

DECLARATION
OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
BELLA VISTA

Prepared by and return to: Alison R. Cayton of Manning, Fulton & Skinner, P. A.
P. O. Box 20389, Raleigh, NC 27619-0389

THIS DECLARATION, made on the date hereinafter set forth by **Bella Vista Development LLC**, a North Carolina limited liability company, with the principal office located at 8310 Bandford Way, Raleigh, North Carolina 27615 hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Wake, State of North Carolina, commonly referred to as "Bella Vista Subdivision", which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on that Property described in Exhibit "A" attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof; and,

WHEREAS, the Property shall be comprised of single family residential lots and associated open space.

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and

conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 2. "Association" shall mean and refer to Bella Vista Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 6. "Consumer-Occupant Lot Owner" referred to herein is a Lot Owner who purchases a Lot from the Declarant or a builder of the initial residence on the Lot and occupies the residence on the Lot.

Section 5. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of all the Owners. Common Elements include but are not limited to the private road serving the Property and the entry sign and associated landscaping, lighting, utility irrigation well, monument and entry gates; Common Elements also include storm water drainage and storm water system improvements and easements, landscape easements, sign easements and pedestrian easements located on the Property serving any or more than one Lot and are not maintained by any governmental authority. The Common Elements to be owned by the Association is all of that Property other than the Master Plan Lots and the Common Elements owned by any sub-association established by the Declarant.

Section 6. "Common Expenses" shall mean and include, as applicable:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance, including but not limited to snow removal, and maintenance of the landscape, any right-of-way easements, and, as determined by the Homeowners Association or the Board, any amenities as provided in this Declaration;
- (c) Expenses of administration, insurance, maintenance, repair, or replacement of the Common Elements including expenses of maintenance of the signage, lighting, irrigation, hardscaping and landscaping located at all entrances to Bella Vista Subdivision as shown on the recorded plat, the expenses of maintenance of any signage, lighting, irrigation, hardscaping and landscaping located on any of the Common Areas within Bella Vista as shown on any recorded plat of the subdivision.
- (d) Expenses for repairs and maintenance of Open Space

(e) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws.

(f) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws, including but not limited to expenses for the maintenance, repair and replacement of storm water drainage and storm water system improvements, control structures, and easements located on the Property serving any or more than one Lot which are not maintained by any governmental authority;

(g) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;

(h) Ad valorem taxes and public assessment charges lawfully levied against Common Elements;

(i) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Elements of the Property and serve both the Property and lands adjacent thereto;

(j) The expense of the maintenance of all easements and landscaping and improvements thereon, conveyed to the Association. This includes the cost of maintenance of the streetscape buffers within the open space located along Creedmoor Road and

(k) The expense of the maintenance, repair and replacement of the entryway, features including but not limited to landscaping, brick walls, wood walls, lighting, and signage.

(l) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

(m) Maintenance of federal mail delivery system kiosk.

(n) Maintenance and annual inspection of wastewater collection system pursuant to the terms of that Tri- Party Agreement dated October 20, 2015 and recorded in Book 16187, page 1310 Wake County Registry between Wake County Department of Environmental Services, Bella Vista Development LLC, and Bella Vista Owners Association, Inc.

Section 7. "Declarant" shall mean and refer to Bella Vista Development LLC its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure when held by Declarant or its successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 8. "Declarant Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Wake County, North Carolina, and continuing until the later of (i) such time as Declarant shall no longer have the right to annex any additional property pursuant to the provisions of Article VI, Section 2

hereof; or (ii) such time as Declarant shall no longer own any portion of the Property for the purpose of development or sale.

Section 9. "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use, designated for residential use and for separate ownership and occupancy. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or Common Elements, or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 10. "Master Plan" shall mean and refer to the plan(s) for the Property and any additional property now or hereafter approved by the appropriate local governmental authority as such plan(s) may be from time to time amended.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Notice" required to be given herein shall be in writing and mailed by U.S. mail, postage prepaid, first class to the address of any Member on the records of the Association or shall be hand delivered to the Member.

Section 13. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 15. "Property" shall mean and refer to that certain real property described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, on and over the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and the right to use the Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, to sell, dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

On any instrument of dedication, sale, or transfer of real or personal property, the Secretary of the Association shall certify that eighty percent (80%) of the votes of each class of members have approved the action evidenced by the instrument, and that certificate shall be conclusive that the execution and delivery of such instrument was properly authorized by the Association and its members and shall be relied upon and binding as to any third party or as to any grantee, its successor and assigns; provided, however, conveyances for general service utility purposes as specified in the Declaration may be made without consent of the members, and the Association may execute an instrument of conveyance therefore without such certification;

(c) the right of the Association, with the assent of the Members entitled to cast two-thirds (2/3) of the votes of each class of Members to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, provided that the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Members and the Association hereunder;

(d) the right of the Association, to participate in an equal exchange of land, as permitted by local government ordinances.

(e) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, if any, which rules and regulations may further restrict the use of the Common Elements and to create Limited Common Elements.

(f) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of use and enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Elements and Common Elements established on all lands included in subsequent phases.

(g) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be

effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Elements to the members of his family, his tenants, or contract purchasers who reside on the Property, but may not delegate or assign responsibility for the actions of those to whom such right is delegated.

Section 3. Title to the Common Elements. The Declarant hereby covenants for itself, its heirs and assigns, that at such time as determined by the Declarant in its sole discretion, it will convey fee simple title, or an easement interest as the case may be, to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Elements for ownership and maintenance as necessary.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. In the event that two or more Lots are recombined to form one Lot, the owner of the new Lot shall only be entitled to one vote for the new Lot. Likewise, in the event that one Lot is subdivided to form two or more Lots, the owners shall be entitled to one vote per new Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal or exceed the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, the Master Plan is amended to add additional Master Plan Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase) greater than those of the Class A membership, or

(b) ten (10) years from the date of recordation of this Declaration

Section 3. Prior to conversion of the Class B membership to Class A membership, Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any members or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Section 4. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section I (b) herein.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Elements and private road if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses; and, in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and facilities, and for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the payment of amounts due to Bella Vista Owners Association by the Association or its members, providing for security to the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. From the date of recordation of the subdivision map for lot subdivision to be called Bella Vista and the subjection of that property to this Declaration to the end of that calendar year, the initial maximum annual assessment shall not exceed \$1,080.00

(b) Increase by Association. The initial year of assessment referred to in subsection (a) above, the annual assessment imposed by this Association, initially \$1,080.00 may be increased effectively from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of twelve (12%) percent or the percentage increase reflected in the Consumer Price Index For All Urban Consumers (CPI-U) - South Urban Area Average (1982-84 = 100) (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed that Index, for that twelve-month period ending the immediately preceding October 1. The percentage increase shall be based on the maximum annual assessment for the prior year, or if the Association has not chosen to implement an increase for one or more years, the increase provided in this Section 3 (b) may, at the option of the Association, be based on the annual assessment that would be effective had the increase been implemented each year prior to the year of the actual increase. Any budget providing for an increase not requiring a vote pursuant to subsection (c) below, is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting. The Board of Directors, at its option may declare that a special Refurbishment Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied no more than once every five (5) years from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing, refurbishing or repairing portions of the Common Elements such as, but not limited to entryway features, lighting and landscaping and the like.

(c) Increase by Members. From and after the initial year of assessment referred to in subsection (a) above, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the greater of twelve (12%) percent or the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

(e) Board Authority. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant may loan to the Association funds to cover the expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members prior to making a special assessment for attorney's fees or prior to incorporating attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment is based.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option and without a vote of the members of the Association, may declare that a Special Capital Assessment be levied against all Lots. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half (1/2) of the required quorum is not met, then in a

subsequent meeting the requirement shall be one-fourth (1/4) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The annual assessments provided for herein shall commence as to all Lots at the time of recording of a deed from the Declarant to the initial property owner. Notwithstanding the foregoing, Lots owned by the builder of the initial improvements on the Lot, will not be subject to assessments until the earlier of the date that the Lot is sold to a consumer-occupant or the date that is twelve (12) months from the date the deed to the builder is recorded. A Lot owner shall pay the pro-rata amount of the full annual assessment from the date of closing on any Lot until the first day of the first calendar year following closing of that sale or until the end of such period as the Association chooses to collect the Assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of a Lot by a builder or Declarant to a consumer-occupant Lot Owner, pay to the Association a sum equal to Five Hundred and no/100 DOLLARS (\$500.00) for that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 10. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, shall be subject to a late charge of the greater of twenty dollars (\$20.00) or 10% of any unpaid installment per month. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Chapter 47F of the North Carolina General Statutes.

Section 11. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to

such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, barns, storage buildings, other accessory buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, swimming pools, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements, landscaping or plantings shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, an Architectural Committee composed of three (3) persons appointed by the Declarant or his designee in its sole discretion. Initial construction on all Lots shall be reviewed and approved by the Declarant or its designee until the sale of the final Lot in the Subdivision by the Declarant. After such date, the Architectural Committee shall be composed of three (3) persons, and shall be appointed by the Board. In the event the Architectural Committee fails to approve such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Committee, approval will be deemed to have been denied. Any plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding any prior approval by the Committee.

Upon request, the Association, on behalf of the Architectural Committee, shall provide any Owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and the letter may be relied upon by third parties.

Approval or disapproval by the Architectural Committee of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Committee, it shall deem sufficient. Neither the Association, Board, nor the Architectural Committee shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made on any Lot.

The Board and the Architectural Committee, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications.

The Architectural Committee shall have the power to grant, and may allow, variances of and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, pursuant to the terms herein, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards. Notwithstanding the foregoing, Declarant shall have the power to grant the above variances and adjustments so long as Declarant has the authority to appoint members to the Architectural Committee.

In the event of the grant of any variance in the restrictions established herein, the Declarant for so long as the Declarant has the authority to appoint members to the Architectural Committee, and thereafter the Association on behalf of the Architectural Committee shall execute a document acceptable in substance to the Association attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record the document in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Declarant, the Association, its successors and assigns, and other Lot Owners and may be relied upon by third parties to evidence the variance approval.

Any purchaser of a Lot or institution financing a lot shall rely on the foregoing statement.

The Association, so long as Declarant has authority to appoint members to the Architectural Committee, shall defer architectural approvals and grants of variances to Declarant unless Declarant has voluntarily relinquished control of the Association.

ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTIES

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

Section 2. If within twenty (20) years of the date of recordation of this Declaration in the office of the Wake County Register of Deeds, the Declarant should develop such other lands as Declarant or Affiliate or member of Declarant may hereafter acquire contiguous to the additional land, which additional land has been subjected to this Declaration, such land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property.

Declarant may amend this Declaration at the time of annexation of additional lands as pursuant to the provisions of this Article VI, Section 2. Declarant shall have the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration.

Section 3. Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above, (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

Section 4. Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Elements within the lands annexed as such Common Elements are developed and by recordation of such deed by the Declarant, the Association is deemed to accept such Common Elements for ownership and maintenance as necessary.

Section 5. Should Declarant elect to annex any additional property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right to alter the restrictions as applicable to the annexed property to best suit the intended use of the annexed property. The addition of property authorized under this paragraph may increase the cumulative maximum number of lots authorized in the properties, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

ARTICLE VII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for a temporary office of the Declarant) and building models used by Declarant shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except as may be approved by the Board of Directors on a case-by-case basis after petition by an Owner. Provided however, that any such approved business must be conducted entirely within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, birds, or livestock shall be kept or maintained on any Lot or in any dwelling except that of dogs, cats, pet birds, poultry for household use or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. The owner of any pet shall clean up after such pet. The location of and the materials used in the construction of any kennel, runs, coops, fences and any other improvements for the containment of any pet will require the review and approval of the Architectural Committee as set out in Article V herein.

Section 5. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property.

Section 7. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot except as provided for in Article VII, Section 2 hereinabove, except that the Declarant or its agents may use any unsold Lots for sales or display purposes, Declarant may maintain a sales or rental office on the Property.

Section 8. Signs. No Lot Owner shall display, or cause, or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant, or its respective agents, may place "For Sale" or "For Rent" signs on any Lots for sale and in suitable places on the Common Elements approved by the Association; provided, however, that during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees.

Section 9. Fences, Walls and Hedges, Statues, Yard Art. All fencing, hedges, walls, statues, and "yard art" must be approved by the Architectural Committee.

Section 10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

Section 11. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 12. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on any Lot, on the Common Elements, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or contract purchasers, except inside an enclosed garage located on a Lot, delivery and maintenance vehicles are permitted. Notwithstanding the foregoing, this prohibition shall not apply to contractor's trucks and vehicles during the construction of any dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Property until completion of any dwelling, garage or accessory building. An Owner shall be responsible for repairing any damage to the road right of way due to traffic from construction, social or other events undertaken or sponsored by that Owner. Vehicles displaying advertising must be parked in a garage.

Section 13. Trailers, etc. No trailer, tent, mobile home, modular home or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to (a) the sales trailer used by the Declarant and its approved agents, or (b) shelters or storage units used by the contractor during the construction of a dwelling, garage or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction. Construction of residences shall be completed within one (1) year of commencement of grading of the Lot.

Section 14. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Declarant or Association from erecting, placing or permitting the placing of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 15. Guest Facility. A guest apartment or guest facility may be included as part of a main detached single family dwelling or accessory building, upon receipt of necessary governmental approvals.

Section 16. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, and to any successor to which Declarant makes a specific assignment of this right, the right to replat any two (2) or more Lots and/or Common Elements (so long as replatting of the Common Elements conforms with applicable governmental regulations and upon approval by the appropriate governmental authority) shown on the plat of any subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots and/or Common Elements to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or Lots and/or Common Areas that are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots. Any of the Common Elements is recombined with a Lot, the Association shall execute all necessary documents to effect the recombination.

Section 17. Delivery Receptacle. The mail delivery for the development will be via the Federal Post Office mandated kiosk delivery system. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Board or the architectural committee.

Section 18. Antennae. With exception to the Federal Communications Commission's Restrictions identified in the Telecommunications Act of 1996, the following applies: Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose

Section 19. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the Board so as not to damage unnecessarily trees, street paving and curbs. During construction, builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris shall not be dumped in any area of the Property. All concrete wash outs are to be kept on the Lot. Lot Owners shall be responsible for repairing any damage to roads, ditches and pipes as a result of construction on their Lot.

Section 20. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 21. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

Section 22. Maintenance. Subject to any other applicable terms of this Declaration, the Owner of each portion of the Property, at such Owner's sole cost and expense, shall Maintain its portion of the Property, including improvements thereon, in a safe, clean and attractive condition at all times, including but not limited to the following thereon:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Lawn Maintenance on a regular basis by mowing and keeping clear any weeds on lots with grass areas;
- (c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material in the vicinity of the neighbors;
- (d) Maintenance of flower and plant gardens;
- (e) Maintenance of exterior lighting and mechanical facilities;
- (f) Maintenance of parking areas and driveways;
- (g) Maintenance of all Improvements thereon;

(h) Maintenance of storm water drainage easements and portions of the Properties served by storm water drainage easements, as required by this Declaration;

(i) To the extent not adequately Maintained by the applicable governmental authority, the Association or a public utility provider, Maintenance of the sidewalk, if any, driveway, driveway apron and utility laterals serving each Owner's portion of the Property, even if located in the Common Property. Each Owner also shall provide snow and ice removal for any sidewalks, if any, located adjacent to such Owner's portion of The Property; and

(j) Each Owner shall perform the foregoing responsibilities in a manner that does not reasonably disturb or interfere with the reasonable enjoyment by the other Owners of their portions of the Property.

If any Owner fails to perform any of the foregoing Maintenance Responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required Maintenance. If any such Owner fails to perform the required Maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's portion of The Property and perform such Maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required Maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefor. If the Owner fails to reimburse the Association as required, the Association shall have the same rights and remedies for collection of the amount as provided in Article IV, Section 9 herein for tax collection of Assessments.

Section 23. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 24. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

Section 25. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, flags, and similar items are subject to Declarant's prior approval. However, nothing contained herein shall prohibit the appropriate display of an American flag, of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sec 5-10.

Section 26. Recreational and Other Equipment. No recreational equipment (including but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be placed in the front yard of a Lot except that a basketball goal may be located in a driveway. The recreational equipment shall be green or brown in color so to blend in with the natural surroundings of the Lot and it is preferred that it be made of a wood or wood-like composite product with the exception of equipment such as sliding boards and basketball goal posts which may be of metal or other materials necessary for proper functioning of such equipment. No such recreational equipment shall be located in such a

manner as to constitute a nuisance or unsightly condition.

Section 27. Pools, Spas and Hot Tubs. Swimming pools, spas and hot tubs shall be screened by landscaping so as to reduce visibility from a public road or neighboring lot and must be approved by Declarant. No above ground swimming pools are permitted on a Lot and all swimming pools, spas and hot tubs are subject to applicable governmental regulations. The location of pumps, pool equipment, and other noise-making devices used for pools, spas and hot tubs shall be approved in writing by Declarant. Sound attenuation measures may be required by Declarant.

ARTICLE VIII BUILDING RESTRICTIONS

Section 1. Architectural Review and Approval. All improvements on a Lot must be approved in writing by Declarant prior to any lot clearing or construction. The Builder of the initial residence on a Lot shall submit the required architectural approval forms along with the required documents as set forth in the Builder Agreement.

Section 2. Square Footage. Any dwelling erected on a detached single-family residential Lot shall contain a minimum enclosed dwelling area of 4,000 square feet. In addition thereto, and unless a variance is granted therefor as provided herein, all dwellings shall have an enclosed two car garage attached to the main dwelling. The term "enclosed dwelling area" as used in this Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling; provided however, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. Variances of these square footage requirements in the amount of 15% may be granted by Declarant or the Board of Directors of the Association pursuant to Article V hereof, and in no case shall the size be less than that required by the governmental agency having jurisdiction over the Property.

Section 3. Setback Lines. No dwelling erected on a detached single-family residential Lot (including garage) shall be constructed nearer than Thirty (30') feet to the front Lot line; Ten (10') feet to any side Lot line; Twenty (20') feet to any side Lot line for a corner Lot and Thirty (30') feet to any rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements may be granted by Declarant or the Board of Directors of the Association pursuant to Article V hereof, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property.

Section 4. Construction and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot unless approved in writing by the Declarant or the Architectural Committee.

Section 5. Accessory Building Specifications. Garages and accessory buildings shall be constructed of the same materials and similar style as the single family dwelling located on a Lot.

Section 6. Landscaping. Landscaping on initial detached single family dwelling shall meet minimum requirements as set forth in the Bella Vista Builder Agreement and shall be approved in writing by Declarant or the Architectural Committee prior to installation. Landscaping shall be installed prior to the house being occupied.

Section 7. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected or placed on, or allowed to occupy, any detached single-family residential Lots, and

no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 8. Remedies. If the finished dwelling, garage, accessory building or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws as described in Article IV, Section 9 herein, a notice of liens for any costs incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorneys' fees. Any changes in plans or specifications must first be reapproved by the Company in accordance with the procedure herein specified for architectural control.

Section 9. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area or garage not generally visible from the road.

Section 10. Parking Spaces. Each Lot Owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said Lot in accordance with standards established by the Association.

Section 11. Storm Drainage. Each Lot Owner shall maintain the drainage devices on its Lot at its own expense except for required storm water control devices and easements. Furthermore, each Lot Owner shall not allow the diversion or concentration of storm water runoff without the prior written approval of the Architectural Committee, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation or State Road System Wake County private road standards.

Section 12. Driveway and Stone Head Walls. Reinforced concrete piping shall be utilized within the access to each Lot. A stone headwall shall be constructed at both ends of the driveway pipes in the road swales within the right-of-way of the road in such design as approved by the Declarant. Head walls shall be in compliance with NCDOT specifications and shall not protrude above the horizontal surface elevation of the driveway. All drives shall be constructed of "poured in place" concrete and shall be finished "flush" with the road service.

ARTICLE IX

ROAD MAINTENANCE AND STORMWATER MAINTENANCE

Section 1. Road Maintenance

- (a) Road Maintenance. Declarant shall construct a road to serve Bella Vista which shall be constructed to Wake County Public Road Standards and be enrolled into the NC State Road system for maintenance. The roads shall be maintained by the Declarant until such time as the State accepts the Road for maintenance;
- (b) Piping of swales, drive accesses and other items shall not be permitted without the express written consent of Declarant. No road swale drainage system may be altered without the written permission of the Declarant. Any work rejected by NCDOT will be the responsibility of the Lot Owner to correct to acceptable State Standards;

- (c) Fencing and other structures are not permitted within the right-of-way of any road in Bella Vista subdivision;
- (d) The Association Manager for Bella Vista Owners Association shall choose a person or firm to perform periodic maintenance services on the road during snow and icy conditions.

Section 2. Stormwater Control Structure Maintenance. The Association shall be responsible for maintenance of the storm water control structures serving the property as established in that Stormwater Agreement recorded in Book 16188, page 647 Wake County Registry.

Section 3. Waste Water Collection System. A Tri-Party Agreement dated October 20, 2015 and recorded in Book 16187, page 1310 has been entered into by and between Wake County Department of Environmental Services, Declarant and the Association. Declarant shall construct a wastewater collection system to service Lots 6, 7, 9, 10, 12, 17, 18, 19, 20, 21, 51, 56, and 65 in accordance with permits, applicable rules, and plans and specifications hereafter issued and approved by the Department; and shall thereafter assign the maintenance and repair of such system in accordance with the applicable permit provisions, rules, and laws to the Association for maintenance as a limited common element, with the expenses being allocated to the lots named in this Section 3 of Article IX.

Section 4. Individual Septic Systems. Individual septic systems for lots not included in the waste water collection system controlled by the aforementioned Tri-Party Agreement shall be the responsibility of the Lot Owner.

ARTICLE X

EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Common Elements, shall be subject to such easements for driveways, walkways, parking areas, water lines, sewer lines, storm drainage, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Elements for the setting, removing and reading of water meters (which shall be separate for each Lot), maintaining and replacing water, sewage and drainage facilities, if any, for police protection, fire-fighting and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the governmental authority or other responsible agency, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authorities responsibilities.

Section 3. Specific Utility Easements. There is hereby reserved an easement fifteen (15') feet in width along the front property line, and ten (10') feet along the side and rear property line of each Lot designated for detached single-family residential use for the purpose of installation, repair, maintenance, erection, construction and inspection of water lines, sewer lines, gas lines, electric lines, telephone lines, cablevision lines or other such utility or service lines and for drainage cuts and storm sewer lines. The Declarant reserves the right to subject the real property in this subdivision to a contract with Duke Energy Progress for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to the Association by the owner of each lot.

Section 4. Septic Supply Line Easement. There is hereby reserved an easement of fifteen (15') in such location as necessary to locate a septic supply line on any Lot, provided the location of the line shall be located only on that portion of a Lot where there are no improvements.

Section 5. Recorded Easements. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Section 6. Drainage Easement. In addition to the foregoing reserved specific easements, the Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drain ways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot.

Section 7. Ground Disturbance. These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 8. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Elements, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 9. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 10. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Elements.

Section 11. Sign and Landscape Easement. A Sign and Landscape Easement shall be located on the property described on Exhibit A for purposes of the establishment and maintenance of an entrance monument sign and landscaping. Initial landscaping and construction of the sign shall be accomplished by the Declarant at the Declarant's sole expense. Declarant shall be responsible for the costs of maintenance and repairs within the sign and landscape easements until the Association

begins collecting dues. The Sign and Landscape Easement shall have a neat appearance at all times.

ARTICLE XI

INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

- (a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association.
- (b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- (c) Such other insurance coverage as it may determine to be desirable and necessary.
- (d) Fidelity bonds for those officers or employees having control over Association funds.
- (e) Other insurance required by law.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

ARTICLE XII

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, U. S. Department of Veterans Affairs, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

(e) To be given notice by the Association of any substantial damage to any part of the Common Elements.

(f) To be given notice by the Association if any portion of the Common Elements, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. General Amendments. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated as hereinafter provided. This Declaration may be terminated only with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. This Declaration may be amended with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. The foregoing notwithstanding, however, during Declarant's Development Period, this Declaration may not be amended or terminated without Declarant's consent; and no termination and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. In addition, no alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of

Declarant or of the obligations imposed herein on Declarant shall be made without the written consent of Declarant being first had and obtained and no alteration, amendment or modification of any easement rights established in favor of any property not a part of the Property shall be effective without the written consent of the owner(s) of such property. Any notice of termination or amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite Owner and Declarant approval has been obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the termination or amendment and, as the case may be, if required, Declarant, and that such acknowledgments have been made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Wake County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Property, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds. Notwithstanding the foregoing, Declarant may at any time unilaterally amend this Declaration, and thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, to correct obvious errors and omissions herein. Any Amendment shall not be effective until approved by the applicable governmental authorities, if such approval is required or unless applicable laws provide approval is deemed granted by the failure of applicable governmental authority to respond during the designated period.

Section 4. Landscaping of Entrance Sign and Landscape Easements. Landscaping of islands within the roads shall be the responsibility of the Association. Such areas shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants must be removed by the Association. The cost of maintaining any landscape islands shall be a Common Expense.

Section 5. Recordation. No amendment shall be effective until recorded in the Wake County Register of Deeds.

[SIGNATURE LINES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 4 day of November, 2015.

Bella Vista Development, LLC, a North Carolina limited liability company

By: *Henry K. MacNair*

Henry K. MacNair, Manager

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I certify that the following person personally appeared before me this day acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Henry K. MacNair, Manager of Bella Vista Development, LLC.

Witness my hand and notarial stamp or seal, this 4th day of November, 2015.

My commission expires:

June 15, 2018
[AFFIX SEAL]

Mary Ellen Potanovic

Notary Public

Typed or Printed Name: Mary Ellen Potanovic

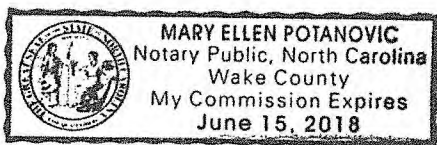


EXHIBIT "A"

BEING all of that approximately 56.49 acre tract shown as Phase I on that plat entitled "Cluster Subdivision & Recombination Plat for Bella Vista Phase I" by Withers & Ravenel and recorded in Book of Maps 2015, pages 1777 – 1785 Wake County Registry.

STATE OF NORTH CAROLINA : FIRST AMENDMENT
COUNTY OF WAKE : TO
DECLARATION

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

THIS FIRST AMENDMENT TO DECLARATION is made this 25 day of January, 2019 by the Bella Vista Owners Association, Inc., a North Carolina corporation (the "Association") and consented to by Bella Vista Development LLC, a North Carolina limited liability company (the "Declarant");

WITNESSETH

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions, Easements and Restrictions for Bella Vista recorded in Book 16207, page 132 Wake County Registry, (the "Declaration"); and

WHEREAS, pursuant to Article XIII, Section 3 of the Declaration, the Association desires to further amend the Declaration and the Declarant consents to such amendment; and

WHEREAS, there is written acknowledgement by Owners comprising at least 80% of the votes of the Association approving this Declaration which has been made a part of the Minute Book of the Association; and

WHEREAS, there is written acknowledgement by the Declarant approving this Declaration which has been made a part of the Minute Book of the Association;

NOW THEREFORE, in consideration of the benefits to the Property, the Association does hereby amend the Declaration as follows:

1. The above recitals are incorporated herein and all capitalized terms herein have the same meaning as given to them in the Declaration.

STATE OF NORTH CAROLINA : **FIRST AMENDMENT**
COUNTY OF WAKE : **TO**
DECLARATION

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

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WITNESSETH

WHEREAS, Declarant executed that certain Declaration of Covenants, Conditions, Easements and Restrictions for Bella Vista recorded in Book 16207, page 132 Wake County Registry, (the "Declaration"); and

WHEREAS, pursuant to Article XIII, Section 3 of the Declaration, the Association desires to further amend the Declaration and the Declarant consents to such amendment; and

WHEREAS, there is written acknowledgement by Owners comprising at least 80% of the votes of the Association approving this Declaration which has been made a part of the Minute Book of the Association; and

WHEREAS, there is written acknowledgement by the Declarant approving this Declaration which has been made a part of the Minute Book of the Association;

NOW THEREFORE, in consideration of the benefits to the Property, the Association does hereby amend the Declaration as follows:

1. The above recitals are incorporated herein and all capitalized terms herein have the same meaning as given to them in the Declaration.

2. The Article IV, Section 2 is hereby deleted in its entirety and the following is inserted in lieu thereof:

“Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses; and, in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and facilities, and for the use and enjoyment of the Common Elements, and utilities provided to the Property whether or not the utilities are located on the Common Elements, and including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the payment of amounts due to Bella Vista Owners Association by the Association or its members, providing for security to the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.”

3. The first sentence of Article IV, Section 4 is hereby deleted in its entirety and the following is inserted in lieu thereof:

“In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements or of a capital improvement associated with utilities provided to the Property whether or not the capital improvement is located on a Common Element, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto, and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.”

4. Except as herein modified, all terms and provisions of the Declaration are hereby ratified and confirmed and shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, the duly authorized officer the Association has hereunto set its hand and seal on the day and year first above written.

[SIGNATURE ON FOLLOWING PAGE]

Bella Vista Owners Association, Inc., a
North Carolina non-profit corporation

By: *H. K. MacNair*
President

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I certify that the following person personally appeared before me this day acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Henry K. MacNair, President.

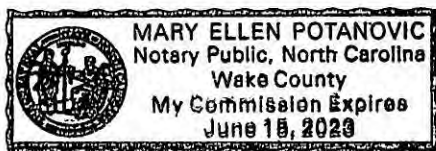
Witness my hand and notarial stamp or seal, this 25th day of February, 2019

My commission expires:

June 15, 2023
[AFFIX SEAL]

Mary Ellen Potanovic
Notary Public

Typed or Printed Name: MARY ELLEN POTANOVIC



Bella Vista Development, LLC, a
North Carolina limited liability
company

By: *Henry K. MacNair*

Henry K. MacNair, Manager

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I certify that the following person personally appeared before me this day acknowledging to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Henry K. MacNair, Manager of Bella Vista Development, LLC.

Witness my hand and notarial stamp or seal, this 25th day of February, 2019.

My commission expires:

June 15, 2023
[AFFIX SEAL]

Mary Ellen Potanovic

Notary Public

Typed or Printed Name: Mary Ellen Potanovic

