

RUTHERFORD



Rutherford Homeowners Association, Inc. Rules & Architectural Guidelines

**Adopted 6/29/20
Revised 05/23/2025**

TABLE OF CONTENTS

1.0	Introduction.....	3
1.1	Applicability	3
1.2	Purpose.....	3
1.3	Application and Review Process	3
2.0	General Architectural Standards	4
2.1	Antennas, Satellite Dishes (DBS, MDS, DSS).....	4
2.2	Birdbaths, Birdfeeders, Birdhouses and Statuary	5
2.3	Clotheslines	5
2.4	Decks, Patios, Porches and Sunrooms	5
2.5	Awnings & Shades	6
2.6	Pets	6
2.7	Exterior Colors, Shutters, Doors, Other Exterior Modifications	7
2.8	Exterior Lighting, Seasonal Decorations	7
2.9	Fences and Privacy Screening	8
2.10	Flagpoles, Flags.....	10
2.11	Garage Sales, Garage Sale Signs, Items For Sale	10
2.12	Garbage Containers, Recycle Containers, Garbage.....	10
2.13	Home-Based Businesses.....	11
2.14	Swimming Pools.....	11
2.15	Landscape improvements	12
2.16	Outdoor Furniture.....	13
2.17	Parking, Recreational Vehicles, Campers, Boats, Trailers	13
2.18	Signs (General).....	13
2.19	Storm Doors.....	14
2.20	Window Air Conditioners, Fans	14
2.21	Grading, Drainage and Dirt.....	14
2.22	Yard Maintenance.....	15
2.23	Trampolines, Play Equipment, Basketball Goals	15
2.24	Storage Sheds, Garages and Other Improvements.....	16
3.0	General Appearance Standards/Maintenance	16
4.0	Architectural Review Committee (ARC).....	16
4.1	The Architectural Review Committee Process.....	17
4.2	Architectural Review Criteria.....	18
4.3	Appeal Procedure	19
4.4	Violations and Penalties	19

1.0 Introduction

1.1 Applicability

This guide to Rules and Regulations (“Guide”) is adopted pursuant to the *Articles of Incorporation*, and the *Declaration of Covenants, Conditions, and Restrictions*, (“Declaration”). These documents provide for the establishment of reasonable rules and regulations concerning the use of individual lots and common areas. The Architectural Review Committee (“ARC”) serves as representatives of the Board of Directors (“Board”) while enforcing the Guide. Compliance with this Guide is required, but is not the sole basis for review or approval, nor does it guarantee approval of any application. In reviewing each application, the ARC may consider any factors it deems relevant. Decisions may be based purely on aesthetic considerations. Each owner acknowledges that determinations as to such matters are purely subjective in nature and that opinions may vary as to the desirability and attractiveness of a proposed addition or modification.

1.2 Purpose

This document is not intended to replace the Declaration, but to clarify the process by which homeowners may customize and modify the exterior presentation of their homes and/or lots. The intent is to provide consistent guidance to owners regarding requirements for additions and modifications to property in the community, and matters of particular concern to the ARC when considering applications for approval of such conditions and modifications. Additionally, the Guide sets forth various restrictions on other matters relating to community standards and the overall appearance of property in the community.

1.3 Application and Review Process

Unless otherwise specifically exempted by the Declaration or this Guide, **each and every proposed exterior modification/addition to residential units or lots require prior approval of the ARC.** Submit the *Request for Architectural Approval* form to the management company at the address noted on the request form.

Each application must include a copy of the lot survey showing the size and location of the proposed modification/addition as well as a list and description of the materials to be used. Color samples **and photographs** may assist the ARC in rendering its decision and expedite the review process. The ARC may require submission of such additional information as may be reasonably necessary to consider any application. Review of the application and notification to the applicants shall be conducted as described in the Declaration. The Board and the Committee shall have 60 days to review submitted plans and to approve or disapprove those plans, as provided in the Declarations, although generally, a decision is rendered much earlier. Where specifically permitted to proceed without prior approval, such permission shall only be effective so long as the Owner complies with every requirement of this Guide. The ARC is not responsible for ensuring structural integrity or compliance with state and local building codes. Homeowners must obtain all necessary building permits and other government approval that may be required for the proposed modification or addition. ARC approval does not constitute engineering

approval. ARC approval is aesthetic in nature. Improvements and consequences are the sole responsibility of the homeowner or person making the improvements.

It is strongly encouraged that you share and discuss your plan and application request with your neighbors on either side of your property and directly behind or adjacent to your property. Their signature on the form only indicates that they are aware and have viewed the planned activities, not that they approve, as their approval is not solicited. This notification may prevent any questions or an objection surfacing after any installation work has been performed.

2.0 General Architectural Standards

2.1 Antennas, Satellite Dishes (DBS, MDS, DSS)

Pursuant to FCC Section 207 of the Telecommunications Act of 1996, the Association will not require prior approval for antennas/dishes in the attic, crawl space, garage, or other interior space of the dwelling, or another approved structure so as not to be visible from the exterior of the residence. However, homeowners who wish to place a satellite dish on the exterior of the residence must submit a *Request for Architectural Approval* to the ARC.

The following rules apply to antennas and satellite dishes installed on the exterior of the residence:

- Freestanding antennas/dishes (mounted on a pole anywhere on the lot) are **not** permitted.
- A maximum of two satellite dishes measuring one meter or less (39”) in diameter may be erected on any lot.
- The cables must be hidden or buried. It is the owner’s responsibility to assure that the installer performs this task. If installation is required in other than the following approved locations, include a statement from the installer with an ARC application.

Standard, approved placement of a satellite dish is:

- Attached to or mounted on a deck or patio in the rear of the residence and extending no higher than the eaves of that portion of the roof of the dwelling directly in front of such antenna; or,
- Attached to or mounted on the rear wall or rear roof of the residence so as to extend no higher than the ridgeline of the residence at a point directly above the position where attached or mounted to the wall.

2.2 Birdbaths, Birdfeeders, Birdhouses and Statuary

Birdbaths, fountains, birdfeeders and houses, and statuary require a *Request for Architectural Approval* application and ARC approval. The Guidelines permit two (2) approvable items maximum in the front area.

If approved, birdfeeders and birdhouses must be no larger than one foot in width, one foot in depth, and one foot in height. Any pole on which a birdhouse or birdfeeder is located may not exceed two inches in diameter and six feet in height (including the house and feeder).

Fountains, birdbaths, birdhouses, and bird feeders shall not be placed in the front yard, side yard, or in common areas or wetlands/marshes.

Statuary of any kind shall require a *Request for Architectural Approval* application and ARC approval.

2.3 Clotheslines

No clotheslines of any type are approved or will be allowed to remain on any Lot.

2.4 Decks, Patios, Porches and Sunrooms

Decks, patios, porches, sunrooms, fire pits, knee walls, permanent built in grills, and paver or concrete pads for grills are approvable items and require ARC approval with a *Request for Architectural Approval* application. Included in the ARC Request should be the type and color of stain or paint, and screen, siding, and roofing details, including materials and colors.

During the Declarant Control Period, all proposed decks, patios, porches and sunrooms will only be approved if similar in size and constructed materials as those originally available by the builder per plan. *In addition to the original rear structural options that were offered per plan, another 250 sf of patio expansion is approvable and this 250 sf may not be applied towards any structural expansions. See Section regarding pools for additional information regarding expansions (9/25/24 Update).* Decking material, if wood, may be stained a natural wood color, and must be maintained. All decks, patios, porches and sunrooms require ARC approval with a *Request for Architectural Approval* application. Included in the ARC request should be the type and color of stain or paint, and screen, siding and roofing details, including materials and color.

Patios may be approved in the rear area of the lot only. Acceptable patio materials are stone, brick, stamped concrete, and plain concrete. Due to unique topography in some rear lots, retaining walls may be considered in the rear area only to create even patios. All proposals for patios require ARC approval with a *Request for Architectural Approval* application and the owner is advised that the municipality may require permits. Any permits, if required, are the responsibility of the owner.

No indoor-outdoor carpeting may be installed on any porch, patio or deck. Personal property such as bicycles and recreational equipment should be stored inside the home or garage.

Fire pits, knee walls, permanent built in grills, and paver or concrete pads for grills are approvable items and require ARC approval with a Request for Architectural Approval application. Stone fire pits are approvable items provided that they are permanent in nature and will be counted towards impervious square footage. Non-permanent fire pits are also approvable items and must be kept in good repair and stored out of the line of view from the street and neighboring properties while not in use. (5/12/21 Update)

Raw exterior wood and decking may be stained with one of the following Behr semi-transparent stains ONLY, without an application. Clear coat sealant may also be used.

- Pewter ST-131 (grey tone)
- Wood Chip ST-111 (mid brown tone)
- Padre Brown ST205 (dark brown tone)
- Boot Hill Grey ST-159 (light taupe tone)
- Taupe ST-153 (lightest taupe tone)

Pergolas will only be approved if immediately adjacent to the home, permanent in nature, constructed of wood, and may be painted to match existing exterior trim, stained to match decking material, Pulte Gold, or sealed with clear sealant. Pergolas must be constructed over an existing patio or approved patio extension.

Required building permits and placement within the building envelope is mandatory. Any utility easements must not be entered or obstructed. Lots may have impervious surface limitations which further restrict the additional features that may be added to a lot.

2.5 Awnings & Shades

Awnings or similar shading devices are permitted on the Rear of the home only, and must be solid, light to medium earth-tone in color or as similar in color to the home as possible. Retractable awnings must remain retracted at night and when not in use. No advertising, stripes, patterns, or logos are allowed on awnings. Awnings must be installed over a patio area and not over grass. (5/12/21 Update)

2.6 Pets

Owners are required to maintain control of their pets at all times. Pets must be on a leash, or restrained in the yard by use of invisible fencing or an approved fence.

Animal nuisance of any kind will not be tolerated, including noise and improper waste disposal. While outside the confines of the owner's property, animal waste will immediately be collected by the owner and disposed of in an approved waste receptacle.

Other than household pets, no other animals, livestock or poultry of any kind shall be raised, bred or kept on the properties. Dogs, cats or other household pets may be kept in homes

provided that such pets are not kept, bred or maintained for any commercial purpose. It is suggested that homeowners familiarize themselves with any applicable municipal ordinances relating to pets.

2.7 Exterior Colors, Shutters, Doors, Other Exterior Modifications

Changes to existing exterior paint and roof color require a Request for Architectural Approval application and ARC approval. Changes to existing exterior paint color will only be approved if the new color scheme does not exceed 4 different colors on the home's façade (including but not limited to shutter, board and batten, shutters, and door colors). Changes to existing exterior color scheme will only be approved if the desired color/s were originally offered by the builder. Community color book can be made available upon request for approvable colors.

Shutters & Doors require a Request for Architectural Approval and may only be approved if they are similar in style to that which was originally offered by the builder on other homes and matches the style of the home.

Repainting using an existing paint color, re-roofing, minor repairs, and the like shall not require the approval of the Committee. (5/12/21 Update)

2.8 Exterior Lighting, Seasonal Decorations

All permanent exterior landscape lighting or décor requires a *Request for Architectural Approval* application and ARC approval prior to installation. General rules on exterior lights, include:

- Low voltage light fixtures may be used for low-level path lighting, up-lighting, down lighting and landscape architectural accent lighting.
- Lights along a path or outlining a natural area should be in the mulched area and at between four (4) and six (6) feet apart and should not exceed eight (8) in number in the front.
- Low voltage/solar lights should not be installed along driveways unless there is a special need.
- Tree-mounted down lights shall be shielded from both street and neighbors view such that the light source is not readily visible from the street.
- Low voltage and security fixtures shall be located and aimed carefully so that they do not constitute a nuisance or hazard to any homeowner or neighboring resident. A lighting layout plan for low voltage fixtures shall be submitted to the ARC for review and approval.
- Junction boxes shall be placed below grade or screened to minimize daytime visibility of hardware.

- No colored or multi colored lights or changing color lights are permitted except at holiday times. Low voltage light fixtures may not exceed 18" in height. Light fixtures shall conform to the architectural character of the home and will be subject to approval by the ARC.

Holiday decorative lights are pre-approved from Thanksgiving through the 15th of January. Seasonal decorations are approved without application two weeks prior to the event until two weeks after the event.

2.9 Fences and Privacy Screening

No fence, other than the types listed below, shall be constructed or erected on any lot.

Approval must be sought through a *Request for Architectural Approval* application and ARC approval must be granted prior to installation.

Owner is responsible for any municipal permits required for fence installation.

There are two approved fence styles:

1) Black aluminum fence

Minimum height: 4 feet, maximum height of 5 feet.

Note that a “puppy panel” at bottom is allowed.



2) Solid wood privacy fence, treated pine #2 grade, with 2x4 exterior brace

6 feet in height, with decorative copper caps.

Fence is required to be either stained with an approved stain (“Pulte Gold” from Home Depot or similar) or clear sealant. “Pulte Gold” stain is available at Home Depot, ask an associate to look up “Pulte Homes” under phone number 919-816-1100 to

retrieve the color formula called “Pulte Gold”. Application must specify the choice.



Fencing notes:

- Acknowledgment of the fence application is required of neighboring and affected owners.
- Fences may be allowed to make short perpendicular crossings of easements. Fences are prohibited from running laterally within the easement
- Owners may tie-in their fence with existing neighbor's fence with permission and acknowledgement by the affected owner, and signatures should be reflected in the application. Any agreement between neighbors to share a fence is considered a private agreement to which the HOA and the Board of Directors will have no responsibility. Tie-in of owner's fence to common area fencing or walls *may* be allowed at the Board's discretion, depending on the circumstance.
- All fences must be placed within the Owner's property.
- Fences may enclose all or part of the rear *and side* yards only. Fences *must be a minimum of 15' back from the front* corners of the home. (4/18/25 Update)
- Corner Lot Fencing - corner lots may fence-in the side yard adjacent to the roadway. The fence may not extend more than 30' from the rear house corner and may not be closer than 15' from the front corner (excluding the front porch). The fence must be installed at least 5' off the side yard property line to leave at least 5' of grass or other landscaping outside the fence on the property.
- Fences must be maintained and kept in good repair.

- Each fence shall include at least one gate.

Any desired or required privacy screening requires a *Request for Architectural Approval* application and ARC approval is required. Screening must follow fencing guidelines.

2.10 Flagpoles, Flags

Freestanding flagpoles are only allowed for American flags. All other flags must be placed in planting beds or attached to flag brace installed on the dwelling. Flags, which, in the Board's judgment, tend to incite or antagonize are not permitted.

American flags meeting the following criteria are pre-approved:

- One flagpole, not to exceed two inches in diameter and sixty inches (60") in length. The American Flag may be mounted on the front of a dwelling.
- American flags shall not exceed 4' x 6' in size, must be maintained in good condition and shall not be displayed if mildewed, tattered, or faded.

All other flags, whether attached to the home or placed in the yard, require *Request for Architectural Approval* and ARC approval before being installed.

2.11 Garage Sales, Garage Sale Signs, Items For Sale

Garage sales must be limited to a maximum of 2 (two) times per year per residence. Each garage sale may last a maximum of 48 hours. Sale items must be kept in the immediate area of the garage area.

Advertising signs may be placed at the residence 48 hours in advance of the sale and must be removed immediately after the conclusion of the sale. Signs placed other than at the residence must follow the guidelines in paragraph 2.16.

Signs advertising items for sale such as cars, boats, lawnmowers, etc. may not be displayed at the residence or on any common areas.

2.12 Garbage Containers, Recycle Containers, Garbage

Garbage containers are pre-approved to be stored in the following locations:

- Inside the garage, except on garbage collection days.
- In the rear of the dwelling, fully out of sight from the road and neighboring properties.

If storage in the side yard is desired, a *Request for Architectural Approval* application and ARC approval is required. Concrete garbage pads will only be approved if 3' x 5' in size. Acceptable pad materials are stone or brick earth tone in color, stamped concrete, and plain concrete. The application must contain a plan to screen the garbage and/or recycling containers from the street and neighboring lots with fence paneling per fence guidelines, or landscaping.

Garbage and recycle containers may be placed at the curb no earlier than dusk the day prior to collection and must be retrieved and stored back inside the garage or rear yard before dusk on the day of collection.

2.13 Home-Based Businesses

Home-based businesses are permitted provided the following criteria are met:

- It is not evident that home-based business is being conducted.
- No unusual traffic, other than normal residential traffic, is permitted. The Board may have sole discretion as to whether amount of traffic generated is unusual.
- Only removable signs are permitted on vehicles and said vehicles must be parked in the garage or the signs may be required to be removed while in the community.
- No items or equipment related to the business may be stored or otherwise kept on owner's lot outside of the dwelling or garage
- Business activities must comply with all applicable federal, state and local laws.

2.14 Swimming Pools

The following above ground items are not permitted: hot tubs, spas, saunas, and pools. Kiddie pools, defined as hard plastic pools or plastic inflatable pools meant for this purpose are allowed provided that they must be placed in the back yard, out of view from the street. They must be used only during the months of May through September, and when not in active use for this purpose must be stored inside the Dwelling or garage. *In-ground pools and spas must be screened with a solid wood privacy fence and require a Request for Architectural Approval application and ARC approval. Approvable inground pools and spas meet the following criteria:*

1. *Pool Deck width may not exceed 10 feet in any spot.*
2. *Pool Equipment shall be located adjacent to the house, screened with evergreen shrubs, and associated pad will count towards impervious limits listed below.*

Cumulative impervious limits are as follows:

*The Rear structural options as originally offered by the builder, per plan, are allowable (no impervious limit)***

A. Expanded Patio	250sf max
B. Shed	80sf max
C. Pool Deck	<u>670 sf max</u> (varies based on expanded patio & shed)
	Total = 1000sf

For example –

- *1000 sf pool deck is approvable only if the expanded patio and shed were not also*

- built on the lot.
- 820 sf pool deck would be approvable if the expanded patio and shed were built on the lot.

****Maximum Original Builder Options**

House Plan	Patio	Lanai	Sunroom	Rear Extension
Abbeyville	12' x 10'3"	12'3" x 10'3"	11'4" x 9'7"	N/A
Aspire	12' x 12'	12' x 12'		17'8" x 4'
Eastway	15' x 8'	15' x 12'3"	11'4" x 11'7"	N/A
Hampton	12' x 10'	12' x 12'		16'3" x 4'
Martin Ray	10' x 14'3"	19' x 10'	16'7" x 11'7"	N/A
Mitchell	12' x 10'	12' x 12'		15'10" x 4'
Summerwood	11'1" x 12'3"	14'6" x 12'3"	13'8" x 11'8"	N/A

Notes:

- Please see Exhibit 4 for more details regarding approvable pools and pool deck limits.
 - Rear Structural Options are limited on a per plan basis. As an example, the owner of a Mitchell is not entitled to the patio size of an Aspire.
- (8/16/21 Update)

2.15 Landscape improvements

All installed edging borders of landscape beds or tree wells require *Request for Architectural Approval application* and ARC approval before being installed. Preferred edging material should be made of the following materials:

- Fibertech 5/16 x 3 7/16" composite bender board (or equivalent)
- Coated steel coated edging, earth tone in color
- Stone pavers/concrete pavers/solid bricks with flat tops provided that they are installed at ground level with no more than a 2-inch reveal and are earth tone in color. Red / pink pavers or bricks are not allowed. Multiple layers of materials are not allowed.

- Ground level installation shown here: (5/12/21 Update)



Ground plane material in landscape beds shall be either wood, stone, or brick chips meeting the following additional criteria if applicable:

Mulch

Color: Natural, brown, black, or red

Stone

Size: 1/2" to 3"

Color: White, gray, or earth tones

Brick chips

Size: 1/2" to 2"

Color of ground plane material must be consistent throughout the lot with the exception of a combination of stone and mulch. Rubber mulch is not allowed. (4/18/25 Update)

Vegetable gardens are permitted only in the rear yard. Gardens may be constructed of treated wood, concrete, stone, or brick, and must appear neat and clean. Debris and all dead plant material must be removed quarterly. Garden areas shall not exceed 64 square feet. (4/18/25 Update)

2.16 Outdoor Furniture

No furniture shall be used, stored or kept on the exterior of any residence except on porches, patios, rear grassed area and decks. Furniture not enclosed in a room shall be limited to such types as is designed for outdoor use.

2.17 Parking, Recreational Vehicles, Campers, Boats, Trailers

Refer to Declaration of COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS for RUTHERFORD Article VI, Section 5 for regulations on parking.

Widening of driveways to 20' is permitted with stamped or standard concrete. The widening must be equal on each side. Driveway extensions may be approved on a case-by-case basis by the ARC Committee. (5/23/25 Update)

2.18 Signs (General)

The placement of the following signs on any portion of the property must meet the following requirements and do not require the submittal of a *Request for Architectural Approval Application* and ARC approval:

- A single "For Sale" sign (which shall be limited to six (6) square feet) and must be displayed from the inside window of the dwelling.
- A single garage sale sign as described in paragraph 2.10.
- Such permits as required by legal/government agencies.
- Official community events as approved by the Board.
- Political signs may be placed on the homeowner's property expressing support or opposition to a candidate or referendum issue, not 60 days before the election and must be removed within 2 days following the event.
- Security, burglar alarm, or dog fence signs located discreetly in the front yard of the

house and measuring no more than one foot by one foot in size (1' x 1').

- Open house, yard/garage sale or community event sign in the common area, up to 3 days prior to the event. The signs must be immediately removed after the event concludes.
- Temporary signage during the period of home improvements. Signs must be removed as soon as the job is completed.

Prohibited are: for rent signs, all homemade signs in yards and permanent signs announcing installation of security systems or interior or exterior improvements being done in or around the home after the conclusion of the installation.

All signs must comply with all applicable federal, state and local laws and ordinances, if applicable

2.19 Storm Doors

Storm doors are permitted with submittal of a *Request for Architectural Approval* form and ARC approval. They must be full-view glass or glass/screen and door frame color must match the existing facade color scheme. Split screen with retractable screens may be considered. Door hardware must also match the existing hardware (brass handle for brass lights, etc.)

2.20 Window Air Conditioners, Fans

Window air conditioning units and window fans are not permitted.

2.21 Grading, Drainage and Dirt

The grading and drainage swales in place at the time of closing are in place to support warranties existing at the time of closing and to prevent any run-off or drainage issues from your property on to any neighboring Lots. Any landscaping changes to an existing Lot after closing must be pre-approved by a *Request for Architectural Approval* application and ARC approval.

Any homeowner or resident who changes the existing grade or drainages shall be liable for all costs and expenses of repairing such changes, and any costs, liabilities, damages or causes of

action arising out of such changes. ARC approval does not constitute approval for a homeowner to change any existing grading or drainages.

All dirt, excavated or brought in, shall have a specific plan for storage in the rear area of each Lot. At no time, shall dirt be stored on any Common Area.

Prior to any digging or excavation in any Lot, it is strongly recommended that “NC No Cuts” be contacted at 811. **It is the homeowner’s responsibility to avoid underground utilities and in some cases, your application may be denied or amended by the ARC Committee based on known utility lines on your property, or based on drainage and utility easements.**

Important Note: ARC approval on landscaping and grading does not constitute engineering approval. ARC approval is aesthetic in nature. Improvements and consequences are the sole responsibility of the homeowner or person making the improvements.

2.22 Yard Maintenance

Homeowners shall be required to water the grass and plantings on their lots as needed to maintain a healthy lawn and plants, as well as to be responsible for replacing any dead plantings with material similar in nature to the original landscaping. The same color scheme of mulch and/or pine straw utilized throughout the community and in neighboring lots shall be maintained. All landscaping improvements made by the homeowner will be the responsibility of the homeowner to maintain and not that of the Association.

The replacement of dead shrubs and trees, are pre-approved and do not require a *Request for Architectural Approval* application and ARC approval prior to installation if the dead or diseased shrub or tree is being replaced by a similar one in type and size (i.e., replacing a 2.5” caliper maple for a 2.5” caliper maple; replacing a one gallon size azalea with a one gallon size azalea).

All landscaping changes and additions which are not ‘like to like’, installation of mulch; erecting edging devices and other changes of a similar nature shall require the submission of a *Request for Architectural Approval* application and ARC approval prior to installation.

2.23 Trampolines, Play Equipment, Basketball Goals

Trampolines are not allowed on any lot unless the lot is fenced with a privacy fence. Additional screening may be required. Trampolines require a *Request for Architectural Approval* application and ARC approval. If approved, they must be placed in the rear yard and must be out of view or screened from view of the street.

Play Equipment is allowed but requires a *Request for Architectural Approval* application and ARC approval. If approved, they must be placed in the rear yard and must be out of view or screened from view of the street. *Approvable Play Equipment meets the following requirements, earth-tone in color (slide or swings may be blue or yellow), no more than a 150sf play area with*

one slide appendage, no taller than 10ft, and must not be enclosed on all sides. See Exhibit 3 for further illustration of approvable play equipment and play area. (5/12/21 Update)

Refer to Declaration of COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS for RUTHERFORD Article VI, Section 25 for regulations on basketball goals. (4/18/25 Update)

2.24 Storage Sheds, Garages and Other Improvements

Refer to Declaration of COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS for RUTHERFORD Article VI, Section 31 for regulations on detached buildings and garage usage. (4/18/25 Update)

No space within any garage may be converted to living space, but will remain as required parking. Sheds are allowed and require a Request for Architectural Approval application and ARC approval. Shed must be constructed with the same materials (siding, trim, shingles), roof pitch and colors as the house on the same lot. Sheds must have a suitable floor and foundation, must be placed behind the home so as not to be seen from the roadway if standing in front of the house, and may not be installed in building setbacks (even if allowed by the Town). Sheds may not be larger than 8'x10'. Most prefabricated sheds will not be approved. (8/16/21 Update).

3.0 General Appearance Standards/Maintenance

Paint and stain must be maintained in uniform and good repair (with no peeling, chipping, cracking, or discoloration) on the trim or siding.

Lawns must be well kept with uniform ground coverage. The designated lawn area should be fully covered with grass. Any brown or bare patches should be repaired during the spring or fall season. Dead trees and shrubs must be removed and replaced with plantings of similar size and shape, or if different, must be approved by the ARC before installation. Properties should be free of debris.

No items such as toys, bikes, garden equipment, chairs, wood, etc. may be left in front or side yards or on porches when not in use.

Artificial vegetation is not allowed.

4.0 Architectural Review Committee (ARC)

The Declarations establish an Architectural Review Committee (ARC) comprised of individual(s) at the discretion of the board. The ARC is charged with conducting the review of all applications for exterior changes and with rendering a decision to the applicant **within 60** days. The ARC will respond in writing with either an approval, approval with conditions, disapproval, or a request for more information on the project. More information may be required for the ARC to make an informed decision. It is the Homeowner's responsibility to provide that information in a timely manner.

The ARC may from time to time publish and promulgate architectural standard bulletins, which shall be fair, reasonable, and uniformly applied. The ARC shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement the Declaration and are incorporated herein by reference.

4.1 The Architectural Review Committee Process

The Declaration of Covenants requires prior written approval for any improvements to an owner's lot. Therefore, do not commit labor or materials until you have received written approval.

1. Owner submits to the Architectural Review Committee, in care of the management firm, an Application for Architectural Improvement. **Please note the Architectural Review Committee has sixty (60) days to review the application; however the actual time to review and reach a decision usually is much shorter. The review period does not start until Community Association's management company receives the completed application.** Complete applications will be considered on individual merit, using these documented standards as a basis for decision-making.

****Out of courtesy, we request you inform your neighbors of your proposed improvement(s). Note:** when attaching to a neighbor's fence, written approval must be obtained from the neighbor.

2. The application, noted with the date of receipt by the manager, is turned over to the Architectural Review Committee within two working days, provided all information necessary for review is received. Management will make a cursory review of the application and request of owner any additional information needed. The committee may still require additional information, as detailed in 4d, below. The **60-day timetable** begins when the application is complete and appropriate for review.
3. The committee will act on the application within the allowable **60 calendar days** from receipt; however most applications will receive a response within three weeks.
4. The committee's decision will be noted on the application. The owner will be notified by management of all final decisions, either:
 - a. **APPROVAL:** The application is approved as submitted.
 - b. **APPROVAL WITH CONDITIONS:** The overall proposal is accepted, but with certain specified changes, limitations, or requirements that must be followed.
 - c. **DISAPPROVAL:** The application is denied. The owner can appeal to the Architectural Review Committee within 15 business days. Further escalation may require the involvement of the Board of Directors. *(see Appeal Process section for more details)*

- d. **ADDITIONAL INFORMATION REQUIRED:** The Committee has determined that additional information is needed for appropriate review of the application. In this case, the entire process begins again once management receives the information. The owner should follow the same submission procedure. The Architectural Review Committee will act swiftly on all re-submissions.
5. **ARC or management inspection:** The ARC or the manager reserves the right to visit your lot and inspect the improvement, to verify that the application details were followed and to note problems encountered which might help other residents on similar projects.
6. Once work has begun on an improvement, it must be completed within 90 days. Applications are valid for 1 year from the date of approval.

**** Please note:** Many design changes require a permit and the City and/or County may not issue a permit without the written approval of the ARC. Please plan in advance. It is strongly suggested that the City and /or County be contacted to determine what permits or approvals are required from a City/County Ordinance. Architectural Review Committee approval does not substitute for municipal approval. It is the homeowner's responsibility to acquire appropriate approvals, permits, etc. from the appropriate municipality.

4.2 Architectural Review Criteria

The ARC evaluates each application on the individual merits of the application and the standards listed below. During the Declarant Control Period, Declarant has unilateral right to deny an application if approval would affect design standards.

Validity of Concept - The basic idea of the exterior change must be sound and appropriate to its surroundings.

Landscape and Environment - The exterior change must not unnecessarily destroy the natural landscape or the achieved man-made environment.

Relationship of Structures and Adjoining Property - The proposed change should relate harmoniously among its surroundings and to existing buildings and terrain that have a visual relationship to the change.

Protection of Neighbors - The interest of neighboring owners will be considered, using various and appropriate criteria and exercise discretion in determining which of these criteria will be governing in each specific application.

Design Compatibility - The proposed change must be compatible with the design characteristics of the applicant's home and the general neighborhood setting. Compatibility is defined as harmony in style, scale, materials, color and construction details.

- a. Scale: The three-dimensional size of the proposed change must relate satisfactorily to adjacent structures and their surroundings.
- b. Materials: Continuity is established by use of the same or compatible materials as used in the existing home. Siding materials and shingles must match existing structure.
- c. Color: Color may be used to soften or intensify visual impact.

Workmanship - The quality of work must be equal to or exceed that of any existing structure. Poor practices may cause the owner problems and may be visually objectionable to others. For example, a wooden fence not properly treated and maintained may, in a short period, start to decay and become unsightly to the owner and neighboring property owners.

4.3 Appeal Procedure

If the applicant disagrees with the decision of the Committee in its review or inspection, the process is noted for an appeal:

1. Within 15 business days after receipt of a notice of disapproval, the homeowner must file a written appeal with the Architectural Review Committee at the address of contact for the community.
2. Upon receipt of the appeal, the ARC may contact the homeowner and schedule a review of any further information relating to the request and appeal.
3. Should the ARC determine that the disapproval remains, the homeowner may request (within 7 days) that the appeal be forwarded to the Board of Directors. It is the responsibility of the ARC to forward any correspondence and pertinent information to the BOD at this time.
4. The Board of Directors shall then establish the date and the time that the appeal will be heard. Normally, this will be made at the next scheduled Board meeting. To reverse an Architectural Review Committee decision, requires a majority vote of the BOD.
5. No work may progress during this appeal process time period.

4.4 Violations and Penalties

An exterior change made without the required approval of the ARC constitutes a violation of the Declaration of Covenants and Community Guidelines. **A violation may require removal or modification of the work at the expense of the property owner**, even if the request may have been otherwise approved.

When a violation is determined to have occurred, the following steps shall be taken:

1. The ARC will investigate any reported violation and attempt to bring the owner into compliance. Homeowners will be notified in writing of the violation and are expected to bring the violation into compliance within thirty (30) days.
2. Should the owner fail to act upon the recommendations for corrections, the Committee shall submit the matter to the Board of Directors.
3. The homeowner shall be invited to a hearing with the BOD where the homeowner will have opportunity to be heard and present evidence. Failure to appear shall result in a fine beginning to accrue on the day after the scheduled hearing date. Of course, if the violation were brought back into compliance prior to the hearing, no hearing would be necessary.
4. After the hearing, the BOD shall respond to the homeowner with a decision in writing within five (5) days. Any penalties or costs relating to the violation (and the date from which the accrual shall begin) shall be noted in the letter from the BOD.

Fines: Fines may be levied on a daily basis, per violation, until the violation is rectified. The North Carolina Planned Community Act allows planned residential communities the ability to uphold standards that will protect and insure homeowners of maintained property values, with regard to holding all property owners accountable for abiding by the existing covenants.

Fees: A violation may also result in payment of damages incurred by the Association in having the work removed or modified, as well as a fine assessed by the Association. Attorneys' fees, court costs, site assessment will all be incorporated into the fine process.

**** Please remember; Owners are responsible for their renters.**

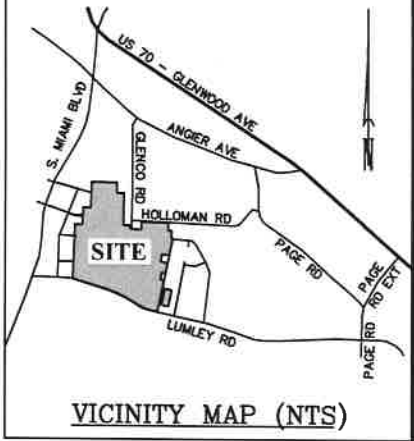
EXHIBIT 1A - CORNER LOT FENCING

LEGEND

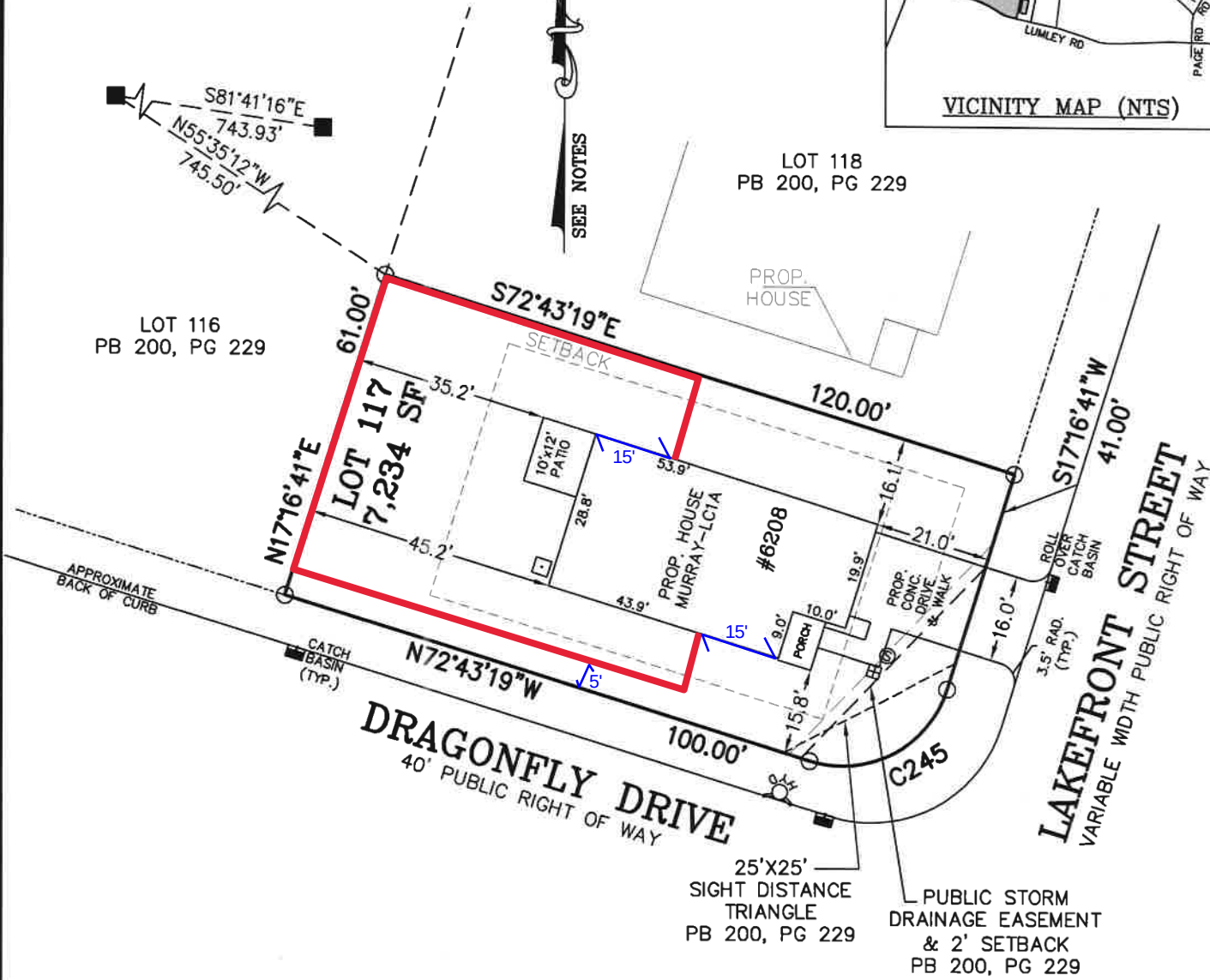
- MATHEMATICAL POINT
- CONTROL CORNER
- MAIS MAXIMUM ALLOWABLE IMPERVIOUS SURFACE
- ⊙ SEWER CLEAN OUT
- ⊞ WATER METER
- ⊠ A/C UNIT



GRAPHIC SCALE
1"=30'



VICINITY MAP (NTS)



CURVE TABLE				
CURVE	LENGTH	RADIUS	CH. BRG.	CHORD
C245	31.42'	20.00'	S62°16'41"W	28.28'

- NOTES:
- REFERENCE DURHAM COUNTY PB 200, PG 226-233 FOR BOUNDARY INFORMATION, NORTH INDEX AND TIE LINES TO SUBDIVISION CONTROL CORNERS.
 - ZONING: RR
 - SETBACKS:
 - STREET YARD-8', GARAGE-20', REAR YARD-25', SIDE-0', (BUILDING SEPARATION 10'),
 - STREET SIDE MIN: 8', 35' MAX. BUILDING HEIGHT
 - 2' MINIMUM BUILDING SETBACK FROM ALL PUBLIC AND/OR PRIVATE STORM DRAINAGE EASEMENTS.
 - THIS PROPERTY IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS SCALED FROM NFIP FIRM #3720074900K AND #3720075900K (EFFECTIVE DATE: 10/19/2018).

IMPERVIOUS SURFACE TABLE	
TOTAL ESTIMATED IMPERVIOUS-2,047 SF	
SITE	SQ. FT.
HOUSE	1,521
DRIVEWAY	336
LEAD WALK	61
SCR. LANAI	0
PATIO	120
SUN ROOM	0
A/C PAD	9

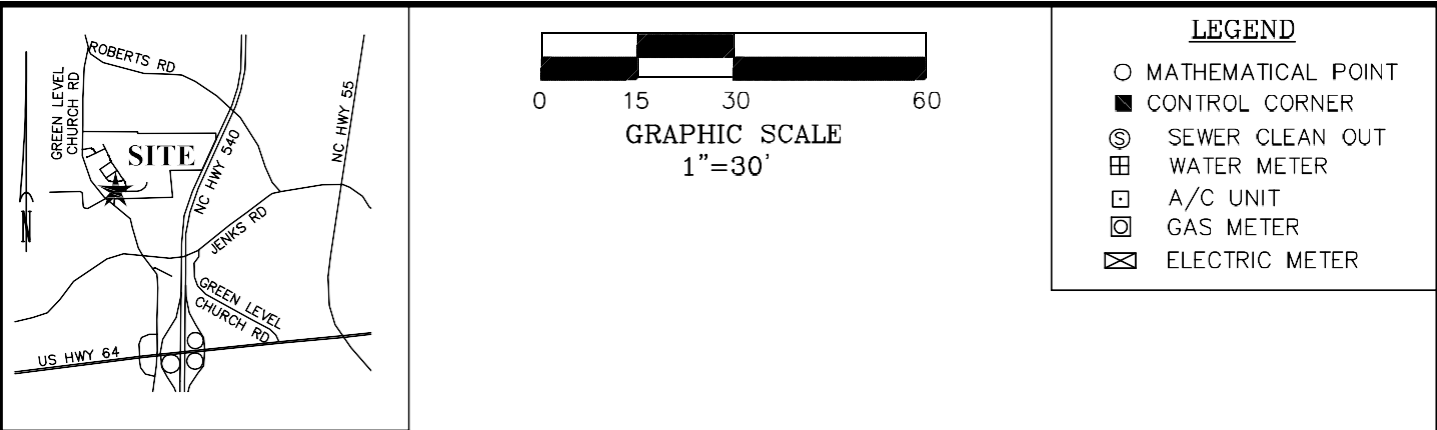
PERMIT PLAN FOR LOT 117



FENCE

IN THIS INSTANCE, THIS IS A CORNER LOT. ON THE SIDE ADJACENT TO LOT 118, THE FENCE MAY NOT EXTEND BEYOND 15 FEET FROM THE REAR CORNER, NOT INCLUDING ANY REAR OPTIONS. ON THE SIDE ADJACENT TO DRAGONFLY DRIVE, THE FENCE CAN EXTEND TO ENCLOSE THE SIDE YARD, BUT CANNOT COME ANY CLOSER THAN 15 FEET FROM THE FRONT CORNER OF THE HOME, NOT INCLUDING THE FRONT PORCH. THE FENCE MUST ALSO REMAIN 5 FEET OFF OF THE PROPERTY LINE ON THE SIDE ADJACENT TO DRAGONFLY DRIVE.

EXHIBIT 1B - FENCING & EASEMENTS



MYNSTER DRIVE
50' PUBLIC RIGHT OF WAY

APPROXIMATE
BACK OF CURB
SIDEWALK

5' TOWN OF APEX
UTILITY EASEMENT
BM 2016, PG 2225

LOT 72
BM 2016, PG 2225

LOT 70
BM 2016, PG 2225

20' PRIVATE STORM
EASEMENT
BM 2016, PG 2225

OPEN SPACE 1
BM 2016, PG 2225

SEE NOTES

NOTES:
-REFERENCE WAKE CO. BM 2016 PG 2222-2228
FOR BOUNDARY INFORMATION, NORTH INDEX & TIE
LINES TO SUBDIVISION CONTROL CORNERS.
-ZONING: PUD-CZ (13CZ18) & PUD-CZ (14CZ17)
-THIS PROPERTY IS NOT LOCATED WITHIN A SPECIAL
FLOOD HAZARD AREA AS SCALED FROM NFIP FIRM
#3720072300J, EFFECTIVE DATE: 05/02/2006 AND
NFIP FIRM #3720073300J, EFFECTIVE DATE: 5/02/2006
-SETBACKS:
FRONT: 15' FROM HOUSE FACADE;
20' FROM GARAGE FACADE
SIDE: 5'; REAR 20'

IMPERVIOUS SURFACE TABLE	
TOTAL ESTIMATED IMPERVIOUS-2,664 SF	
SITE	SQ. FT.
HOUSE	2,015
DRIVE	357
LEAD WALK	42
SUNROOM	116
PATIO	125
A/C	9

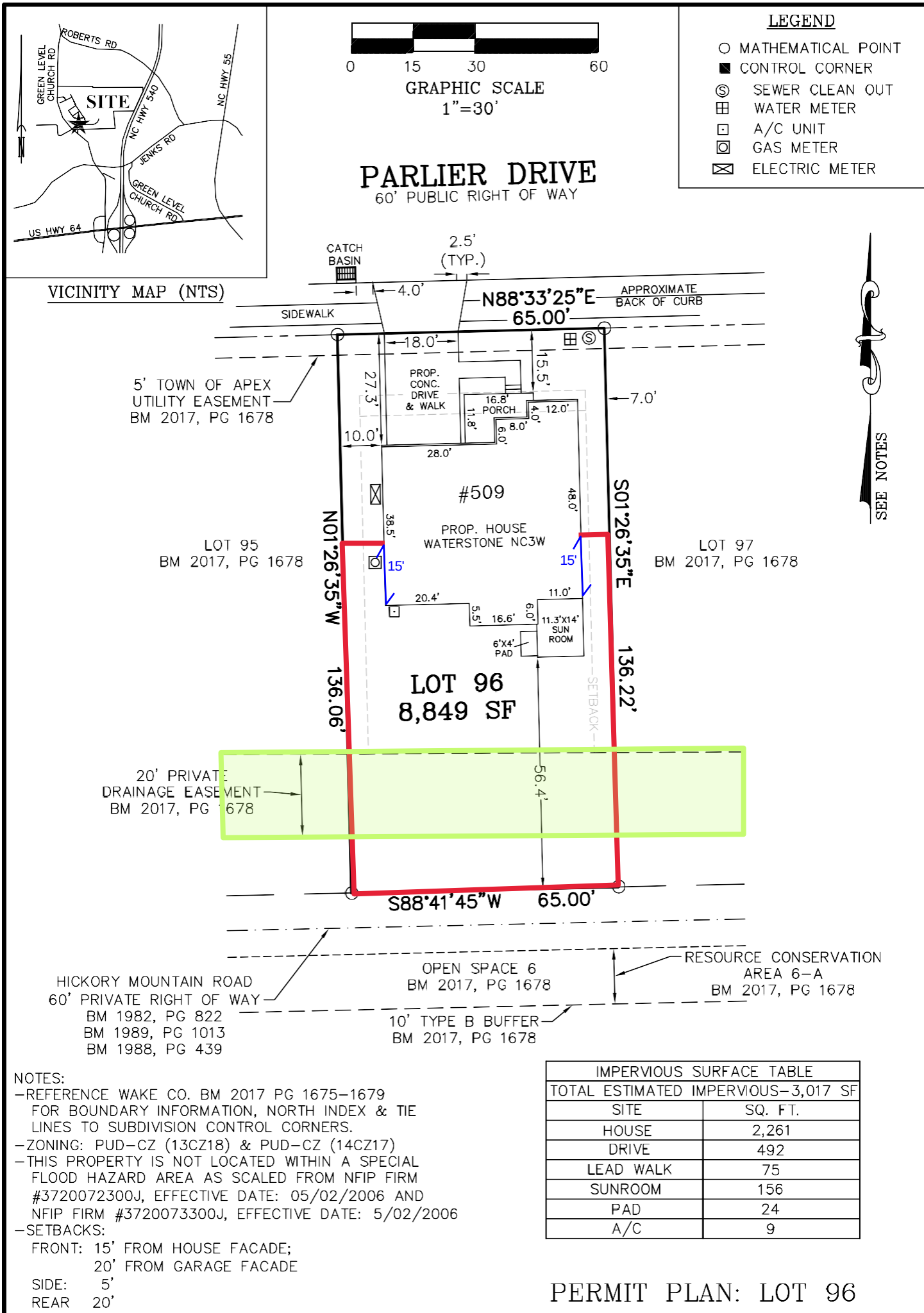
PERMIT PLAN: LOT 71

EASEMENT

FENCE

IN THIS INSTANCE, THE EASEMENT IS NOT COMPLETELY
WITHIN THE PROPERTY LINES, MEANING THE FENCE
CANNOT MAKE A SHORT PERPENDICULAR CROSSING OF
THE EASEMENT. THEREFORE, THE FENCE MUST STAY
OUTSIDE OF THE EASEMENT.

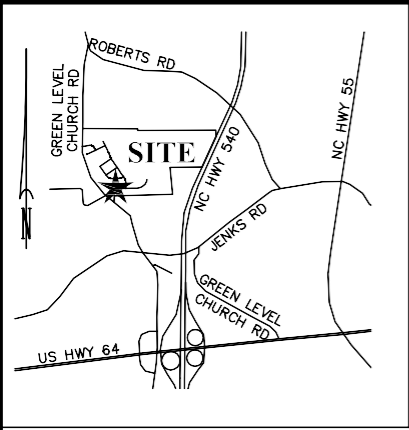
EXHIBIT 2 - REAR EXPANSION



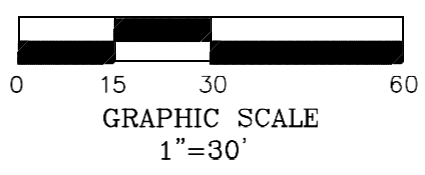
EASEMENT

IN THIS INSTANCE, THE EASEMENT IS COMPLETELY WITHIN THE PROPERTY LINES, MEANING THE FENCE CAN MAKE A SHORT PERPENDICULAR CROSSING OF THE EASEMENT. THEREFORE, THE FENCE MAY CROSS THROUGH THE EASEMENT THAT IS ON THEIR PROPERTY.

FENCE

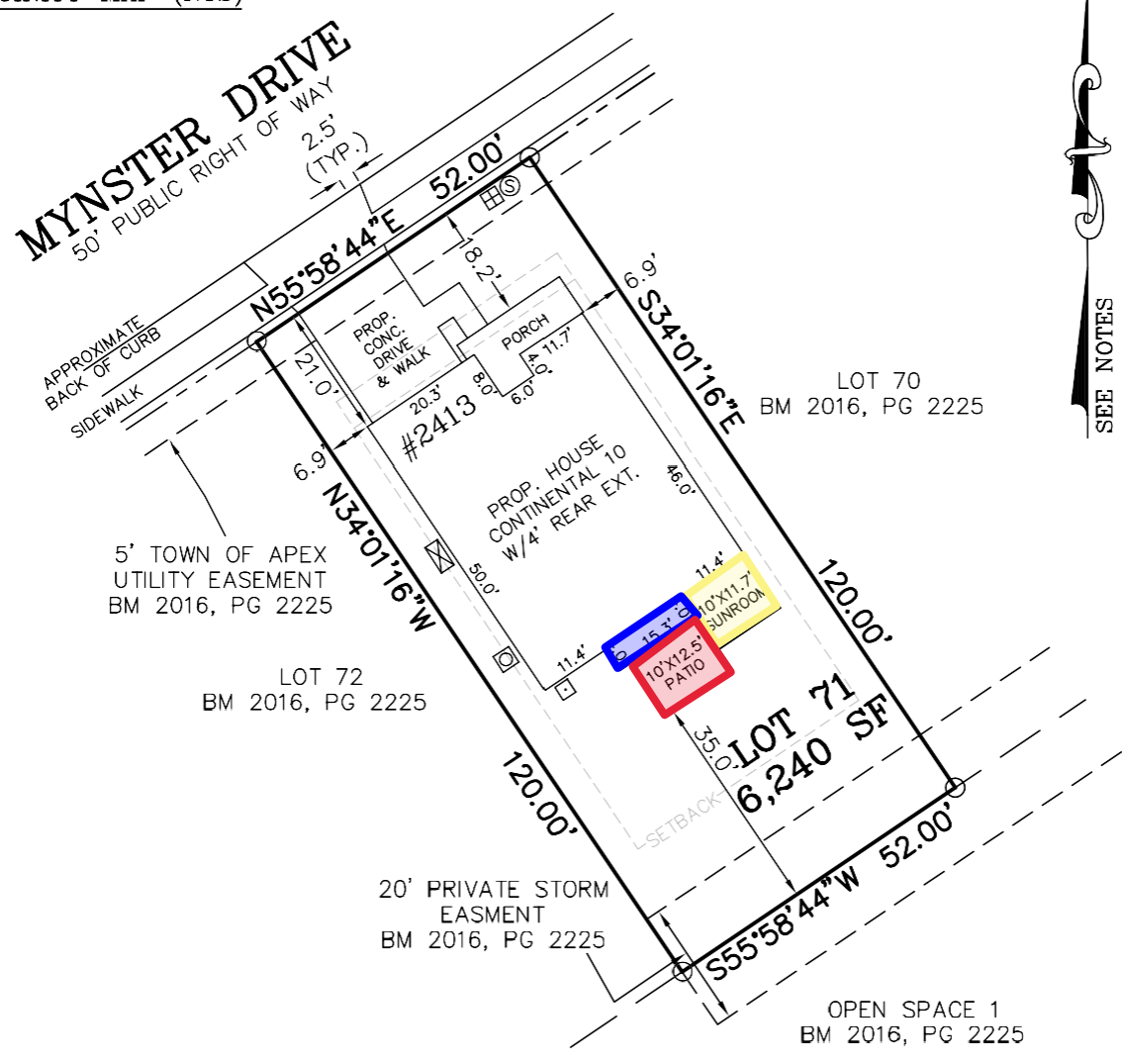


VICINITY MAP (NTS)



LEGEND

○	MATHEMATICAL POINT
■	CONTROL CORNER
⊙	SEWER CLEAN OUT
⊞	WATER METER
□	A/C UNIT
⊠	GAS METER
⊞	ELECTRIC METER



SEE NOTES

NOTES:

- REFERENCE WAKE CO. BM 2016 PG 2222-2228 FOR BOUNDARY INFORMATION, NORTH INDEX & TIE LINES TO SUBDIVISION CONTROL CORNERS.
- ZONING: PUD-CZ (13CZ18) & PUD-CZ (14CZ17)
- THIS PROPERTY IS NOT LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS SCALED FROM NFIP FIRM #3720072300J, EFFECTIVE DATE: 05/02/2006 AND NFIP FIRM #3720073300J, EFFECTIVE DATE: 5/02/2006
- SETBACKS:
 - FRONT: 15' FROM HOUSE FACADE;
 - 20' FROM GARAGE FACADE
 - SIDE: 5'; REAR 20'

IMPERVIOUS SURFACE TABLE	
TOTAL ESTIMATED IMPERVIOUS-2,664 SF	
SITE	SQ. FT.
HOUSE	2,015
DRIVE	357
LEAD WALK	42
SUNROOM	116
PATIO	125
A/C	9

PERMIT PLAN: LOT 71

- 4' REAR EXTENSION**
4'x15.3' = 61.2 SF
- SUNROOM**
10'x11.7' = 117 SF
- PATIO**
10'x12.5' = 125 SF

FOR THIS HOUSE PLAN, THE BUILDER OFFERED A 4' REAR EXTENSION (61.2 SF), SUNROOM/SCREENED PORCH (117 SF), AND A PATIO (125 SF). MEANING THAT, IF THE BASE HOUSE WAS PURCHASED, WITH NO REAR OPTIONS, THERE WOULD BE A TOTAL OF 303.2 SF (61.2 +117+125) AVAILABLE FOR THE HOA TO APPROVE FOR ANY APPROVABLE REAR EXPANSION (SUNROOM, SCREENED PORCH, DECK, PATIO, ETC.). FOR EACH REAR OPTION THAT WAS PURCHASED, THAT SQUARE FOOTAGE WOULD BE DEDUCTED FROM THE APPROVABLE REAR EXPANSION SQUARE FOOTAGE.

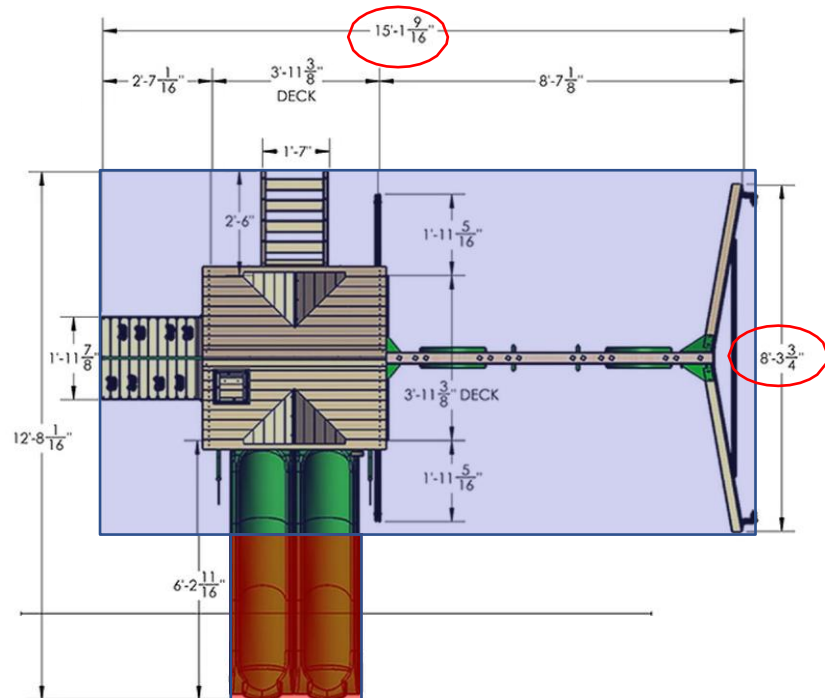
Exhibit 3 – PLAY EQUIPMENT, PLAY AREA, & PLAYHOUSES

Examples of Approvable Play Equipment:

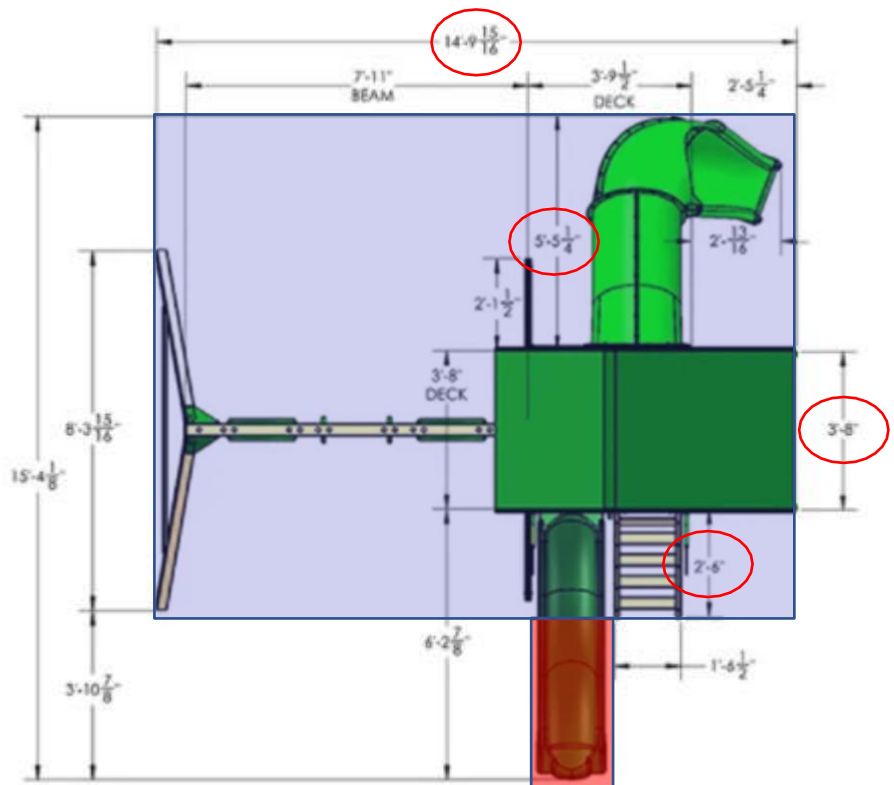


Examples of Play Areas:

This Playset is 15'1 9/16" x 12'8 1/16" overall. However, the guidelines state that play equipment is allowed one slide appendage, seen within the red box. Therefore, the only area that counts towards the 150 sf footprint limit is shown within the blue box. Meaning: the total area of this playset would be 125.13 sf (15'1 9/16" x 8'3 3/4") which falls within the 150 sf limit and would be approvable.



This Playset is 14'9 15/16" x 15'4 1/8" overall and has 2 slide appendages. While the guidelines state that ONE appendage is allowed, a playset may have more than one slide; however, only one slide would be allowed to be excluded from the footprint limit. Therefore, the area that counts towards the 150 sf footprint limit is shown within the blue box (the larger slide appendage is excluded). Meaning: the total area of this playset would be 172.15 sf (14'9 15/16" x 11'7 1/4") which exceeds the 150 sf limit and would not be approvable.



Examples of Prohibited Playhouses:

No playhouses are approvable by the guidelines, that is including but is not limited to the representative photos provided here. The representative photos are meant to provide further illustration and clarity surrounding what the Board qualifies as a “playhouse”.



LEGEND

- MATHEMATICAL POINT
- CONTROL CORNER
- MAIS MAXIMUM ALLOWABLE IMPERVIOUS SURFACE
- ⊙ SEWER CLEAN OUT
- ⊞ WATER METER



GRAPHIC SCALE
1"=30'

VICINITY MAP (NTS)

VARIABLE WIDTH
PUBLIC
UTILITY EASEMENT
BM 2019
PG 2069

OPEN SPACE-12
BM 2019, PG 2069

SEE NOTES

LOT 179
18,551 SF

Pool Measurements:
15'x10'
Area = 150sf

10' PUBLIC
UTILITY EASEMENT
BM 2019
PG 2069

LOT 180
BM 2019
PG 2069

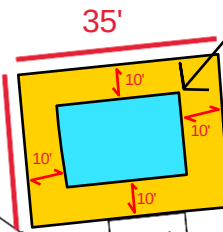
- Pool Deck
- Pool
- Pool Equipment Pad
- Evergreen Shrubs

Based on Architectural Guidelines regarding in-ground pools and pool decks, this would be an approvable request.

On this lot, the home that was built maximized all of the rear options that was offered by the builder, and have neither expanded their patio by the allowable 250 sf nor built an 80sf shed, leaving 670 sf of impervious surface available for the pool deck & equipment.

The pool area is 150sf (which does not count towards the impervious limit of 1,000 sf), the pool deck area is 670 sf, and the pool equipment pad is 60sf (which **does** count towards the impervious limit of 1,000 sf). So, when you add the pool deck and the pool equipment pad together, you get 730 sf which does not exceed the impervious limit of 1,000 sf.

LOT 178
BM 2019
PG 2069



12'x12' SUN ROOM
10'x12' PATIO
15.9'
11.7'

PROP. HOUSE
HAMPTON-LC2H
W/DEN ILO
FLEX & 4'
REAR EXT.
#2061

12.7'
5.0'
20.3'
9.1'

176.04'

107.80'

90.05'

S59°22'44"E

N35°01'27"E

N35°12'45"W

99.3'

154.00'

82.9'

S03°58'06"W

3.5' RAD.

APPROX. BACK OF CURB

CATCH BASIN

4.0'

16.0'

28.5'

PROP. CONC. DRIVE & WALK

9.0'

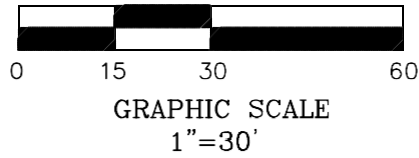
40.0'

11.7'

15.9'

10'x12' PATIO

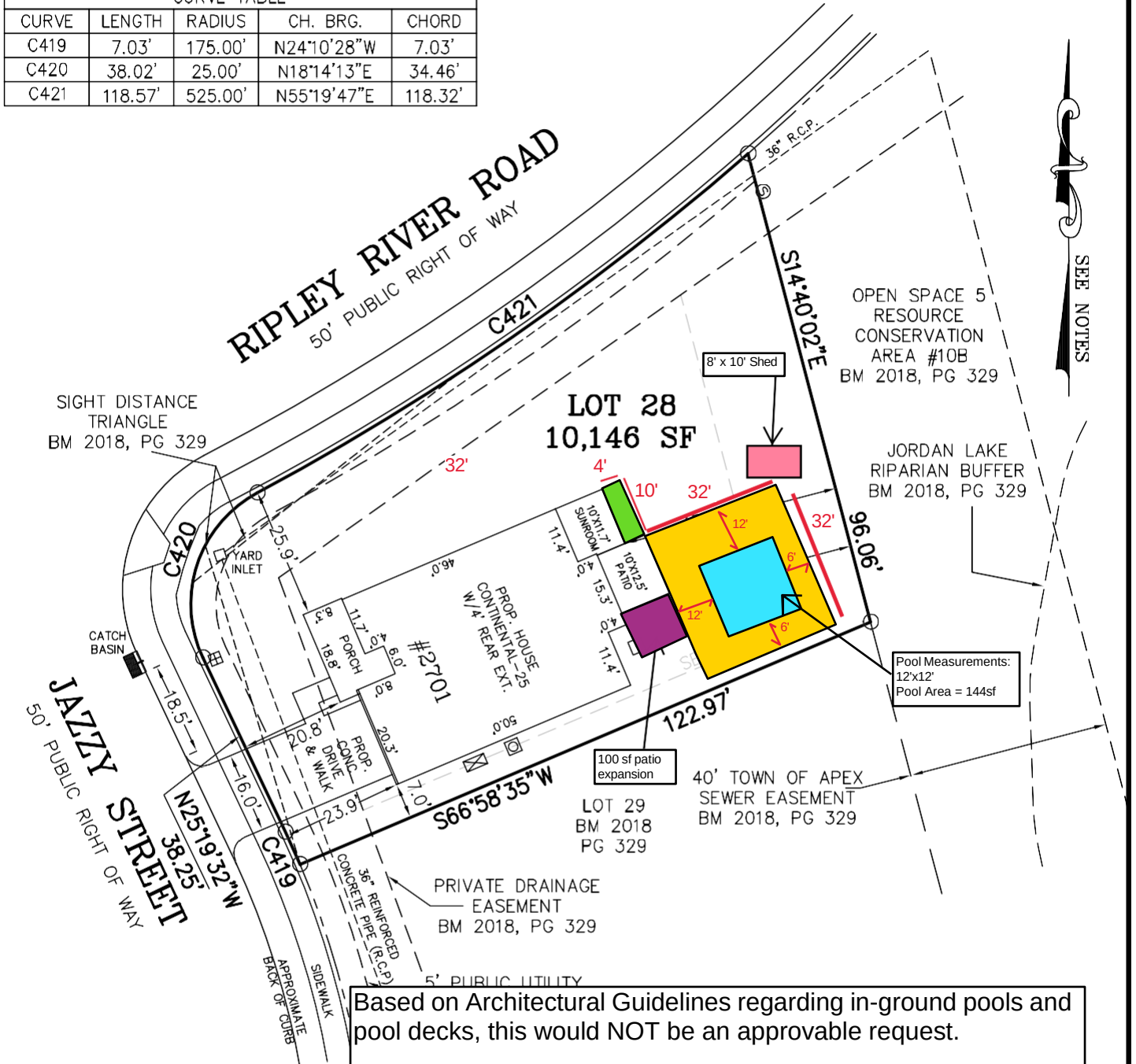
12'x12' SUN ROOM



LEGEND

- MATHEMATICAL POINT
- CONTROL CORNER
- WATER METER
- SEWER CLEAN OUT
- A/C UNIT
- GAS METER
- ELECTRIC METER
- FIRE HYDRANT

CURVE TABLE				
CURVE	LENGTH	RADIUS	CH. BRG.	CHORD
C419	7.03'	175.00'	N24°10'28"W	7.03'
C420	38.02'	25.00'	N18°14'13"E	34.46'
C421	118.57'	525.00'	N55°19'47"E	118.32'



Based on Architectural Guidelines regarding in-ground pools and pool decks, this would NOT be an approvable request.

On this lot, the home that was built maximized all of the rear options that was offered by the builder, and both the 100sf patio expansion and 80sf shed have been built - leaving 820sf of impervious surface available for the pool deck & equipment.

The pool area is 144sf (which does not count towards the impervious limit of 820sf), the pool deck area is 880sf, and the pool equipment pad is 40sf (which **does** count towards the impervious limit of 1,000 sf). So, when you add the pool deck and the pool equipment pad together, you get 920 sf which exceeds the impervious limit of 820 sf.

Also, the pool deck width is wider than 10' in two places, and the equipment pad is not screened with evergreen shrubs - which is not approvable.

Therefore, due to the impervious limit being exceeded, the pool deck width being exceeded, and the lack of evergreen shrubs, this request would be denied.

- Pool Deck
- Pool
- Pool Equipment Pad



ARCHITECTURAL REQUEST

**Rutherford
Homeowners Association, Inc**

Name: _____

Date: _____

Address: _____

Daytime Phone: _____

Evening Phone: _____

E-mail Address: _____

In order for your application to be reviewed, you must submit all required information for your application to be deemed complete. Please note failure to provide this information may cause a delay in the review process. Provide a detailed description below:

Each request must be accompanied by the following additional information:

1. Plot Plan with location of project shown, a bird's eye view drawn to scale indicating all dimensions (length, width, height, square footage) and distance to property lines. For fencing, indicate existing fences and if you will be attaching or abutting, plus setback dimensions and location and size of any gate(s).
2. Materials List. For landscaping requests, include list of plants to be used with locations shown and size of plant type at maturity.
3. Indicate color(s) and include paint/stain samples and note if it will match the existing home.
4. Provide photos of proposed project. For tree removal, please include photos of the tree(s) marked with an "X".
5. Drainage Plan and/or landscaping plan as applicable.

Please mark the box with an "X" beside your proposed project type. The numbers in parentheses correspond to the required attachments for each project.

☐ Fence (1,2,3,4)	☐ Landscaping (1,2,5)
☐ Storage Shed (1,2,3,4)	☐ Tree Removal (1,2,4)
☐ Deck/Screened Porch (1,2,3,4,5)	☐ Play Equipment (1,2,3,4)
☐ Patio (1,2,3,4,5)	☐ Other as applicable (1,2,3,4,5)

****PLOT PLAN, RENDERING, SIGNATURE AND INITIALS REQUIRED ON ALL APPLICATIONS****

All directly adjoined neighbors' signatures for any exterior modification are optional, with the exception of fencing, but highly encouraged to help prevent conflict.

My signature acknowledges I am aware of my neighbor's proposed improvement(s)/addition(s). If I have any concerns or questions about the proposed project I will direct them to the Board of Directors and/or Architectural Committee.

NAME	SIGNATURE	ADDRESS	LOT #

I understand that this application will be reviewed by the Board of Directors (or its Architectural Committee). I further understand that the Board of Directors (or its Architectural Committee) has the authority to approve, approve with conditions or deny this request and that there is no appeal other than resubmission of a modified request. I further understand that the placement and design of my improvement must meet the architectural guidelines, regardless of my submission or errant approval of such submission. A variance from standards must be noted by the committee in the comments section below. Please note the Board/Committee is allowed up to 60 days to render a decision from the date the complete application is received.

Signature

Date

Initial
Here

Submission without a Plat Map/Survey: I hereby certify that my mortgage company did not require a survey. In lieu of a recorded plat map, I certify that the attached rendering is true, complete, and correctly drawn to scale to the best of my knowledge. As lot Owner, I accept liability for any inaccuracies that may be proven in the future and release the Association, Management and its Agents from any responsibility.

Initial
Here

Disclaimer: The Association reviews applications primarily based upon aesthetic qualities and to a lesser degree, basic construction practices. Owners (and their contractors) are responsible for determining and ensuring that all applicable municipalities, county and state requirements are met and all necessary permits, variances, etc. are obtained. Should the requirements set forth by the municipality, county and state be more stringent/restrictive than those established by the Association, the more stringent/restrictive requirements prevail.

You may submit your application via E-mail (info@charlestonmanagement.com), Upload your request directly to the website at www.charlestonmanagement.com (see instructions below), Fax (919) 848-1548, US Mail to:

**Rutherford HOA
c/o Charleston Management Corp
PO Box 97243
Raleigh NC, 27624**

Directions for Uploading your request online:

Visit the website link listed above, click the 'Homeowner Log In' link and sign in.

Once you have logged on to your homeowner home page, please go to 'Association Business'

Select 'Architectural Control'

- Create a request
- Submit your scanned form

Complete the email address field and give a description of your project in the comments field.

Please upload your form, plat map, and any other supplemental documents or details.

Select 'Submit Architectural Control Request' and you will receive an email confirmation.

Declaration

of

**COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

for

RUTHERFORD

**THIS DOCUMENT REGULATES OR PROHIBITS THE
DISPLAY OF THE FLAG OF THE UNITED STATES OF
AMERICA OR STATE OF NORTH CAROLINA. THIS
DOCUMENT REGULATES OR PROHIBITS THE
DISPLAY OF POLITICAL SIGNS.**

Prepared by and Return to:
Pulte Home Company, LLC
1225 Crescent Green Drive, Suite 110
Cary, NC 27518

Submitted electronically by Hervey & Hervey, P.A. in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Wake County Register of Deeds.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR STONECREEK
TABLE OF CONTENTS**

Number	Description	Page
ARTICLE I.	DEFINITIONS.....	1
ARTICLE II.	PROPERTY SUBJECT TO THIS DECLARATION.....	6
Section 1.	Property Subject to This Declaration.....	6
Section 2.	Other Property.....	6
ARTICLE III.	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS	6
Section 1.	Classes of Membership	6
Section 2.	Directors Appointed by Declarant	7
Section 3.	Directors Elected by Members.....	7
ARTICLE IV.	ASSESSMENTS.....	7
Section 1.	Obligation for Assessments	7
Section 2.	Purpose of Assessments.....	7
Section 3.	Amount of Assessments; Budgets	8
Section 4.	Effect of Non-Payment; Remedies	8
Section 5.	Supplementary Budgets	9
Section 6.	Certificate of Payment	9
Section 7.	Special Assessments	9
Section 8.	No Setoff or Deduction.....	10
Section 9.	Application of Payments.....	10
Section 10.	Date of Commencement of Assessments.....	10
Section 11.	Individual Assessment	10
Section 12.	Bulk Contracts	11
ARTICLE V.	MAINTENANCE, RECREATION FACILITIES & CONVEYANCE OF COMMON AREA TO ASSOCIATION	11
Section 1.	Association's Responsibility.....	11
Section 2.	Owner's Responsibility.....	13
Section 3.	Recreation Facilities.....	13
Section 4.	Conveyance of Common Area and Personal Property by Declarant to Association.....	14
ARTICLE VI.	USE RESTRICTIONS AND RULES	15
Section 1.	General.....	15
Section 2.	Residential Use	15
Section 3.	Architectural Standards.....	15
Section 4.	Signs.....	18
Section 5.	Parking and Vehicular Restrictions	18
Section 6.	Garages	18
Section 7.	Leasing.....	18
Section 8.	Occupants Bound.....	18
Section 9.	Animals and Pets.....	18
Section 10.	Nuisance.....	19

Section 11.	Unsightly or Unkempt Conditions	19
Section 12.	Antennas	19
Section 13.	Tree Removal.....	19
Section 14.	Drainage.....	19
Section 15.	Sight Distance at Intersections.....	20
Section 16.	Garbage Cans, Woodpiles, Etc.	20
Section 17.	Subdivision of Lot.....	20
Section 18.	Guns	20
Section 19.	Fences.	20
Section 20.	Utility Lines	20
Section 21.	Air Conditioning Units	20
Section 22.	Lighting.....	21
Section 23.	Artificial Vegetation, Exterior Sculpture and Similar Items	21
Section 24.	Energy Conservation Equipment	21
Section 25.	Gardens and Play Equipment.....	21
Section 26.	Mailboxes.....	21
Section 27.	Exteriors.....	21
Section 28.	Clothesline	21
Section 29.	Exterior Security Devices	21
Section 30.	Entry Features	21
Section 31.	Storage Sheds, Garages and Other Improvements.....	21
Section 32.	Sewer Systems	22
Section 33.	Wetlands	22
Section 34.	Swimming Pools	22
Section 35.	Rules and Regulations.....	22
Section 36.	Retaining Walls.....	23
Section 37.	Certain Rights of Declarant	23
ARTICLE VII.	INSURANCE AND CASUALTY LOSSES	23
Section 1.	Insurance on Common Area	23
Section 2.	Liability Insurance	23
Section 3.	Declarant	23
Section 4.	Premiums	23
Section 5.	Miscellaneous	23
Section 6.	Damage and Destruction—Insured by Association.....	25
Section 7.	Damage and Destruction to Improvements Located on a Lot	25
ARTICLE VIII	CONDEMNATION	26
ARTICLE IX	ANNEXATION OF ADDITIONAL PROPERTY.....	26
Section 1.	Unilateral Annexation by Declarant	26
Section 2.	Other Annexation.....	26
ARTICLE X.	EASEMENTS	27
Section 1.	Easements for Encroachment and Overhang	27
Section 2.	Easements for Use and Enjoyment	27
Section 3.	Easements for Access, Utilities and Other Purposes	29
Section 4.	Easement for Drainage.....	29
Section 5.	Easement for Entry	29

Section 6. Easement for Maintenance.....30

Section 7. Easement for Signage, Pedestrian Trails, Entry and Streetscape Features30

Section 8. Construction and Sale Period Easement30

Section 9. Irrigation Easements31

Section 10. Fence Easement31

Section 11. Easements in Favor of Additional Property.....31

Section 12. Dwelling Maintenance Easement32

Section 13. Blanket Easement.....32

Section 14. Declarant’s Easement to Inspect Lots and Dwellings.....32

Section 15. Retaining Wall/Privacy Fence Easement.....32

ARTICLE XI. GENERAL PROVISIONS33

Section 1. Enforcement.....33

Section 2. Self-Help33

Section 3. Duration32

Section 4. Amendment.....34

Section 5. Partition.....34

Section 6. Gender and Grammar.....34

Section 7. Severability35

Section 8. Captions35

Section 9. Perpetuities.....35

Section 10. Indemnification34

Section 11. Books and Records34

Section 12. Financial Review36

Section 13. Notice of Sale, Lease, or Acquisition36

Section 14. Agreements36

Section 15. Implied Rights.....36

ARTICLE XII. VARIANCES.....36

ARTICLE XIV. LITIGATION.....36

ARTICLE XV. CAPITALIZATION OF ASSOCIATION.....37

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
RUTHERFORD**

This **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR RUTHERFORD** (this "Declaration") is made as of the 10th day of February, 2023, by Pulte Home Company, LLC, a Michigan limited liability company ("Pulte").

W I T N E S S E T H:

WHEREAS, Pulte is the owner of the real property described on Exhibit A; and

WHEREAS, Pulte desires to subject the real property described on Exhibit A, and possibly other property, to the provisions of this Declaration to create a residential community.

Accordingly, Pulte has created a North Carolina non-profit corporation known as "Rutherford Homeowners Association, Inc.", to exercise certain rights and obligations in this Declaration with respect to such real property. The owners of residential dwellings to be constructed upon such property shall be members of such association.

NOW THEREFORE, Pulte hereby declares that the Properties (as defined hereinbelow), including any improvements which may be (but are not required to be) constructed on the Properties, are subjected to the provisions of this Declaration and shall henceforth be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, contained in this Declaration. The provisions of this Declaration shall run with the title to the Properties now or hereafter subjected to this Declaration. This Declaration shall be binding on all Persons having any right, title, or interest in all or any portion of the Properties now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I.
DEFINITIONS**

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

"**Act**" means the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S. 47F, with the particular section number following the G.S. 47F reference (for example, G.S. 47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in this Article or elsewhere in this Declaration (for example, the term special declarant rights), have the definition contained in the Act.

"**Affiliate**" means: (i) any corporation at least fifty percent (50%) of the voting stock of which is owned or controlled by the Declarant, and any partnership, joint venture or limited

liability company in which the Declarant has at least a fifty percent (50%) equity interest or an interest in at least fifty percent (50%) of the cash flow from such partnership, joint venture or company; or (ii) any Person owning or controlling at least a fifty percent (50%) equity interest in Declarant or an interest in at least fifty percent (50%) of the cash flow from Declarant.

“Annexation Declaration” means a document, by whatever name denominated, that is recorded for the purposes of annexing additional property to this Declaration and causing such property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

“Architectural Review Committee” means the architectural review committee for the Community established and empowered as provided in Article VI of this Declaration

“Areas of Common Responsibility” mean the Common Area, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts, or agreements.

“Articles” means the Articles of Incorporation of the Association.

“Assessment(s)” means a payment (or payments) which an Owner is obligated to pay to the Association as permitted or contemplated by this Declaration.

“Association” means Rutherford Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

“Association Documents” means in the aggregate this Declaration, the Articles, the Bylaws, the rules and regulations published by the Association, and all of the instruments and documents referred to or incorporated therein, as they may be amended from time to time.

“Board of Directors” or **“Board”** means the board of directors of the Association, and is the “executive board” as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

“Bylaws” mean the Bylaws of the Association.

“Common Area” means real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and Occupants of the Properties, however such real property is described or shown on a plat or document recorded in the Public Records for the County in which the Community is located, including, but not limited to any Recreation Facilities (as hereinafter defined). Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein.

“Common Expenses” means the expenditures made by and the financial liabilities of the Association, together with any allocations for reserves, including specifically, but without limitation, all of the following:

- (1) All sums lawfully assessed by the Association against its Members;
- (2) Expenses of the Common Area and administration, inspection and maintenance of the Common Area;
- (3) Expenses classified as Common Expenses under the Act or under the provisions of this Declaration or other Governing Documents;
- (4) Expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) *Ad valorem* taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;
- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Fees for services engaged by the Association;
- (11) Costs and expenses for which the Association is obligated under any easement agreement or other agreement serving or encumbering all or portions of the Community;
- (12) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (13) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses;
- (15) Expenses incurred by the Association in maintaining, operating, inspecting, repairing, and replacing the Project Drainage System, which include, but are not limited to, (i) the expenses for the routine maintenance and repairs to the Project Drainage System (or any component thereof) required by the Town and set forth in a Storm Water Agreement or Storm Water Manual, if any; and (ii) the expenses associated with any periodic major repairs or reconstruction of the Project Drainage System (or any component thereof) required by the Town in accordance with any applicable Storm Water Agreement or Storm Water Manual.

(16) Any other expenses deemed appropriate by the Board that are consistent with the plan of development for the Community or are necessary for the Association to perform its duties or meet its obligations in the Association Documents.

(17) The Association shall maintain, repair and replace the Shared Walls and the Association's cost of same shall constitute a Common Expense. Any retaining wall installed by an Owner on such Owner's Lot shall not be deemed to be a Shared Wall regardless of the dimensions of such wall.

"Community" means Rutherford, the residential community to be constructed upon the Properties.

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

"Declarant" means Pulte Home Company, LLC, a Michigan limited liability company, as well as its successors and assigns pursuant to an express assignment or conveyance of any special Declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis. Any such assignment shall be recorded in the office of the Register of Deeds of the county in which the Community is located.

"Declarant Control Period" means the period commencing on the date this Declaration is recorded in the Public Records (as defined below) and ending on the earlier of (i) the date on which 100% of the lots developed or to be developed as part of the Community (including all present and future phases) pursuant to development plans maintained by the Declarant, as such plans may be revised and amended from time-to-time, have been conveyed to Persons other than Declarant; or (ii) the date on which Declarant records in the Public Records a document relinquishing its authority to appoint and remove directors and officers of the Association.

"Declarant's Development Period" means the period of time commencing on the date this Declaration is recorded in the Public Records, and continuing until the later of: (i) one (1) year after Declarant shall cease to own any property within the Community; or (ii) for so long as Declarant shall have the unilateral right to subject additional property to this Declaration.

"Declaration" shall include this Declaration of Covenants, Conditions, Restrictions and Easements for Rutherford, as the same may be supplemented or amended pursuant to any Annexation Declaration or any amendment to this Declaration in accordance with its terms.

"Dwelling" means an individual single-family detached residential dwelling constructed upon and as part of a Lot.

"Governmental Authorities" means the federal government, the State of North Carolina, the County of Wake, the Town of Fuquay-Varina (the **"Town"**), and any agency or instrumentality of them having jurisdiction over the Properties or any portion thereof.

"Institutional Mortgagee" means any lending institution holding an interest in a Lot pursuant to a first mortgage covering a Lot. Institutional Mortgagees shall include, but not be limited to (i) the successors and assigns of such lending institutions, (ii) any "secondary mortgage

market institution” who typically purchase, insure or guaranty mortgages (such as the Federal National Mortgage Association, the Veterans Administration (“VA”), the Federal Housing Administration (“FHA”), the Department of Housing and Urban Development (“HUD”), and similar entities), (iii) Declarant, if Declarant holds a mortgage on any portion of the Properties.

“**Lot**” shall mean and refer to any lot or any separately numbered portion of the Properties shown on any now or subsequently recorded subdivision plat of the Properties intended for use or used as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon and “**Lots**” shall refer to all or any referenced subset of such lots collectively, and may include one or more of the Lots. 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, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Area. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a “Lot” as defined in this Declaration and each newly configured lot shown on the revised plat shall be a “Lot” as defined in this Declaration.

“**Mortgage**” means any mortgage, security deed, deed of trust, or similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

“**Mortgagee**” shall mean the holder of a Mortgage.

“**Occupant**” shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

“**Owner**” shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation, and “**Owners**” shall refer to all or any referenced subset of such owners.

“**Person**” means a natural person, corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

“**Project Drainage System**” means the system of storm water drainage for the Community, which may consist of ponds, detention areas, surface swales or ditches, underground piping, catch basins, and other related facilities to achieve proper drainage for the Properties.

“**Properties**” means the real property and interests described on Exhibit A to this Declaration and such other real property as may be made subject to this Declaration as more particularly provided in Article IX hereof.

“Public Records” means the Register of Deeds Office of Wake County, North Carolina, or such other authorized County office in which deeds and other land records and documents are filed for public notice.

“Ranch Lot” shall mean those specific Lots that the Declarant may designate on a Final Plat or other instrument recorded in the Public Records, as Lots for which the Association shall provide basic yard maintenance services as described in Section 1(b) of Article V, the expenses of which shall be assessed against the Owners of the Ranch Lots in the form of an Individual Assessment pursuant to Section 11 of Article IV.

“Recreation Facilities” means the pocket park(s), common green(s), walking trails, and other passive recreational features located within the Community, which will be constructed by Declarant and conveyed to and operated by the Association.

“Shared Wall” or **“Shared Walls”** means one or more retaining walls originally installed by Declarant and/or the Association for the purpose of providing additional structural support for improvements within Rutherford, which are located (i) entirely on Common Area, (ii) on two or more Lots, (iii) on Common Area and one or more Lots, or (iv) located entirely on one Lot and (a) has at least one exposed face (i.e., one above-ground surface) exceeding one-hundred and fifty (150) square feet in area, and (b) has an above-ground height of (X) at least four (4) feet for a continuous span of fifteen (15) feet or (Y) in excess of 10 feet at any point.

By way of example, any of the following would constitute a Shared Wall: (X) a wall on a single Lot having an above-ground height of four (4) feet for a length of thirty-eight (38) feet, or (Y) a wall on a single Lot that has a ten (10) foot long section with an above-ground height of four (4) feet, a twenty-five (25) foot long section with an above-ground height of three and one-half (3.5) feet, and a six (6) foot long section with an above-ground height of four (4) feet, or (Z) a wall on a single Lot that has an eighteen (18) foot long section with an above-ground height of ten (10) feet.

“Stormwater Agreement” means any maintenance agreement regarding the Project Drainage System that is entered into by Declarant and/or the Association with the Town or other applicable Governmental Authority for the purpose of setting forth certain rights benefitting the Town or applicable Governmental Authority and certain obligations of Declarant and/or the Association with respect to the operation, maintenance, repair, and replacement of the Project Drainage System.

“Stormwater Manual” means any document required by the Town or applicable Governmental Authority and referred to in a Stormwater Agreement which sets forth specifications and requirements for the installation, maintenance, operation, repair and replacement of the Project Drainage System or certain components thereof.

ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Subject To This Declaration. The real property which is originally made subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit A owned by Declarant at the date and time this Declaration is recorded in the Public Records.

Section 2. Other Property. The real property described in Section 1 of this Article is made subject to this Declaration and additional real property may be subjected to this Declaration after its original recording as described in Article IX hereof.

ARTICLE III. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Classes of Membership. The Association shall have two classes of voting membership:

Class A: The Class A Members shall be every Person who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, during any Period of Declarant Control. The foregoing is not intended to include Persons that hold an interest in a Lot merely as security for the performance of an obligation. Class A Members 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, but such Members collectively shall not be entitled to cast more than one (1) vote with respect to such Lot.

Class B: Declarant shall be the Class B Member and Declarant shall be entitled to three (3) votes for each Lot that is owned by Declarant and/or any Affiliate. The Class B membership shall cease and be converted to Class A membership at such time as Declarant no longer has the right to appoint the members of the Board of the Association pursuant to the provisions of Section 2 of this Article.

Section 2. Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until the expiration of the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

Section 3. Directors Elected by the Members. Following the expiration of the period during which Declarant shall have the right to appoint and remove Directors as set forth in Section 2 above, the Directors of the Association shall be elected by the Owners in accordance with the terms of this Declaration and the Articles and Bylaws of the Association. The initial Board of Directors elected by the Members of the Association shall consist of three (3) members. The Directors selected by the Members of the Association shall be elected at the Annual Meeting of the Association as provided by the Bylaws of the Association, and at least a majority of the Directors shall be Members of the Association or employees, officers, directors, shareholders, partners or members of a corporate, partnership or company Member of the Association.

ARTICLE IV. ASSESSMENTS

Section 1. Obligation for Assessments. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Association Documents; and (ii) maintain, operate and preserve the Common Area for the welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Lot and the Owners, the affirmative

covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, which include, but are not limited to, "Base Assessments", "Special Assessments", and "Individual Expense Assessments (as those terms are hereinafter defined). Each Owner by acceptance of a deed or other instrument of conveyance of a Lot from Declarant, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Common Expenses in accordance with the provisions of the Association Documents.

Section 2. Purpose of Assessments. The regular annual Assessment (referred to below as the "Base Assessment") is primarily for the purpose of funding the Common Expenses of the Association, in accordance with the budget for the fiscal year to which it applies, although such Assessments may be used for payment of any Common Expenses as determined by the Board.

Section 3. Amount of Assessments; Budgets. The Board of Directors shall adopt a proposed budget of Common Expenses for the Association at least annually. Based on the proposed budget, the Board of Directors shall establish the amount of the regular annual Assessment to be levied against each Lot by dividing the budgeted amount of the Common Expenses by the number of Lots subject to assessment hereunder, with the quotient thus arrived at being the "Base Assessment

Notwithstanding the foregoing, during the Declarant Control Period, the Board shall have the right, but not the obligation to establish the amount of the annual Base Assessment by dividing the budgeted amount of Common Expenses by the total number of Lots shown on Declarant's current development plan approved by the Governmental Authorities for the Community.

Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a summary of the proposed budget to the Members and a deliver written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). That budget shall be deemed ratified unless at that meeting the Members entitled to cast at eighty percent (80%) of the votes of the entire membership vote to reject the budget. Provided, however, if the amount of the annual Base Assessment reflected in the proposed budget exceeds 110 % of the Base Assessment last ratified by the Members and in effect for the fiscal year of the Association immediately preceding the fiscal year that is the subject of the proposed budget, that portion of such budget may be rejected by a vote of the Members at the meeting entitled to cast at least a majority of the votes of the Association. If any proposed budget is rejected by the Members in accordance with the provisions of this Section 3, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget, or portion thereof, proposed by the Board.

Until December 31 of the year of the conveyance of the first Lot to an Owner other than Declarant or an Affiliate, the annual amount of the Base Assessment shall be One Thousand One Hundred Sixty-Four and no/100 Dollars (\$1,164.00) per year, which is Ninety-Seven and no/100 Dollars (\$97.00) per month). The Base Assessment for each subsequent fiscal year for purposes of voting percentages to ratify the budget shall be 110% of the amount of the Base Assessment, as the case may be, for the immediately preceding fiscal year.

Section 4. Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area. All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be a charge on the Owner's Lot as provided in G.S. 47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S. 47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

Section 5. Supplementary Budgets. The ratification of a budget for a specified period of time shall not preclude the adoption of a modified budget by the Board at any time to address increases in Common Expenses or unforeseen or unexpected Common Expenses. Any modified budget that results in an increase of the Base Assessment must be ratified pursuant to the provisions Section 3 of this Article.

Section 6. Certificate of Payment. The Association shall, within ten (10) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments, other charges, and fines on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association, the Board, and the Owner as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

Section 7. Special Assessments. "Special Assessments" include those Assessments which are levied for capital improvements which include the costs of constructing or acquiring improvements on or for the Common Area or the costs of repairing, reconstructing or replacing such improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Lots shall be paid by the Owners in addition to any other Assessments. Special Assessments shall be assessed in the same manner as the Base Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board of Directors shall, from time to time, determine. In any fiscal year of the Association after the expiration of Declarant's Development Period, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the

Bylaws. In any fiscal year of the Association prior to the expiration of Declarant's Development Period, the levying of any Special Assessment which exceeds five percent (5%) of the budgeted Common Expenses of the Association for that fiscal year, shall require the affirmative assent of at least two-thirds (2/3) of all votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the expiration of Declarant's Development Period in an amount equal to 5% or less of the budgeted Common Expenses of the Association for a fiscal year may be levied by the Board of Directors without the approval or consent of the Owners or any other party.

In addition, any expenses incurred by the Association as a result of the Association or the Town (or the applicable Governmental Authority who executed any Stormwater Agreement) withdrawing funds from an escrow account (if required by the Stormwater Agreement), or expenses incurred by the Association for any obligation of the Association to reimburse the Town or applicable Governmental Authority for expenses incurred by such party in performing the Association's obligations under the Stormwater Agreement in accordance with the Stormwater Manual, shall be the subject of a Special Assessment as provided in accordance with this Section 7 of Article IV.

Section 8. No Setoff or Deduction. No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

Section 9. Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

Section 10. Date of Commencement of Assessments. As to each Lot, assessments shall start on the date of the conveyance of the Lot to a Person other than Declarant. The first annual Assessment levied on a Lot shall be adjusted according to the number of days then remaining in that fiscal year.

Section 11. Individual Assessment. Pursuant to this Section, the Board shall have the power to levy individual assessments for the following Association expenses:

- (a) Expenses of the Association which benefit less than all of the Lots may be individually assessed equitably among all of the Lots which are benefited according to the benefit received;
- (b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.
- (c) Expenses incurred by Declarant or the Association as a result of an Owner's failure or refusal to comply with the Association Documents including, but not limited to, non-compliance of Dwellings and any other improvements or personal property located

upon a Lot with the standards set forth in the Association Documents, may be individually assessed against the subject Owner(s) and collected and enforced in the same manner as any other Assessments hereunder as provided herein.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future.

Section 12. Bulk Contracts. "Bulk Contracts" are one or more contracts entered into by the Association or assigned to the Association by Declarant for the provision of utility services or other services of any kind or nature to the Lots. The services provided under Bulk Contracts may include, without limitation, cable television services, telecommunications services, internet access services, "broadband" services, security services, trash pick-up services, propane service, natural gas service, lawn maintenance services, snow removal, management services, and any other services of any kind or nature which Declarant or the Association deems to be appropriate or beneficial to the Community. The Association will have the power to enter into Bulk Contracts at any time and from time to time. The Association may enter into Bulk Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are owners or participants, directly or indirectly). The Bulk Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by the Owners under a Bulk Contract to the assessments levied against the Lots. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such twelve (12) day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid directly to the applicable service or utility provider by such Owner. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner can make arrangements for payment of the bill and for re-connection or re-institution of service.

ARTICLE V. MAINTENANCE, RECREATION FACILITIES & CONVEYANCE OF COMMON AREA TO ASSOCIATION

Section 1. Association's Responsibility. The Association shall maintain in good repair all Areas of Common Responsibility, as follows:

- (a) The Association shall maintain, repair, and replace all improvements situated on the Common Area, provided that the Association shall only be required to replace landscaping improvements if and when required to do so by a Governmental

Authority. The Association shall also maintain, repair and replace, entry features (including the expenses for water and electricity, if any, provided to all such entry features); operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community, all retaining walls and common privacy fencing installed by Declarant or the Association within the Community, all storm water facilities and easements serving the Community, all private trails, mail kiosks, open space areas and conservation areas. To the extent that any entry feature, mail kiosk, pedestrian trail, retaining wall, privacy fence, or portion thereof is located upon a Lot, Declarant has reserved an easement in favor of Declarant and the Association pursuant to Section 7 of Article X, and has restricted the use of the portions of any Lot upon which any portion of a retaining wall or privacy fence is located, as provided in the applicable Sections of Article VI.

(b) **Intentionally Deleted.**

(c) The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, within or serving the Community, including the Lots and improvements thereon, where the Board has determined that such maintenance would benefit the Owners.

(d) The Association shall have the right, but not the obligation, from time to time, as determined by the Board in its sole discretion, to make reasonable modifications to the scope of the services to be provided by the Association.

(e) The Association shall not be liable to any Owner, or any Owner's Occupant, guest, or family member for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of an alleged failure of the Association to take some action or perform some function required to be taken or discomfort arising from the making of repairs or improvements which are the responsibility of the Association. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association.

(f) In the event that the Association determines that the need for maintenance, repair, or replacement of property that is to be maintained, repaired or replaced by the Association in accordance with the terms of this Declaration is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance maintained by or on behalf of the Association, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and assess all costs thereof as an Individual Assessment against such Owner and such Owner's Lot; provided, however, during Declarant's Development Period, any such action by the Association shall require the Declarant's prior written consent. Such Owner may request a hearing by the Board of Directors, or an adjudicatory panel appointed by the Board, to determine responsibility for the damages if the monetary amounts involved are less than or equal to the jurisdictional amount established for small claims under North Carolina law. The hearing shall afford notice of the charge to the Owner, an opportunity for the Owner to be heard and to present evidence, and a notice of decision by the Board. The Board of Directors or its appointees may not assess liability in an amount in excess of the jurisdictional amount established for small claims under North Carolina law.

(g) The maintenance shall be performed consistent with the Community Standard.

Section 2. Owner's Responsibility. All maintenance of the Lot and all structures, fences, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof. Each Lot shall be maintained in a manner consistent with the Community Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an Individual Assessment levied against the Owner and a lien on such Owner's Lot in accordance with the provisions of Article IV hereof.

Section 3. Recreation Facilities. The Recreation Facilities shall be part of the Common Area and shall be used for recreational purposes by the Association, Declarant, the Owners and Occupants, and their family members, guests, invitees and lessees, and other Persons who may be permitted by Declarant or the Association to use the Recreation Facilities as provided in this Declaration. The Recreation Facilities shall be used for recreational purposes and such proper ancillary uses as may be determined by Declarant (who shall have the right to determine such uses until the Association assumes such right after the expiration of the Declarant Control Period). All of the Recreation Facilities shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses and shall be used for such purposes and not for residential, commercial or industrial construction or purposes of any kind. The Recreation Facilities shall be maintained, administered and ultimately owned by the Association. The Board may adopt specific rules and regulations regarding the use of the Recreation Facilities as provided in Section 35 of Article VI below.

Notwithstanding the foregoing, Declarant has not made and is not deemed by any provision of this Declaration to make, any representation or warranty regarding when the Recreational Facilities will be completed and available for use by the Owners. Each Owner, by acceptance of a deed or other instrument of conveyance of a Lot shall be deemed to have acknowledged and agreed that (i) Declarant is under no obligation to construct any Recreation Facilities by a certain date or within a certain time period, (ii) Declarant has not made any representations or warranties regarding when the Recreation Facilities will be completed and available for use, and (iii) such Residential Owner recognizes that no salesperson, employee, representative, or other agent of Declarant has the expertise or the authority to make any such representations or render any opinions regarding the time frame for the completion of the Recreation Facilities.

During the period following the completion of the Recreation Facilities and the conveyance thereof to the Association and ending on the expiration of the Declarant Control Period, Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional improvements to or upon the Recreation Facilities. Until the expiration of the Declarant Control Period, the decision as to whether to construct such additional facilities and improvements and the construction thereof shall be in the sole discretion of Declarant.

NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL FOR THE RECREATION FACILITIES. ANY INDIVIDUAL USING THE RECREATION FACILITIES SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

Section 4. Conveyance of Common Area and Personal Property by Declarant to Association. The Declarant may convey to the Association any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community, in which event such property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Declarant in recording any plat of the Properties may identify thereon certain areas of land as "Open Space," "Common Area," "Common Property," "Common Open Space" or similar designation. Such designated properties, unless otherwise expressly provided, are expressly not dedicated to the public, but are intended to be conveyed by Declarant to the Association as Common Area. Declarant, however, reserves the right to reconfigure, in accordance with any applicable local governmental ordinances and regulations, all or any portion of such areas and all or any one or more of the Lots shown on any recorded subdivision plat at any time prior to the conveyance of such property by recording a revised subdivision plat of the property and thereby increase or decrease the area of any "Open Space," "Common Area," "Common Property," or similarly designated property and/or increase or decrease the number or size of the Lots shown thereon. Any "Open Space," "Common Area," "Common Property," or similarly designated property conveyed to the Association shall be conveyed subject to all easements and restrictions then of record, including all easements and restrictions herein reserved and established, and the recording of a plat showing such areas shall not limit the rights of Declarant to further restrict such property and to grant and convey easements on, over or upon such property, prior to its conveyance to the Association, or otherwise in accordance with the terms of this Declaration. Declarant may convey to the Association any personal property to be used by the Association in connection with Common Area or any services to be provided by the Association pursuant to this Declaration and the costs of maintaining such property shall be a Common Expense.

ARTICLE VI. USE RESTRICTIONS AND RULES

Section 1. General. This Article sets out certain use restrictions that must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration.

Section 2. Residential Use. Except as otherwise herein provided with respect to (i) the use of portions of the Properties as sales offices, construction offices and/or model homes and (ii) the maintenance of offices or home businesses, all Lots shall be used for residential purposes

exclusively, and no portion of the Properties shall be used except for residential purposes and uses ancillary thereto, including recreational, park and street purposes. Notwithstanding the foregoing restrictions, the Declarant, during Declarant's Development Period, shall have the right to operate and maintain one or more sales offices, construction offices and model homes within the Community. In addition, notwithstanding the foregoing restrictions, an Owner may maintain an office or home business on such Owner's Lot or in any dwelling or other improvement located on the Lot only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing on the Lot, or by Owner's tenant residing on the Lot; (ii) there are no displays or signs indicating that the Lot or improvement is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage (as determined from time to time in the sole discretion of the Board) by clients, customers or other Persons; (iv) no equipment or other items related to the office or business are stored, parked or otherwise kept on such Owner's Lot outside of the dwelling or other enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from all applicable local governmental authorities, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all applicable federal, state and local laws and ordinances; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing on the Lot or the Owner's tenant residing on the Lot; and (viii) the Owner has obtained prior written approval from the Board and thereafter registers annually with the Association as long as the operation of the home business continues. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all applicable federal, state and local laws and ordinances and the rules and regulations, if any, adopted by the Board.

Section 3. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. Except for improvements installed by the Declarant, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.

(a) The Board may employ architects, engineers, or other Persons as it deems necessary to enable the Architectural Review Committee to perform its review.

(b) The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

(c) Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.

(d) Until the expiration of Declarant's Development Period, Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the

expiration of Declarant's Development Period or the earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

(c) If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction commenced in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

(f) Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 4. Signs. No sign of any kind shall be displayed to the public view on any portion of the Properties except for signs which are approved by Declarant, during Declarant's Development Period, and thereafter, by the Board, and any of the following: (i) signs advertising a Dwelling for sale or rent by an Owner other than Declarant, provided that only one (1) such sign may be displayed with respect to any given Dwelling that is for sale or rent, that the sign is not larger than six (6) square feet, and that any such sign advertising a Dwelling for sale is displayed

inside the window of the Dwelling, (ii) signs advertising any portion of the Properties for sale by Declarant; (iii) signs erected by or on behalf of Declarant, during Declarant's Development Period, and thereafter, by or on behalf of the Association identifying the subdivision name of the Properties or of a phase, section or subdivision within the Community, or the number or street address of a Lot or Dwelling, or directing Persons as to the location of certain portions of the Properties; (iv) signs erected by or on behalf of Declarant, during Declarant's Development Period, and thereafter, by or on behalf of the Association identifying any portion of the Common Area; and (v) signs required by any applicable governmental authority or a utility provider. All signs maintained on any portion of the Properties must comply with all applicable federal, state and local laws and ordinances.

Section 5. Parking and Vehicular Restrictions.

(a) Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, passenger trucks and other vehicles manufactured and used as private passenger vehicles, may be parked within the Community overnight without the prior written consent of the Board, unless kept within an enclosed garage. In particular and without limitation, without the prior written consent of the Board, no vehicle containing commercial lettering, signs or equipment, and no truck (other than private passenger trucks), recreational vehicle, camper, trailer, aircraft, motorcycle, or vehicle other than a private passenger vehicle as specified above, may be parked or stored outside of a Dwelling overnight. No overnight parking is permitted on any streets, lawns, or areas other than driveways, garages without the consent of the Board. Provided, however, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the Community. All vehicles parked within the Community must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the Community outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the Properties. All-terrain vehicles, and the like are not permitted to be operated within the Community or parked overnight outside of an enclosed garage, except with the prior written consent of the Board which may be withdrawn at any time. Any motorcycle or other permitted motorized vehicle must be licensed for street use and equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the Community.

(b) The Board shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered.

Section 6. Garages. To the extent that any Dwelling contains a garage, no garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space

or storage space and no garage opening shall have a screen covering without the consent of the Architectural Review Committee. All garage doors shall remain closed when vehicles or Persons are not entering or leaving the garage. The foregoing shall not include any garages used or formerly used by Declarant as an office or other area in connection with the sale of Dwellings, which are Declarant Improvements and not subject to the restrictions in this Article VI.

Section 7. Leasing. Except as otherwise herein provided, Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's Lot in accordance with the provisions of Article IV.

Section 8. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied and assessed against the Owner and secured with a lien against such Owner's Lot in accordance with the provisions of Article IV.

Section 9. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets, may be kept by the Owner(s) or Occupants of Lots, so long as such pets are kept in compliance with requirement of law applicable to such animal and any rules and regulations promulgated in accordance with the authority herein conferred on Declarant or the Association. No pets shall be kept, bred or maintained for any commercial purpose. All pet animals must be secured by a leash or lead and under the control of a responsible person and obedient to that person's command at any time they are permitted outside a residence on the Lot or Common Area. Each Owner shall be absolutely liable to each and all remaining Owners, their families, guests, and invitees and to the Association, for any and all damage to person or property caused by any such pet brought upon or kept on the Properties by such Owner or by such Owner's family, guests, or invitees. The Board of Directors, with the approval of Declarant during Declarant's Development Period, shall have the power to adopt, publish, amend and enforce rules and regulations governing the keeping of pets on the Properties and to establish penalties for the infraction thereof, to the extent such rules and regulations do not conflict with this provision. Such rules and regulations may place reasonable limits on the number and/or size of pets that may be kept by the Owner(s) and Occupants of each Lot.

Section 10. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's or Occupant's property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall

anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the Architectural Review Committee, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

Section 11. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 12. Antennas. No satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained within the Community, except that Declarant and the Association shall have the right, without the obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and except that (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices")) shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot (generally being the rear of the Lot) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community Standard and any design guidelines. Owners shall remove any inoperable or damaged Permitted Device or any Permitted Device not in use due to the Owner's discontinuation of the applicable telecommunications service within 30 days after such device is damaged, becomes inoperable, or the applicable telecommunications service is discontinued.

Section 13. Tree Removal. No trees shall be removed without the prior written consent of the Architectural Review Committee.

Section 14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

Section 15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be stored completely enclosed within the garage that is a part of the residence located on the Lot or as long as such items are screened so as to be concealed from view of

neighboring streets and property, located in the rear or side yard of the Lot. All Owners who keep a trash or recycling container in the rear or side of a Lot will not have access rights over any other Lots for the purpose of moving such container to the front of the Lot for collection. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except that Declarant may maintain a "burn pit" during development and construction of the Community.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and common areas in the Community are laid out.

Section 18. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

Section 19. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Association shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

Section 20. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction, and lines installed by or at the request of Declarant.

Section 21. Air Conditioning Units. No window air conditioning units may be installed.

Section 22. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for approved lighting as originally installed on a Lot.

Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee. Notwithstanding anything herein to the contrary, however, the display of the American Flag shall not be prohibited, but shall be subject to the reasonable regulation of the Association as to the time, place, manner, location and size of any such display, including, without limitation, the requirement that any display of the American Flag be in compliance with Federal Laws relating to the same.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

Section 25. Gardens and Play Equipment. No vegetable garden or play equipment shall be erected on any Lot without the prior written consent of the Architectural Review Committee, and any such items must be located between the rear dwelling line and the rear lot line. Permanently mounted basketball goals are prohibited. When not in use any temporary basketball goal shall be stored fully enclosed in a garage or otherwise fully screened from the view of adjacent Lots or any street within the Community, utilizing screening that has been erected in accordance with the provisions of this Declaration requiring Architectural Review Committee review and approval.

Section 26. Mailboxes. In accordance with the new USPS rule, all U.S. mail for the Community will be delivered only to mail kiosks which are installed within the Common Area and/or on the corners of certain Lots or within the sidewalk area of a street right-of-way pursuant to easements shown on the recorded plat(s) of the Properties and described in Section 7 of Article X. No curbside mailboxes may be installed on any Lots.

Section 27. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the Dwelling, must be approved by the Architectural Review Committee.

Section 28. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 29. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

Section 30. Entry Features. Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

Section 31. Storage Sheds, Garages and Other Improvements. Construction, installation, or placement of a tree house, detached garage, or a building separate from the main dwelling on the Lot is not permitted on any Lot. No space within any garage may be converted to living space but will remain as required parking. However, storage sheds shall be allowed and must be screened with an opaque fence, except for some perimeter lots, which may have alternate screening.

Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls, or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, shall be permitted on any Lot without the prior written consent of the Architecture Review Committee or its designee.

Section 32. Sewer Systems. As long as reasonably adequate sanitary sewer service is supplied to a Lot by applicable governmental authorities, no private sewage system shall be permitted on that Lot.

Section 33. Wetlands. Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland under applicable laws of the Governmental Authorities shall conform to the requirements of applicable wetland rules adopted by the United States or the State of North Carolina and in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill except as allowed under applicable federal, state and local laws and ordinances, so the Owner of any such portion of the Properties should not assume that a future application for fill or alteration of a wetland will be approved. The Owner of any portion of the Properties subject to any such future application shall report the name of the development (in this case, Rutherford), together with the name of the particular phase or section within the Properties, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules adopted by the United States, the State of North Carolina, Wake County, or the Town of Apex, and this covenant may be enforced by the United States, the State of North Carolina, Wake County, or the Town of Apex. The provisions of this Section shall run with the Properties and be binding on all Owners of any part or all of the Properties and all Persons claiming under them.

Section 34. Swimming Pools. No above ground swimming pools shall be permitted in the Community, except that small, inflatable wading pools shall be permitted, as long as any wading pool is put away at night inside a Dwelling or garage. However, spas, hot tubs, or the like and in ground swimming pools shall be allowed but must have an enclosed opaque fence.

Section 35. Rules and Regulations. The Association shall have the exclusive right to establish the rules and regulations pursuant to which Owners and Occupants of the Lots may be entitled to use the Common Area and/or to establish other restrictions concerning the governance of the Community. Pursuant to such rule making authority, the Association may promulgate rules and regulations concerning pets and pet ownership as expressed in Section 9 of this Article and parking and traffic flow as expressed in Section 5 of this Article. In addition, provided that at least a majority of the Directors that are also Owners of a Lot also approve, the Association may promulgate rules and regulations that apply exclusively to the Lots.

Section 36. Retaining Walls. If any portion of a retaining wall is located within the boundaries of a Lot, the Owner of such Lot is prohibited from installing any improvements or performing any land disturbing activities on the Lot which may damage, weaken, or compromise the structural integrity of the retaining wall, or would obstruct access to such retaining wall, without the prior written consent of the Committee, and the Committee may require that any such Owner seeking to make any such improvements provide an affirmative recommendation of the proposed improvements from a licensed professional engineer selected by the Committee. Such prohibited activities include, but are not limited to, excavation, digging, and storage of heavy construction materials or supplies.

Section 37. Certain Rights of Declarant. The provisions, restrictions, terms and conditions of this Article VI shall not apply to the activities or operations of Declarant or to any improvements constructed or to be constructed by Declarant.

ARTICLE VII. INSURANCE AND CASUALTY LOSSES

Section 1. Insurance on Common Area. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements owned by the Association whether or not located on the Common Area. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase “all-risk” coverage in like amounts. Such insurance may, in the discretion of the Board, include coverage for personal property owned by the Association.

Section 2. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Area covering the Association and its members and until Declarant’s ownership of any portion of the Properties ceases, naming Declarant as an additional named insured for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors’ and officers’ liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors’ and officers’ liability insurance coverage.

Section 3. Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Section 4. Premiums. Premiums for all insurance shall be Common Expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Section 5. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association’s Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(3) That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(4) That no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) That no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

(f) Worker's Compensation Insurance; Fidelity Bonds. In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

Section 6. Damage and Destruction -- Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article, means repairing or restoring the property

to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

(b) **Repair and Reconstruction.** Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Owners otherwise agree; provided, however, during Declarant's Development Period, Declarant must also agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 7. Damage and Destruction to Improvements Located on a Lot. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Any such reconstruction shall be subject to all of the requirements of this Declaration concerning architectural review and control. No Owner of a Lot may elect not to rebuild following a casualty without the prior written consent of Declarant during the Declarant Control Period, or the Board following the expiration of the Declarant Control Period, which consent may be withheld or denied in the sole and absolute discretion of Declarant (or the Board, as applicable).

ARTICLE VIII. CONDEMNATION

In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least eighty percent (80%) of the Owners shall otherwise agree, the Association shall restore or replace

such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor. The provisions of this Declaration applicable to Common Area improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE IX. ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Unilateral Annexation By Declarant.

(a) The Declarant shall have the unilateral right, privilege, and option from time to time until ten (10) years after the recording of this Declaration to subject to the provisions of this Declaration any additional real property, provided, however, that any such real property that is not owned by the Declarant at the time it is annexed may be made subject to this Declaration only with the consent of the record owner(s) of such real property. Annexation under this Section 1(a) may be accomplished by filing for record, in the county in which the property to be annexed is located, an Annexation Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Annexation Declaration unless otherwise provided therein. Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property, as long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of the Declarant (during Declarant's Development Period), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration describing the property to be annexed and filed for recording in the land records of the county in which the Community is located. An Annexation Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Annexation Declaration, unless a later effective date is provided therein.

ARTICLE X. EASEMENTS

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or

portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(1) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Area, to limit the number of guests of Owners and tenants who may use the Common Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, and such Owner's family, tenants, guests, and invitees;

(2) The right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(3) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area; provided that, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Area shall be subject to approval by the Owners entitled to cast at least eighty percent (80%) of the votes of the Association and by the Declarant during Declarant's Development Period. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community;

(4) The right of the Association to dedicate or grant licenses, permits, or easements over, under, and through the Common Area to governmental entities

for public purposes and to other Persons for purposes reasonably necessary or useful for the proper maintenance of the Community;

(5) The right of the Association, acting through the Board without Member, Mortgagee or agency approvals, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area (including, but not limited to, the access rights granted to the members of the Waterford HOA referred to in Section 16 of this Article X) which are not inconsistent with and do not unreasonably interfere with the intended use of the Common Area and otherwise 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 be effective unless it is approved by Declarant during Declarant's Development Period and unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded in the Registry of Deeds for the County in which the Community is located;

(6) The right of the Association to dedicate or transfer any real property interest in all or any portion of the Common Area; provided, however, such dedication or transfer shall not be effective unless an instrument agreeing to such dedication or transfer has been approved in writing by the Owners entitled to cast at least eighty percent (80%) of the votes of the Association, by Declarant during Declarant's Development Period, 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 Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(7) The right of the Association, acting through the Board, to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area, and specifically including the right to establish rules and regulations concerning pets and pet ownership and parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Community, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Board; and

(8) The easements, conditions and restrictions herein reserved and established for the benefit of the Declarant, the Association and others.

(b) Delegation. Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Area and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

Section 3. Easements for Access, Utilities and Other Purposes. There is hereby reserved and established in favor of the Declarant and the Association blanket non-exclusive

easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving all or any portion of the Community or any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof (whether or not such additional property is added to the Community), and for such other purposes that are not inconsistent with and do not unreasonably interfere with the intended use of such property. This easement shall include, without limitation, access, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage, irrigation, and any other service or system which the Declarant or the Association might decide to have installed to service the Community or any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof (whether or not such additional property is added to the Community). It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such access, utility or service. Should any party furnishing or receiving any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement. Notwithstanding the foregoing, the Declarant shall have the right to grant or consent to the granting by the Association of any such easement on, over, or upon the Common Area that is consistent with the plan of development for the Community and the Association shall be obligated to sign any plats, deeds, or other instruments or forms necessary to accomplish any of the actions that Declarant is permitted to take pursuant to this Section 3.

Section 4. Easement for Drainage. Declarant hereby reserves for itself, during Declarant's Development Period, and establishes in favor of the Association a perpetual easement across the Community for the purpose of altering drainage and water flow across the Community. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at such Person's sole expense.

Section 5. Easement for Entry. In addition to the other rights reserved and established in favor of Declarant and the Association, the Declarant and the Association each shall have the right (but not the obligation) to enter upon any property or Lot within the Community for emergency, security, and safety reasons and to inspect any construction or proposed construction activity on such Lot. This right may be exercised by the Declarant, the Association their respective designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 6. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are

necessary to allow for the maintenance required or permitted by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 7. Easement for Signage, Pedestrian Trails, Entry and Streetscape Features, Landscape Buffer, and Mail Kiosks. There is hereby reserved to the Declarant and, established in favor of the Association, an easement for ingress, egress, installation, construction, landscaping, inspection, and maintenance of signage, pedestrian trails, entry and streetscape features and landscaping (including Lots 1, 36 – 48, 76 – 85 and 109 as shown on Exhibit “B” attached hereto as shown and labeled as the “20’ Type C Transitional Thoroughfare Buffer”, and mail kiosks, over and upon each Lot over which such an easement is denoted on any recorded subdivision plats for the Community. The easement and right herein reserved and established shall include the right to (i) erect and maintain signage, entry and streetscape features, mail kiosks, (ii) cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such features, (iii) grade the land under and around such features, and (iv) pedestrian and bicycle ingress and egress along and within any portion of a pedestrian trail or walkway that may be located on a Lot.

Section 8. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, during Declarant's Development Period, Declarant reserves an easement across such portions of the Community as Declarant may reasonably deem necessary for any or all of the purposes hereinafter set forth. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

- (a) The right of access, ingress, and egress for vehicular and pedestrian traffic, and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;
- (b) The right to tie into any portion of the Community with driveways, parking areas, and walkways;
- (c) The right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;
- (d) The right (but not the obligation) to construct additional improvements, including any recreational facilities, on Common Area;
- (e) The right to carry on sales and promotional activities in the Community;
- (f) The right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area;
- (g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and

(h) Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices, and may also use Common Area and any improvements located thereon, including any recreational facilities, as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

Section 9. Irrigation Easements. There is hereby reserved to the Declarant and established in favor of the Association a blanket easement to pump water from ponds, lakes, and other bodies of water located within the Community for irrigation purposes, subject to any applicable governmental restrictions.

Section 10. Fence Easement. Declarant hereby reserves and establishes an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

Section 11. Easements in Favor of Additional Property. Declarant hereby reserves and establishes such easements on, across and over the Common Area as shall be reasonably necessary for (i) the exercise by Declarant or any Affiliate of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof, and (ii) the development by Declarant or any Affiliate, their respective successors and assigns, of any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof should Declarant elect not to annex all or any portion of such additional property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for drainage and for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing drainage, water, light, power, telephone, sewage and sanitary service to the such additional property, which easements shall run with and benefit the additional property. This Section shall not be amended without the express written consent of Declarant, during Declarant's Development Period, and thereafter only with the consent of Persons benefited by such easement.

Section 12. Dwelling Maintenance Easements. If any Dwelling is located closer than five (5) feet from its Lot line or if any utility lines or facilities serving a Dwelling, are located in whole or in part on an adjoining Lot, the Owner of said Dwelling shall have a perpetual access easement over the adjoining Lot to (i) repair, maintain, perform, paint, or reconstruct his or her Dwelling, and (ii) to repair, maintain, replace, and inspect any utility lines or facilities serving his or her Lot. Within said easement area no fence or vegetation shall be located. The easement rights noted in (ii) may also be exercised the applicable utility company who owns or maintains the utility facilities located on the adjoining Lot.

Section 13. Blanket Easement. An easement is hereby reserved in favor Declarant and the Association over the Lots and Common Area for the installation, operation, inspection, and

maintenance of landscaping, a common cable television system, a common sprinkler system, entrance sign or features, or any other item for the common enjoyment and benefit of the Owners or for the enhancement of the Community. No Owner shall damage, destroy, alter or otherwise disrupt any of such items so installed. Each Owner shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any of such items which are damaged or destroyed by the acts of such Owner, his family, his guests or invitees.

Section 14. Declarant's Easement to Inspect Lots and Dwellings. A perpetual easement is hereby reserved in favor of Declarant over and upon the Properties for the purpose of allowing Declarant's inspection of the structural portions of the Dwellings and the grade and contour of the Lots. Declarant's easement to perform such inspections shall be perpetual to the extent permitted by applicable law.

Section 15. Retaining Wall/Privacy Fence Easement. Declarant hereby reserves for the benefit of Declarant and the Association, an easement over and upon those portions of the Properties on which any part of a retaining wall or privacy fence constructed by Declarant is located. The purpose of this easement is to allow Declarant and the Association to inspect, maintain, repair, reconstruct, and replace the retaining walls and privacy fences installed by Declarant upon various portions of the Properties. This easement includes the right of Declarant and the Association to enter upon any Lot on which any portion of a retaining wall or privacy fence is located, including the right to remove any improvements, materials or other obstructions which impede access to the retaining wall or common privacy fence or which violate the restriction in Section 36 of Article VI. Declarant reserves the right to file one or more amendments to this Declaration for the purpose of delineating portions of the easement subject to this Section 15 of Article X on a map or plan to locate the specific as-built location of all or a portion of any retaining wall or common privacy fence. Such amendment shall not require the joinder or consent of the Association or any Owner or other party, regardless of the ownership of the specific portions of the Properties on which such wall and/or fence are located. No amendment of this Section shall be effective without the consent of Declarant.

ARTICLE XI. GENERAL PROVISIONS

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. To determine fines and sanctions against Owners, a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board. The Owner shall be given notice of the charge, an opportunity to be heard and to present evidence, and a notice of decision by the Board. If a fine is imposed it may not exceed one hundred (\$100.00) for the violation and for each day after the notice of decision that the violation continues. Such fines shall be assessments secured by a lien. If a sanction is imposed it may continue without further hearing until the violation is cured. Failure by the Association or any Owner to enforce

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

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles stored or parked in violation of this Declaration or the Bylaws may be towed after reasonable notice. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law. If North Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of two-thirds (2/3) of the Lots and the Declarant (during Declarant's Development Period) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided that, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, this Declaration may be amended:

(a) During Declarant's Development Period, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of Lots to which at least sixty-seven percent (67%) of the votes of the Association are allocated; and

(b) Following the expiration of Declarant's Development Period, upon the affirmative vote or written consent, or any combination thereof, of the Owners of Lots to which at least seventy-five percent (75%) of the votes of the Association are allocated.

Notwithstanding anything herein to the contrary, no amendment altering or impairing any right reserved in favor of or conferred on Declarant pursuant to the terms of this Declaration, and no amendment purporting to impose any additional obligation on Declarant, shall be effective without the written consent of Declarant and any successor Declarant to which such right(s) have been assigned.

Section 5. Partition. The Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification. To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment,

negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorneys' fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 11. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 12. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; however, after having received the Board's financial statements, the Owners entitled to cast at least a majority of the votes of the Association, may require that the accounts of the Association be audited by a certified public accountant, the cost of which shall be a Common Expense of the Association. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

Section 13. Notice of Sale, Lease, or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

Section 14. Agreements. Subject to the prior approval of Declarant (during Declarant's Development Period), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 15. Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

ARTICLE XII. VARIANCES

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

ARTICLE XIII. LITIGATION

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. This Article shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

ARTICLE XIV. CAPITALIZATION OF ASSOCIATION

Upon acquisition of record title to a Lot by the first Owner other than Declarant, a contribution in an amount equal to Seven Hundred Fifty and no/100 Dollars (\$750.00) ("**Working Capital Contribution**") shall be made by or on behalf of the purchaser to the Association. The Working Capital Contribution shall be in addition to, not in lieu of, any annual or special assessments. The Working Capital Contribution shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Working Capital Contribution referred to in this paragraph is payable only one time, and will not be charged to subsequent purchasers of a Lot once paid.

Each Working Capital Contribution deposit, at the discretion of the Declarant, shall be deposited for use to support the operating budget of the Association or deposited in a capital reserve fund ("**Capital Reserve**"). The Capital Reserve shall be paid as set out herein. At the time that the Declarant no longer has the right to appoint directors pursuant to Article III, Section 2 of this Declaration, the Association and the Declarant shall enter into an agreement transferring full

control of the Association to the Lot Owners and transferring responsibility for all Common Elements to the Association, which agreement also releases Declarant from any further responsibility or obligations to the Association ("**Transfer and Release Agreement**"). Upon execution of the Transfer and Release Agreement, Declarant shall release the Capital Reserve fund to the Association. Should the Association request the Declarant make repairs or other improvements any time prior to the execution of the Transfer and Release Agreement, then Declarant is authorized to use amounts from the Capital Reserve to accomplish such repairs or improvements. Should the Association and the Declarant be unable to enter into a mutually acceptable Transfer and Release Agreement, within one hundred and eighty days from the date that Declarant no longer has the right to appoint directors pursuant to Article II, Section 2 of this Declaration, then the Capital Reserve shall be paid by the Association to Declarant as a repayment for Declarant's advances to supplement deficits in the Association operating budget prior to the date of transfer.

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal this the 10th day of February 2023.

DECLARANT:

PULTE HOME COMPANY, LLC, a Michigan limited liability company

By: Chris Raughley
Chris Raughley
Vice President of Land Development

STATE OF NORTH CAROLINA §
COUNTY OF WAKE §

I, Benjamin H. Hervey, Notary Public, certify that Chris Raughley personally came before me this day and acknowledged that he is Vice President of Land Development of **PULTE HOME COMPANY, LLC**, a Michigan limited liability company, and that he as Vice President of Land Development, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 10th day of February 2023.

Benjamin H. Hervey
Signature of Notary Public
Printed Name: Benjamin H. Hervey

Date of Expiration of Commission:
10-14-2023

[NOTARY PUBLIC STAMP OR SEAL]

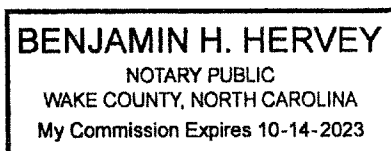


EXHIBIT A

Legal Description of Property Subject to Declaration

Lying and being in the Town of Fuquay-Varina, Wake County, North Carolina, and being more particularly described as follows:

Beginning at an iron pipe found; said point being located along the eastern right-of-way line of Lake Wheeler Road (NCSR# 1375), a public right-of-way; said point also being the northwestern most property corner of the lands herein described, and being a common corner of the lands conveyed from William F. Jordan, III to William F. Jordan, III and wife, Bridget Jordan (see Deed Book 15680, Page 1628, Wake County Registry), having NC Grid Coordinates NAD 1983 (2011) N=691,989.58 feet, E=2,083,125.71 feet, thence leaving said point of beginning and running with the southern boundary line of said lands of William F. Jordan, III and wife, Bridget Jordan (Deed Book 15680, Page 1628, Wake County Registry) North 87°10'01" East, 427.09 feet to an iron pipe found, being a common corner of the lands conveyed from Dorothy J. Langley and Husband, Johnny M. Langley to Bridget L. Jordan (see Deed Book 15815, Page 999), thence running with the southern boundary line of said lands North 87°23'45" East, 207.37 feet to an iron pipe found, being a common corner of the lands conveyed from Ronald G. Pattillo and wife, Susan G. Pattillo to Andrew L. Oakley and Wife, Peggy D. Oakley (see Deed Book 10677, Page 2333, Wake County Registry), thence running with the southern boundary line of said lands North 87°09'18" East, 95.87 feet to an iron pipe found; thence continuing with said aforementioned boundary line North 87°11'56" East, 90.58 feet to an iron rod found along the bank of Thomas Creek (aka Thomas Branch); thence North 87°03'13" East, 4.95 feet located in the center of Thomas Creek; thence leaving the southern boundary line of said lands of Andrew L. Oakley and Peggy D. Oakley (Deed Book 10677, Page 2333), and running with the center of Thomas Creek the following courses and distances South 9°17'42" West, 11.61 feet to a point; thence South 41°58'45" East, 23.22 feet to a point; thence South 0°38'54" West, 37.25 feet to a point; thence S 33°09'48" West, 44.92 feet to a point; thence S 76°18'46" West, 20.76 feet to a point; thence S 65°16'31" West, 15.99 feet to a point; thence South 17°06'26" East, 28.94 feet to a point; thence South 25°34'39" West, 11.89 feet to a point; thence South 12°11'20" East, 8.63 feet to a point; thence South 21°29'16" East, 16.65 feet to a point; thence South 34°07'03" West, 39.65 feet to a point; thence South 29°04'24" East, 36.44 feet to a point; thence South 51°34'02" West, 22.76 feet to a point; thence South 5°09'04" East, 35.37 feet to a point; thence South 73°08'05" West, 19.52 feet to a point; thence South 24°20'39" West, 24.97 feet to a point; thence South 17°53'59" West, 30.37 feet to a point; thence South 1°49'45" West, 17.37 feet to a point; thence South 31°51'16" West, 43.41 feet to a point; thence South 13°34'59" East, 60.96 feet to a point; thence South 26°48'33" East, 45.76 feet to a point; thence South 5°08'52" West, 52.53 feet to a point; thence South 1°29'55" East, 71.89 feet to a point; thence South 30°03'53" East, 41.86 feet to a point; thence South 19°03'36" East, 20.81 feet to a point; thence South 8°15'44" East, 19.06 feet to a point; thence South 32°31'47" West, 71.90 feet to a point; thence South 42°42'07" West, 42.34 feet to a point; thence South 0°51'24" East, 34.78 feet to a point; thence South 27°47'35" West, 47.97 feet to a point; thence South 30°26'08" East, 32.37 feet to a point; thence South 43°32'31" West, 45.88 feet to a point; thence South 24°13'54" East, 37.26 feet to a point; thence South 37°49'31" West, 27.78 feet to a point; thence North 80°28'02" West, 23.35 feet to a point; thence South 27°46'10" West, 12.41 feet to a point; thence South 2°06'31" West, 32.54 feet to a point; thence South 19°10'39" West, 106.33 feet to a point; thence South 73°09'31" West, 24.21 feet to a T-Post found in the center of Thomas Creek; thence running with the center of Thomas Creek the following courses and distances: South 73°09'31" West, 5.37 feet to a point; thence South 35°39'51" West, 42.14 feet to a point; thence South 11°53'02" West, 52.38 feet to a point; thence South 18°11'25" East, 103.69 feet to a point; thence South 1°10'57" East, 62.92 feet to a point; thence South 17°00'22" West, 112.17 feet to a point; thence South 13°45'57" West, 24.75 feet to a point; thence South 64°00'45" East, 24.28 feet to a point; thence South 17°17'36" East, 27.36 feet to a point; thence South 68°08'41" West, 51.25 feet to a point; thence South 24°31'00" West, 34.52 feet to a point; thence South 33°10'29" East, 53.06 feet to a point;

thence South 12°15'06" West, 64.66 feet to an iron pipe found; thence South 4°37'35" West, 18.38 feet to a point; thence South 37°01'40" East, 30.92 feet to a point; thence South 1°03'06" West, 108.74 feet to a point; thence South 1°38'10" East, 53.75 feet to a point located in the center of Thomas Creek; said point being located 3.20 feet northeast from a found iron pipe (disturbed); thence running with the center of Thomas Creek the following courses and distances: South 1°38'10" East, 2.16 feet to a point; thence South 8°24'48" West, 154.18 feet to a point; thence South 6°04'32" West, 89.60 feet to a point; thence South 18°06'31" West, 47.11 feet to a point; thence South 11°49'09" West, 39.59 feet to a point; thence South 22°39'09" West, 31.58 feet to a point; thence South 43°38'22" West, 25.64 feet to a point; thence South 24°04'53" West, 21.63 feet to a point; thence South 10°34'38" East, 37.57 feet to a point; thence South 31°46'11" West, 39.39 feet to a point; thence South 4°55'47" West 13.49 feet to an iron pipe found in the middle of Thomas Creek, being a common corner of Tract 26 as shown on a plat entitled "Subdivision Map Ransdell Park Phase 2" (see Book of Maps 1994, Page 844, Wake County Registry); thence leaving the center of Thomas Creek and running with the boundary line of said Tract 26 South 80°56'15" West, 505.34 feet to an axle found; thence running with the western most boundary lines of Lot 26 and Lot 27 of said plat South 1°05'40" West, 172.25 feet to an axle; being a common corner of the lands of Drusilla C. Williams and Karlynn C. Cobo; thence running with the northern boundary line of said lands North 88°58'04" West, 905.57 feet to an iron rod set; being located along the eastern right-of-way line of Lake Wheeler Road (NCSR #1375); thence running with the eastern right-of-way line of Lake Wheeler Road North 20°46'28" East, 431.19 feet to an iron rod found; being a common corner of Tract 8R as shown on a plat entitled "Recombination Survey for David Harold Cotton, Jr." dated September 14, 2017 (see Book of Maps 2017, Page 2450, Wake County Registry); thence North 20°44'12" East, 292.81 feet to an iron rod found; thence North 20°45'33" East, 353.58 feet to an iron rod found; thence North 20°45'33" East, 69.29 feet to an iron pipe set; thence North 20°46'41" East, 444.23 feet to an iron rod found; thence North 20°56'34" East, 311.14 feet to an iron rod found; thence North 20°57'16" East, 297.62 feet to an iron rod found; thence North 20°46'57" East, 570.32 feet to said point of beginning, containing approximately 63.19 acres, as shown on that certain survey entitled "ALTA/NSPS Land Title Survey for Pulte Home Company, LLC; 4 Parcels Comprising the Lake Wheeler Road Site Fuquay-Varina North Carolina" prepared by Terry L. Westendorf dated January 23, 2018.

BY-LAWS
OF
RUTHERFORD HOMEOWNERS ASSOCIATION, INC.

TABLE OF CONTENTS

ARTICLE I. NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS	1
1.1 Name	1
1.2 Membership	1
1.3 Definitions.....	1
ARTICLE II. MEETINGS, QUORUM, VOTING, PROXIES	1
2.1 Place of Meetings.....	1
2.2 First Meeting and Annual Meetings	1
2.3 Special Meetings	1
2.4 Notice of Meetings.....	1
2.5 Waiver of Notice	2
2.6 Adjournment of Meetings	2
2.7 Voting	2
2.8 Proxies.....	2
2.9 Quorum	2
2.10 Action Without a Formal Meeting	2
2.11 Action by Written Ballot.....	2
2.12 Members List	3
ARTICLE III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS	3
A. Composition and Selection	3
3.1 Governing Body; Composition	3
3.2 Directors Appointed by Declarant	3
3.3 Number of Directors	3
3.4 Nomination of Directors	3
3.5 Election and Term of Office	4
3.6 Removal of Directors	4
3.7 Vacancies	4
B. Meetings	4
3.8 Organization Meetings.....	4
3.9 Regular Meetings	4
3.10 Special Meetings.....	4
3.11 Waiver of Notice.....	5
3.12 Quorum of Board of Directors.....	5
3.13 Compensation	5
3.14 Open Meetings	5

3.15	Executive Session	5
3.16	Action Without a Formal Meeting.....	5
3.17	Telephonic Participation	5
C.	Powers and Duties.....	6
3.18	Powers.....	6
3.19	Management Agent.....	7
3.20	Borrowing	7
3.21	Fining or Suspension Procedure	7
ARTICLE IV. OFFICERS.....		7
4.1	Officers	7
4.2	Election, Term of Office, and Vacancies.....	8
4.3	Removal	8
4.4	President.....	8
4.5	Vice President	8
4.6	Secretary	8
4.7	Treasurer	8
4.8	Resignation	8
ARTICLE V. COMMITTEES		8
ARTICLE VI. MISCELLANEOUS.....		8
6.1	Fiscal Year	8
6.2	Parliamentary Rules	8
6.3	Conflicts.....	9
6.4	Amendment.....	9

**BY-LAWS
OF
RUTHERFORD HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I. NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS

1.1. Name. The name of the Association shall be Rutherford Homeowners Association, Inc. ("Association").

1.2. Membership. The Association shall have two classes of membership, as is more fully set forth in that Declaration of Covenants, Conditions, Restrictions and Easements for Rutherford, recorded or to be recorded in the Office of the Register of Deeds of Wake County, North Carolina, as amended from time to time ("Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein. Unless otherwise herein defined, or the context otherwise requires, all capitalized terms will have the meaning set forth in the Declaration.

1.3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

ARTICLE II. ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

2.1. Place of Meetings. Meetings of the Association shall be held at the Association's principal office or at such other suitable place convenient to the members as may be designated by the Board, either in the Community or as convenient thereto as possible and practical.

2.2. First Meeting and Annual Meetings. An annual or special meeting shall be held within one year from the date the Declaration is recorded. Annual meetings shall be set by the Board.

2.3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by the members entitled to cast at least 1ten percent (10%) of the votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the time and place where it is to be held, the agenda for such meeting, and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than sixty (60) days before a meeting.

2.5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.7. Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

2.9. Quorum. Unless otherwise expressly provided, the presence, in person or by proxy, of ten percent (10%) of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.10. Action Without a Formal Meeting. Any action to be taken at a meeting of the members, or which may be taken at a meeting of the members, may be taken without a meeting if one or more written consents setting forth the action so taken shall be signed by members entitled to cast at least eighty percent (80%) of the votes of the Association; provided, however, that during Declarant's Development Period, such action is also consented to by Declarant. Action taken without a meeting shall be effective on the date that the last consent is executed, and consented to by the Declarant, if required, unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the Association's permanent records.

2.11. Action by Written Ballot. As an alternative to the provisions of Section 2.10 above, any action to be taken at any annual, regular, or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such

action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the Association's permanent records.

2.12. Members List. The record date for determining members entitled to notice shall be the close of business of the day preceding the date notices are given. The record date for determining members entitled to vote at a meeting shall be the close of business of the business day preceding the date of the meeting. The Association shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. Additionally, the Association shall prepare on a current basis through the time of the membership meeting a list of members who are entitled to vote but not entitled to notice. This list shall be made available for any member for the purpose of communication concerning the meeting and shall make the list available at the meeting and any member, member's agent, or member's attorney is entitled to inspect the list at any time during the meeting.

ARTICLE III. BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Except for Declarant-appointed directors, all directors must be Members. In the event of co-ownership of a Lot, only one of the co-owning Members may be a director at any time unless one of the co-owning Members also owns an interest in another Lot and there is no other director who owns an interest in such other Lot.

3.2. Directors Appointed by Declarant. During the Period of Declarant Control, Declarant shall have the right to appoint or remove certain members of the Board Association, the terms of which are specifically incorporated herein by reference.

3.3. Number of Directors. The initial Board shall consist of three members. After the Declarant's right to appoint directors terminates, the Board shall consist of at least three directors, but may expand the number of directors to five or seven members, which shall be filled by a vote of the members in accordance with Section 3.5(b).

3.4. Nomination of Directors. Candidates may be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5. Election and Term of Office. Owner-elected directors shall be elected and hold office as follows:

(a) After the Declarant's right to appoint directors terminates, the Association shall call a special meeting to be held at which Owners shall elect three directors.

(b) Thereafter, directors shall be elected at the Association's annual meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

At the special meeting in which the Owners initially elect directors, two directors shall be elected to two-year terms and one director shall be elected to a one-year term. At the expiration of the initial term of office of each respective Owner-elected director, a successor shall be elected to serve for a term of two years. The directors shall hold office until their respective successors shall have been elected by the Association.

3.6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors may be removed, with or without cause, by a vote of a majority of the members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors at a meeting. This Section and the provisions of Section 3.7 below shall not apply to directors appointed by Declarant. Only Declarant can remove a director appointed by Declarant or fill any vacancy caused by the removal, resignation, or death of any director appointed by Declarant during any Declarant Control Period.

3.7. Vacancies. Vacancies in the Board caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board. Each person so selected shall serve the unexpired portion of the term.

B. Meetings.

3.8. Organization Meetings. The first Board meeting following each annual meeting of the membership shall be held at such time and place as shall be fixed by the Board.

3.9. Regular Meetings. Regular Board meetings may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10. Special Meetings. Special meetings of the Board shall be held when requested by the President, Vice President, or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the

director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) electronic message, fiber optic, or telecommunication to the director; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address, telephone number, or other place of delivery as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telecommunication shall be given at least 48 hours before the time set for the meeting.

3.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board.

3.13. Compensation. No director shall receive any compensation from the Association for acting as such.

3.14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

3.15. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16. Action Without a Formal Meeting. Unless prohibited by North Carolina law, any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.17. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

C. Powers and Duties.

3.18. Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending use restrictions and rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;
- (k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and
- (l) contracting with any Person for the performance of various duties and functions.

3.19. Management Agent. The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Declarant or an affiliate of the Declarant may be employed as managing agent or Manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

3.20. Fining or Suspension Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to use any part of the Common Property unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator by first-class or certified mail sent to the last address of the member shown on the Association's records, specifying:

(i) the nature of the violation, the fine or suspension to be imposed and the date, not less than fifteen (15) days from the date of the notice, that the fine or suspension will take effect;

(ii) that the violator may, within ten days from the date of the notice, request a hearing regarding the fine or suspension imposed;

(iii) the name, address, and telephone numbers of a person to contact to challenge the fine or suspension;

(iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(v) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice.

(b) Hearing. Any requested hearing may, in the sole discretion of the Board, be held before the Board in executive session. At the hearing, the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

(c) Enforcement. In any action or proceeding to enforce the Declaration, these By-Laws, the rules and regulations of the Association, or decision of the Board, the Association shall be entitled to recover all expenses from the violator, including all attorney's fees, thus incurred.

ARTICLE IV. OFFICERS

4.1. Officers. The officers of the Association shall be a President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board. The Board may appoint such other officers, including one or more Vice Presidents, Assistant Secretaries, or Assistant Treasurers, as it shall deem desirable.

4.2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected periodically by the Board. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.3. Removal. Any officer may be removed by the Board whenever, in its judgment, the best interests of the Association will be served thereby.

4.4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Act.

4.5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

4.6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board, shall prepare, execute, certify, and record any amendments to the Declaration on behalf of the Association, and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

4.7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board.

4.8. Resignation. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V. COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

ARTICLE VI. MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2. Parliamentary Rules. *Robert's Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with North Carolina law, the

Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the person presiding over the proceeding.

6.3. Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

6.4. Amendment. These By-Laws may be amended by the Board if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination. Otherwise, they may only be amended upon the affirmative vote of at least two-thirds (2/3rds) of the votes of the members of the Association cast at a meeting of the members duly called for such purpose or with the written consent of the members entitled to cast at least two-thirds (2/3rds) of the votes of the Association; provided, however, during Declarant's Development Period, any such amendment must also be approved by Declarant.