improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of Section 13.02 of this Declaration, an Owner shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty and each Owner shall maintain, repair, and replace the surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair or replace such drainage facilities and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07, and if required to collect said assessment through suit, may collect attorney's fees in the amount of fifteen (15%) percent of the sum(s) due.

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

6.03. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

6.04. Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents.

ARTICLE 7 USE RESTRICTIONS

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

7.01. Residential Use. Except as otherwise provided in this Declaration, each Lot shall be used solely for the construction and occupancy of a residence for a single family and for no other purpose. Except as provided in Section 7.23, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other non-residential use or purpose. No lot shall be used as a group home, halfway house or any other similar use.

Each residence shall have at least 1,600 square feet of heated and air conditioned floor.

Each residence shall have an attached garage accommodating at least two vehicles. Said garages shall have either a side or rear vehicular entry. Except on corner lots, no vehicular entry facing any street right of way is permitted. On corner lots, only one vehicular entry facing any street right of way is permitted.

Each residence shall have a concrete driveway to be installed from the paved street surface to the front foundation of the single family residences.

No existing home, mobile home, modular home or manufactured home may be placed, moved, or erected on any Lot.

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

No dirt bikes, mopeds, four (4) wheel vehicles or go carts may be operated within any street right of way or common area on the recorded plat(s) of Loxdale Farms Subdivision, or on any vacant lot within Loxdale Farms Subdivision.

7.03. Parking. Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any part of the Common Area, (b) in any driveway or (c) on any other part of a Lot, (d) or otherwise on the Property unless the same are fully enclosed within the garage located on the Lot, or are kept behind the house on the Lot which fully hides them from the view of the public walking by such Lot or otherwise properly screened in accordance with the Rules and Regulations. Any such vehicle shall be parked, stored or left wholly within the garage located upon the Lot, except to the extent same is already occupied to capacity, in which case such vehicle may be parked temporarily in the driveway once during any calendar month for not more than 24 consecutive hours. This restriction shall not apply to sales trailers, construction trailers, or other vehicles that may be used by Declarant and its agents and contractors and builders and general contractors in the conduct of their business prior to Completion of Sales.

No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area on the Property. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway on the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot outside an enclosed structure. No vehicles shall be parked on the streets located on the Property.

No commercial vehicles (including but not limited to trucks over one (1) ton) may be located on any Lot.

7.04. Mailboxes. Only mailboxes which have been approved by Declarant will be permitted on any Lot within Farms Subdivision.

7.05. Signs and Curtains. No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no owner shall display, hang, store or use any signs, curtains, draperies, shades, stained glass or other articles whatsoever outside of the dwelling on any Lot so as to be visible from outside the Lot, excluding seasonal decorations and as may be permitted by the Rules and Regulations. Notwithstanding the foregoing, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale or rent may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Lots.

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0785 Antennas and Dishes. Trampolines. Above Ground Swimming Pools. Non-Directional transmission or reception towers, antennas, dishes or dishes , trampolines, or above ground swimming pools shall be erected on any Lot, except that one dish or disk not exceeding two (2) feet in diameter will be permitted subject to the following limitations: (a) dishes or disks may not be located in the area between the street right-of-way and the front corner of the house or, if a corner lot, in the area between the side street right-of-way line and the minimum building setback lines shown on the recorded plat. (b) dishes or disks must be screened from view from all public street rights-of-way, and (c) in all events the location of any dishes or disks and the proposed method of mounting and screening the same must be approved by the Board or architectural control committee, its successors or assigns prior to installation.

7.07. Laundry. No laundry or wash shall be dried or hung for any other purpose upon the exterior of any Lot or any place visible from outside such Lot.

7.08. Fences. No fence or wall shall be erected on any Lot closer to the street than the side street setback or the front of the building facade except for temporary decorative fencing installed by the builder on a model home. No fence or wall shall be erected on any berm of dirt that was placed along the side or rear lot line of any Lot by the Declarant. Chain link or other type of metal fencing, is expressly prohibited, except that metal fencing attached to the split-rail fencing may be used to contain animals within the yard with the prior approval of the Board or the architectural control committee.

7.09. Pets.

(A) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in number except for newborn offspring of such household pets that are less than nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the

The Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property.

(B) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any nuisance that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.09(A).

7.10. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Occupants of any property in such vicinity. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Property shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants that die shall be promptly removed. All trees or plantings shall be behind the sidewalk. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Section, the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Lot at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members,

every a special assessment against such Owner to obtain reimbursement of the cost thereof as provided in Section 9.07. If the Board must bring legal action to recover the special assessment, it shall have the right to also recover reasonable attorneys fees of fifteen (15%) percent of the sum recovered.

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

7.12. Building Setbacks. No building shall be erected on any Lot nearer to any street line than the building setback lines shown on the recorded map(s), and with respect to a corner Lot, no residence or other building shall be located nearer than the distance shown on the recorded map to the side street line. With respect to corner Lots, the front lot line and side street lot line (and front and side street setbacks) shall be defined by Union County, North Carolina, through its zoning and subdivision ordinances. This provision shall not be construed to authorize or permit encroachment of any structure on a Lot upon any easement shown on the recorded plat or reserved herein or upon any other Lot. This provision shall also not be construed to authorize any violation of the zoning provisions of the appropriate governmental authority.

7.13. Temporary Structures. Except as provided in Section 7.23, no residence of a temporary nature shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, or any other recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7.14. Floor Space. The minimum heated floor area per each residence constructed upon a Lot shall be:

(a) One Thousand Six Hundred (1600) square feet

7.15. Accessory Structures. No metal carport, free standing metal garage, free standing metal utility building or other accessory structure shall be erected on any Lot or attached to any residence located on the Lot. Any other accessory structures must have the same exterior as the principal residence, unless otherwise permitted by the Homeowners Association. Such structure(s) must also comply with Union County, North Carolina zoning and subdivision regulations.

7.16. Unintentional Violations. In the event of the unintentional violation of any of the building line restrictions set forth herein, Declarant reserves the right, by and with the mutual written consent of the Owner of such Lot, to change the building line restriction set forth in the instrument, provided however, that such changes shall not be in violation of any provisions of the Zoning provisions of the appropriate governmental authority.

7.17. Above Ground Pools. Above ground pools may be erected, installed, used or maintained on a Lot subject to architectural review as provided herein.

7.18. Tree Cutting. No cutting of trees with an outside diameter of six (6") inches or greater at a height of three (3') feet from the ground shall be permitted without the written consent of the undersigned. The intent of this covenant is to prevent removal of trees with aesthetic value to the neighborhood. No cut trees may remain on the ground for longer than seven (7) days, except firewood which may be neatly stacked in the rear yard.

7.19. Erosion Control. Each lot owner is responsible for the control of erosion and sedimentation on their respective lot(s) and shall take such measures as may be required to avoid damage caused by erosion and sedimentation. Any damage caused by the failure to institute erosion and sedimentation control measures is the responsibility of the lot owner.

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2787 Architectural Requirements. The driveway and sidewalks on a Lot shall be constructed of concrete. The mailbox and paper holder on a Lot must be approved by the Declarant. Lots shall be planted with standard size plantings along the front of the dwelling to screen the foundation. No above ground storage tanks shall be erected or installed on a Lot. It is the intent that only site built dwellings shall be constructed.

7.21. Exercise Equipment. All swing sets, basketball goals and similar equipment must be located in the rear yard of each lot. Rear yard for the purpose of this provision is defined as beginning at the rear corners of the principal residence if extended to the side lot lines and running along the side lot lines to the rear lot line. Exercise equipment must comply with the Rules and Regulations.

7.22. Removal of Obstructions.

(A) The Declarant, its successors or assigns, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, either might produce a hazard or might interfere with the ability or willingness of Union County, North Carolina (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(B) The Declarant, its successors or assigns, shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Lot Owner who directly or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its successors or assigns, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way. In the event that the Lot Owner responsible for such charge or liability as aforesaid fails and refuses, after demand by the Declarant, its successors or assigns, to pay said charge or liability, then the Declarant, its successors or assigns, shall have a lien against his Lot thereon and may enforce collection of the charge or liability, together with reasonable attorney's fees, which is deemed to be fifteen (15%) percent of the sum to be collected, 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.

7.23. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots. The rights of Declarant, their agents, employees and contractors shall include, without limitation:

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

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

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

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0788 rights of Declarant and, to the limited extent set forth herein, Builders under this section shall terminate not later than one (1) year after the Completion of Sales. Amendment of this Section shall require (a) if a two-class voting structure is in effect, the vote or written consent of eighty percent (80%) of the Voting Power of each class of Members of the Association or (b) if a two-class voting structure is not in effect, the vote or written consent of both eighty percent (80%) of the total Voting Power of the Association and of the total Voting Power of the Association residing in Members other than Declarant. Further, no amendment of this Section can be made without the written approval of Declarant.

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

ARTICLE 8 MEMBERSHIP AND VOTING RIGHTS

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

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot. Every Owner shall notify the Homeowners Association of the owner's acquisition of title to a Lot within fifteen (15) days after title is acquired.

8.03 Voting. The Association shall have two classes of voting memberships.

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

Class B: Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Lot owned; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, which ever occurs earlier: (a) the conveyance by Declarant of seventy five (75%) percent of all Lots in the Property to Owners other than a successor Declarant for use as a residence, or (b) ten (10) years after the first Lot is conveyed to an Owner for use as a residence.

It is understood that if Declarant sells and re-acquires a Lot, said Lot shall be considered as originally owned by Declarant and shall be treated as a Lot eligible for Class B membership.

8.04. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the assessment against that interest has been levied by the Association as provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to amendments to this Declaration pursuant to this Declaration. Notwithstanding the above provision, Declarant's voting rights as set out herein shall vest upon the filing of this Declaration.

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§ 789 Declaration's Voting Rights. Declarant's voting rights as set out herein shall vest upon the filing of this Declaration. Declarant shall have the right to cast votes attributable to Lots owned by Declarant on all matters submitted to a vote of the Members.

ARTICLE 9

COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments; Lien. Declarant, for each Lot owned by Declarant, hereby covenants to pay, and every Owner of any Lot by acceptance of a deed, therefor, and every Owner of any Lot (excluding Declarant and Builder, except as provided herein) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration, shall be and become a lien upon the Lot assessed when the Association causes to be recorded in the official records of the County a notice of assessment, which notice shall state:

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

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

9.02. Personal Obligation. Each regular annual or special assessment, together with any late charges, interest, collection costs and reasonable attorneys fees shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his Lot.

9.03. Use of Assessments. Regular annual or special assessments paid by Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area, including but not limited to maintenance of gas street lights and payment of the utility expense(s) therefor, other purposes reasonably related to the foregoing, and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes and insurance, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

1580 Reserve Funds. The Board may establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance and the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget unless a lower level of reserves is approved by the vote or written consent of a majority of the Voting Power of (a) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members or (b) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose, are in excess of the amount necessary to accomplish this purpose then, without the vote or written consent of Members, the excess may be allocated to any other reserve funds established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

9.05. Regular Annual Assessments.

Beginning June 30, 2001 the regular annual assessment for each Lot for the first assessment year (the assessment year shall be from June 30 until July 1 of the following year) shall be \$ 200.00 per Lot owned by an Owner, (not including Declarant.) If the first assessment year shall have fewer than twelve (12) months, the foregoing amounts shall be proportionately reduced. Said assessment shall be due immediately upon the transfer of record title to the Owner and thereafter as the board shall fix as set out below.

The Board shall fix the amount and due date of the regular annual assessment on a yearly basis at least fifteen (15) days in advance of each assessment year. The Board may not impose a regular annual assessment which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of both the Voting Power of the Association and the Voting Power of the Association residing in members other than the Declarant. The ratio of the assessment established for Lots owned by Class A Members to the assessment established for Lots owned by Class B Members shall be three to one (3-1). Written notice of the regular annual assessment shall be sent to every Owner who is not present at the time the regular annual assessment is so fixed. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable annually on the first day of each January or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Lot have been paid and, if not, the amount due. Notwithstanding the foregoing, each Lot owned by Declarant, Inc., shall be required to pay \$ 50.00 per year. Declarant shall be entitled to a credit against such assessment(s) for materials furnished and labor performed in the furtherance of common area maintenance, and repair.

9.06. Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area; provided, however, any such assessment shall be in the ratio of three (3) to one (1) for Lots owned by Class A Members and Class B Members, respectively, as provided in Section 9.05 above, and further provided in any fiscal year, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without (a) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association or (b) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of both the Voting Power of the Association and the Voting Power of the Association residing in Members other than Declarant.

9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

9.08. Allocation of Assessments. Except as otherwise provided in this Declaration all regular and special assessments shall be levied equally against all Owners.

9.09. Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Lots at the discretion of the Board, on January 1, 2001. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Property which is annexed in accordance with the provisions of Article 15 below shall commence on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

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

9.11. Delinquent Assessments; Fines. Any assessment not paid within ten (10) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.09 shall not exceed the following rates compounded and computed on the outstanding balance, which shall include any late charges previously assessed and unpaid, from month to month:

(A) On so much of the outstanding balance as does not exceed one thousand dollars (\$1,000.00), one and one-half (1.50%) percent.

(B) If the outstanding balance is more than one thousand dollars (\$1,000), one percent (1 %) on the excess over one thousand dollars (\$1,000) of the outstanding balance.

(C) If the late charge so computed is less than twenty-five dollars (\$25) for any month, twenty-five dollars (\$25).

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than ten (10) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after notice and opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

ARTICLE 10
INSURANCE

BK 1580 PG 792

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

10.02. Duty to Maintain Insurance.

(A) The Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Common Area in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring on or about the Property. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.

(B) Each Owner shall maintain casualty and personal liability insurance pertaining to his Lot, in such form and in such amounts as the Rules and Regulations may require.

(C) All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation if such waiver can be obtained, unless otherwise provided in the Rules and Regulations.

(D) Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance meeting the insurance requirements for planned unit development projects established by the Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Lot, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or Government National Mortgage Association.

10.03. Proceeds of Insurance. The proceeds of casualty insurance carried by the Association shall be paid as follows:

(a) If such proceeds do not exceed Fifty Thousand Dollars (\$50,000.00), the proceeds shall be paid to and held by the Association as trustee for the Owners, Declarant and Mortgagees for disbursement in accordance with the provisions of this Declaration; and

(b) If such proceeds equal or exceed Fifty Thousand Dollars (\$50,000.00) the proceeds shall be paid to and held by the Insurance Trustee in trust for the Association, Owners, Declarant and Mortgagees, for disbursement in accordance with the provisions of this Declaration.

Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement or reconstruction to the extent required to effectuate repair, replacement or reconstruction of the Common Area.

ARTICLE 11
DAMAGE AND DESTRUCTION

11.01. Damage to Lots. Restoration and repair of damage to any Lot and improvements thereon shall be made by and at the expense of the Owner thereof.

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0793 Repair, Restoration, Reconstruction. Restoration and repair of damage to any Common Area shall be at the expense of the Association unless, under the provisions of Section 47F-3-113(g), the repair or restoration is not required to be effected. If the work is to be accomplished, the Association shall promptly contract for the repair, restoration or reconstruction and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 10.03. The difference, if any, between the insurance proceeds payable by reason of such repairs and the cost thereof may be recovered by one or more special assessments levied by the Board equally against all Owners.

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

11.03 Damage by Builder or Owners. Builders or Owners are responsible for any damage to streets, curbs or sidewalks caused by them, their employees, subcontractors or their agents during construction and shall pay to Declarant or to the Association if after the events set out in Section 8.03 have occurred, the cost of repair and Declarant or Association shall use the payment to complete the repairs.

ARTICLE 12

EMINENT DOMAIN

12.01. Eminent Domain. Notwithstanding any provision contained herein to the contrary, in the event of the taking of all or any portion of a Lot or all or any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as provided in the Act. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed equally among the affected Owners (or any Mortgagee of an Owner to the extent such Mortgagee is entitled to such Owner's share of the proceeds). If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all owners.

ARTICLE 13

ARCHITECTURAL CONTROL

13.01. Architectural Control. No building, pool, fence, wall, solar panel, antenna, deck, patio or other structure or improvement on any lot shall be erected constructed, demolished, or altered until an application, including plans and specifications showing the nature, kind, shape, height, material, color and location of the same, shall have been submitted to and approved in writing by the board or an architectural control committee which has been empowered by the Board to approve such applications and comprised of not less than three (3) who have been appointed by the Board; provided, however, that no such approval shall be required for alterations to the interior of any residential structure.

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774. Board may require a reasonable fee to accompany each application for approval of proposed alteration or improvement may not be commenced. The restrictions herein contained shall have no application to the development, improvement, maintenance and repair of the Property by Declarant or by the Association, and neither the Board nor the architectural control committee shall have any power or authority to review or require modifications in plans and specifications for construction or installation of improvements by Declarant.

13.02. Reconstruction of Residence. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans and specifications thereof; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the Board or duly authorized architectural control committee to reconstruct or repair his residence in accordance with revisions in the plans and specifications. The Board or said committee shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Project in a manner generally consistent with the plan and development thereof.

ARTICLE 14 MORTGAGEE PROTECTION

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

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

14.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (1) inspect the books and records of the Association during normal business hours; and (2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and (3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

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

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

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

14.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value the lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

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

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

ARTICLE 15

ANNEXATION

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

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

0796. Annexed Property. Each Owner of a Lot in an annexed Phase automatically shall be deemed to have accepted the Association and such owners and annexed real property shall be subject to assessment by the Association for the benefit of the Property or any part thereof. Assessments of Lots in an annexed Phase shall commence upon the last to occur of: (a) commencement of regular annual assessments for the Property, and (b) the first day of the month next following the first conveyance of a Lot in such Phase to a purchaser, as provided in Section 9.09. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Property shall be managed and governed by the Association as an entirety. Assessments collected from owners in the Property may be expended by the Association anywhere in the Property without regard to the particular Phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Property and any Phase thereof and shall have use and enjoyment of any Common Area facilities and other amenities contained within the Common Area throughout the Property, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

ARTICLE 16

INDEMNIFICATION OF OFFICERS AND DIRECTORS

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

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

ARTICLE 17

MISCELLANEOUS PROVISIONS

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

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

17.03. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and

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

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

17.05. Notices. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner: to the address of his Lot; (ii) if to Declarant, to PO Box 2026, Monroe, NC 28111-2026; and (iii) if to the Association, to the address of the Property. The Association may designate a different address for notices by giving written notice of such change of address to all owners and to Declarant. Declarant may designate a different address for notices by, giving written notice of such change of address to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

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

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

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

17.09. Exhibits. Exhibit "A" is attached to this Declaration, incorporated herein and made a part hereof by this reference.

17.10 Repurchase of Unimproved Lot by Declarant. In order to promote the timely development of the subdivision, it is the intention of the Declarant that Owners begin construction of a house in a timely manner. Therefore, in the event an Owner has not begun construction of a house on its Lot within one (1) year after the date on which such Lot was originally sold by Declarant to the initial owner thereof, Declarant shall have the option at any time thereafter and so long as construction has not begun to purchase the Lot from Owner at the same price for which such unimproved lot was originally sold by Declarant to the initial owner thereof ("Original Price"). The Original Price shall be the actual cash purchase price of such Lot and shall not include any additional expenses incurred by any party in connection with the purchase of such Lot. For purposes of this Section, construction shall be deemed to not have begun until Declarant has approved construction plans hereunder, a valid building permit has been issued, the foundation is in place, and framing has begun.

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

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8798 Amendments. This Declaration may be amended only in strict compliance with the Act, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

Notwithstanding the foregoing, and provided such amendment is not expressly prohibited by the Act, during any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any member or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot. In the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent of sixty-seven percent (67%) of the Mortgagees (based on one vote for each mortgage owned).

Should the Department of Veterans' Affairs, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (a) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association as such classes are set forth in the Bylaws and this Declaration; or (b) if a two-class voting structure is not in effect, the vote or written consent of both sixty-seven percent (67%) of the Voting Power of the Association and the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association residing in Members other than Declarant; provided, however, that the percentage of the Voting Power (of each class of Members, of the Association, and of Members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under than provision.

Any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Common Area; (vi) responsibility for maintenance and repair of the Property; (vii) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (viii) the boundaries of any lot once conveyed by Declarant to an Owner; (ix) interests in the Common Area; (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (xii) any provisions which are for the express benefit of Mortgagees; or (xiii) any other material amendment shall require written consent of sixty-seven percent (67%) of the Mortgagees (based on one vote for each Mortgage owned), and (a) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members, or (b) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Mortgagees based on one vote for each mortgage owned. Any Mortgagee who does not respond within thirty (30) days request by the Association for consent to an amendment of this Declaration shall be deemed to have approved such request.

Notwithstanding the foregoing, Declarant reserves unto itself the right to amend this Declaration until such time as it conveys Lots to a person, firm or corporation other than R. L. Rushing & Co.

Any instrument amending this Declaration must contain a certification by the Secretary of the Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation.

Notwithstanding anything contrary contained in this Declaration, no amendment shall violate the terms of the Subdivision Approval or the zoning laws of the governing jurisdiction(s).

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

R. L. Rushing & Co.

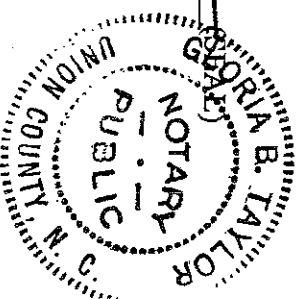
By Ronnie L. Rushing
President

STATE OF NORTH CAROLINA
COUNTY OF UNION

I, Gloria B. Taylor, a Notary Public of said county do hereby certify that Ronnie L. Rushing, personally appeared before me this date, and acknowledged that he is President of R. L. Rushing & Co., a North Carolina Corporation, and that he as President being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this 11th day of June, 2001.

Gloria B. Taylor
Notary Public



My commission expires: November 1, 2005

NORTH CAROLINA - UNION COUNTY
The foregoing certificate of
Gloria B. Taylor
Notary Public
is/are certified
to be correct. Filed for record this 10th day
of JUNE 2001 at 10:30 AM
JUDY G. PRICE, REGISTER OF DEEDS
BY: Mary B. Price
Asst. Reg.

Exhibit "A"

BEING all of that property depicted on those record plats of **LOXDALE FARMS** as shown in Plat Cabinet G, at File Numbers 523 and 524, Union County Register of Deeds to which plats reference is hereby made for a more complete description.

BEING all of that property described in Deed Book 1338 at page 482, Union County Register of Deeds.
