

Prepared by and return to:

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Raleigh, North Carolina 27619-0389

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PRESENTED
FOR
REGISTRATION

000485

96 OCT 29 PM 2:15

DECLARATION

RECORDED
REGISTER OF DEEDS
WAKE COUNTY

OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

FOR

SHEFFIELD ESTATES SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by The Barton Corporation, a North Carolina corporation, with its principal office located at 4603 Western Boulevard, Raleigh, Wake County, North Carolina, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in or near Raleigh, Barton's Creek Township, County of Wake, State of North Carolina, commonly referred to as "Sheffield Estates", which is more particularly described on Exhibit "A" attached hereto;

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

WHEREAS, the Property shall be comprised of single family residential lots, and

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

ARTICLE I

DEFINITIONS

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

Section 2. "Association" shall mean and refer to Sheffield Estates Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

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

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

Section 5. "Common Properties" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners or members or designated classes of members of the Association, including Limited Common Properties as may be designated on any subdivision map of the Property or by the Association. The Common Properties to be owned by the Association at the time of the conveyance of the first Lot is all of that Property other than the Lots.

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

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the signs, fences, and any amenities as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, or replacement of the Common Properties;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;
- (g) Expenses for maintenance of security devices or personnel;
- (h) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 7. "Declarant" shall mean and refer to The Barton Corporation, a North Carolina corporation, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure when held by Declarant or its Successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 8. "Lot" shall mean and refer to any plot or Tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use, designated for residential use and for separate ownership and occupancy.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Notice" required to be given herein shall be in writing and mailed by U.S. mail, postage prepaid, first class to the address of any Member on the records of the Association or shall be hand delivered to the Member.

Section 11. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

(c) the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Properties, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication, sale, lease or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the members;

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage the Common Properties, and the rights of such mortgagee in the Common Properties shall be subordinate to the rights of the members hereunder;

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

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

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

Section 3. Title to the Common Properties. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Properties located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except for encumbrances of fences, landscaping, utility, service, access, storm drainage and other similar service or utility easements.

Section 4. TV Antennas, Cablevision, Music. The Association may regulate or prohibit the erection of television, radio or other disks or antennas on individual Lots.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned including Lots later added pursuant to annexation of additional Property as set forth in the Declaration. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, such additional lands are annexed to the Property without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VI below, or

(b) ten (10) years from the date of conveyance of the first Lot by Declarant.

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

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

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

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 1996, the maximum annual assessment shall not exceed Two Hundred and Fifty and no/100 Dollars (\$250.00) per Lot plus that amount, if any, that may be imposed on each Lot through the Association for the assessment imposed by any other association to which the Association has contracted maintenance of its Common Properties.

(b) Increase by Association. From and after January 1, 1997, the annual assessment imposed by this Association initially \$250.00, effective for any year (including 1996) may be increased effectively from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of ten (10%) percent or the percentage increase reflected in the Consumer Price Index For All Urban Consumers (CPI-U) - South Urban Area Average (1982-84 = 100) (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed that Index, for that twelve-month period ending the immediately preceding October 1.

(c) Increase by Members. From and after January 1, 1997, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of ten (10%) percent or the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

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

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant shall pay any Association expenses not otherwise covered by the assessment hereunder.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Properties, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 15 days nor more than 30 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast forty percent (40%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7)

day, maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half of the required quorum is not met, then in a subsequent meeting the requirement shall be one-fourth (1/4) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other periodic basis established by the Board; provided, however, that the assessment against any Lot that does not contain a finished dwelling shall only be twenty-five percent (25%) of a Lot that does contain a dwelling, and no assessment shall be due on any Lot owned by the Declarant. A Lot shall cease to enjoy the benefit of the reduced assessment at such time as it is sold by a builder of the dwelling to the consumer-occupant.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. Notwithstanding any provision to the contrary, the annual assessments provided for herein shall commence as to any Lot at the time of the initial sale of a Lot by the Declarant to a Builder or consumer-occupant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

At the time of the initial sale of each Lot by Declarant to a Builder or consumer-occupant, Declarant shall pay to the Association a sum of \$250.00 working capital to the Association. These amounts need not be segregated but may be commingled with regular assessment funds.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed ten (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

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

encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Exterior Improvement Maintenance Responsibility. Each Lot Owner, at his sole cost and expense, shall continuously provide exterior upkeep and maintenance of the improvements on the Lot. Such improvements shall always be maintained in a neat and attractive manner and in keeping with the quality or standard of maintenance of other Lot Owners in the Property. Such maintenance and upkeep shall include, and without limitation, exterior building surface care such as painting, staining, cleaning, repair and replacement of roofs, shingles or siding, repair and replacement of gutters, downspouts, moldings, doors, screens and glass surfaces, and shall further include repair and maintenance of fences, screens, walks, driveways or exterior lighting and lighting fixtures.

In the event an Owner fails to keep and maintain the improvements on his Lot in a neat and attractive manner, then the Association may maintain, repair, replace or generally keep up, including painting, staining and other repairs to the improvements on the Lot if such has been approved in advance by a vote of two-thirds of each class of members present and voting in person or by proxy at a meeting of members duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item.

In the event the Association must do any maintenance, repair, replacement or upkeep on any Lot, each Lot Owner hereby gives to the Association, and the same is hereby reserved unto the Association, its agents, servants or independent contractors, the right and easement for unobstructed access in, over and on each Lot at all reasonable times to perform such repair or replacement by the Association.

ARTICLE V

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, swimming pools or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind,

shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements, landscaping or plantings shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, an Architectural Committee composed of three (3) persons appointed by the Declarant so long as Declarant owns any Lot, and after that, then as appointed by the Board. In the event the Architectural Committee fails to approve such submission made by any Lot Owner within sixty (60) days after said plans and specifications have been received by the Committee, approval will be deemed to have been denied. Any plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding any prior approval by the Committee.

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

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

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

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

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

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

The Association, so long as Declarant owns any Lot, shall defer architectural approvals to Declarant unless Declarant has voluntarily relinquished control of the Architectural Committee to the Association. The more specific requirements of any protective covenant applicable to any subdivision on the Property shall prevail.

ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTIES

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

Section 2. If within seven (7) years of the date of conveyance by Declarant of the first Lot, the Declarant should develop additional land as Declarant may hereafter acquire contiguous thereto, such land may be annexed by the Declarant without the consent of members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association.

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

Section 4. Subsequent to recordation of the Declaration of Annexation by the Declarant, and prior to the conveyance of the first Lot therein, the Declarant shall deliver to the Association one or more deeds conveying any Common Properties within the lands annexed as such Common Properties is developed.

ARTICLE VII

USE RESTRICTIONS

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

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

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

Section 4. Animals. No animals, including horses, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners.

Section 5. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property.

Section 6. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot, except that the Declarant or its agents may use any unsold Lots for sales or display purposes. Declarant may maintain a sales or rental office on the Property and Declarant may maintain marinas or other amenities to the Property.

Section 7. Signs. No Lot Owner shall display, or cause, or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Properties, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant, or its respective agents, may place "For Sale" or "For Rent" signs on any Lots for sale and in suitable places on the Common Properties approved by the Association; provided, however, that during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees.

Section 8. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Properties except at the direction or with the express written consent of the Association.

Section 9. Common Properties Use. The Common Properties shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 10. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on any Lot, on the Common Properties, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or contract purchasers, except inside an enclosed garage located on a Lot, within a screened area, or

except as otherwise may be permitted by Rules and Regulations of the Association. Delivery and maintenance vehicles are permitted.

Section 11. Trailers, etc. No trailer, tent, mobile home, modular home or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units used by the contractor during the construction of a dwelling, garage or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 12. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Declarant or Association from erecting, placing or permitting the placing of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 13. Guest Facility. A guest apartment or guest facility may be included as part of a main detached single family dwelling or accessory building.

Section 14. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, its successors and assigns, the right to replat any two (2) or more Lots shown on the plat of any subdivision of the Property in order to create one or more modified Lots for the permitted purpose, including but not limited to water well lots or utility Lots; to recombine one or more Lots to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access to any area of the Property or are needed for use as private roads or access areas, or water well lots or utility lots, and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots.

Section 15. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Board or the architectural committee.

Section 16. Driveways. All driveways and parking areas shall be paved (concrete or asphalt) from the street to each house. Gravel driveways are permitted at the sole discretion of the Architectural Committee, provided the apron from the street to the property line is paved and is constructed at the same width as the driveway. Driveways for any utility lot, as defined in Section 21 below, shall be exempt from the paving requirements of this Section 16.

Section 17. Antennae. Exterior radio and television antennae, acrials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other acrials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose.

Section 18. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the Board so as not to damage unnecessarily trees, street paving and curbs. During construction,

builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris will not be dumped in any area of the Property.

Section 19. Firearms: Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 20. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

Section 21. Utility Lots. At the option of the Declarant, any lot or lots may be used for a well lot, a utility lot including necessary treatment lines for a low pressure sewer system, water tower lot and may contain a pump house, utility house, and treatment lines facilities and well equipment.

Section 22. Unsightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

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

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

ARTICLE VIII

BUILDING RESTRICTIONS

Section 1. Square Footage. Any dwelling erected on a detached single-family residential Lot shall contain a minimum enclosed dwelling area of 3,750 square feet. In addition thereto, and unless a variance is granted therefor as provided herein, all dwellings shall have an enclosed two or three car garage attached to the main dwelling. The term "enclosed dwelling area" as used in this Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling; provided, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. A building used in conjunction with a water, sewer or public utility shall be exempt from the size requirements contained herein.

Section 2. Setback Lines. No dwelling erected on a detached single-family residential Lot (including garage) shall be constructed nearer than fifty (50') feet to the front Lot line, twenty (20') feet to any side Lot line, or thirty (30') feet to the rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements may be granted pursuant to Article V hereof, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property.

Section 3. Height and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single family dwelling not to exceed two (2) stories in height, unless the Board approves in writing a variance permitting a structure of more than two stories, and a garage and small accessory building (which may include a pool house, servants' quarters, or guest facilities), provided, the use of such dwelling or accessory building does not in the opinion of the Board or Architectural Committee overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Association approves in writing a variance permitting a detached garage.

Section 4. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected or placed on, or allowed to occupy, any detached single-family residential Lots, and no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 5. Remedies. If the finished dwelling, garage, accessory building or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws a notice of liens for any costs incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorneys' fees. Any changes in plans or specifications must first be reapproved by the Architectural Committee in accordance with the procedure herein specified for architectural control.

Section 6. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area not generally visible from the road in accordance with standards established by the Association.

Section 7. Parking Spaces. Each Lot Owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said Lot in accordance with standards established by the Association.

ARTICLE IX

EASEMENTS

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

Section 2. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Properties for the setting, removing

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

Section 3. Specific Utility Easements. There is hereby reserved an easement ten (10') feet in width along the side property lines and ten (10') feet along the rear property line of each Lot designated for detached single-family residential use for the purpose of installation, repair, maintenance, erection, construction and inspection of water lines, sewer lines, gas lines, electric lines, telephone lines, cablevision lines or other such utility or service lines and for drainage cuts and storm sewer lines; provided, that if both sanitary sewer and storm sewer lines are located within the same easement, the easement reserved herein along the rear property line shall be fifteen (15') feet in width.

Section 4. Recorded Easements. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Section 5. Fence and Landscape Easement. There is hereby reserved an easement for purposes of installation, construction, maintenance and repair of a fence and landscaping in, upon, and across the property described as follows:

BEING all of that fifteen (15) foot wide strip of land located within the rear lot line of Lots 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Sheffield Estates as shown on that plat recorded in Book of Maps 1996, page 1338 Wake County Registry.

The further terms and conditions of the easement interest herein reserved are as follows:

a. Initial construction and installation of the fence and landscaping shall be undertaken and completed by the Declarant. The Sheffield Estates Homeowners Association shall be responsible for maintenance and repair of the fence and landscaping. All materials and plants used in the maintenance and repair of the fence and landscaping shall be of the same or similar quality as the original fence and landscaping placed on the easement.

b. Nothing herein shall be construed to grant to any person any right of access through or over any property of the Declarant except for that area lying within the easement interest herein described and conveyed.

Section 6. Entranceway and Sign Easement. There is hereby reserved an easement for purposes of installation, construction, maintenance and repair of a sign and entranceway landscaping in, upon and across the property described as follows:

BEING the northern corner of Lot 13 and the eastern corner of Lot 14 in Sheffield Estates which lots are further described on that plat recorded in Book of Maps 1996, page 1338, Wake County Registry.

The further terms and conditions of this easement herein reserved are as follows:

a. Initial construction and installation of a sign and entranceway landscaping shall be undertaken and completed by the Declarant. The Sheffield Estates Homeowners Association shall be responsible for maintenance and repair of the sign and landscaping. All materials and plants used in the maintenance and repair of the sign and landscaping shall be of the same or similar quality as the original sign and landscaping placed on the easement.

b. Nothing herein shall be construed to grant any person any right of access through or over any property of the Declarant except for that area lying within the easement interest herein described and conveyed.

Section 7. Drainage Easement. In addition to the foregoing reserved specific easements, the Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot. The cost and performance of maintenance and repair of any Drainage Easement shall be the responsibility of the owner of the Lot where said easement is located.

Section 8. Ground Disturbance. These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 9. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Properties, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 10. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 11. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Properties.

ARTICLE X

INSURANCE

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

(a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association.

(b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.

(c) Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all improvements located on the Common Properties.

(d) Fidelity bonds for those officers or employees having control over Association funds.

(e) Other insurance required by law.

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

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

ARTICLE XI

RIGHTS OF INSTITUTIONAL LENDERS

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

A. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

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

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

E. To be given notice by the Association of any substantial damage to any part of the Common Properties.

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

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

ARTICLE XII

GENERAL PROVISIONS

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

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

Section 3. General Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty-six and 2/3rds percent (66 2/3%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

Section 4. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

- (A) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant.
- (B) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the

Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

- (C) The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.
- (D) The Declarant for so long as it has control of the Board may amend this Declaration to include any platting change of the Property as permitted herein.

Section 5. Governmental Authority Amendments. No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 6. FHA/VA Approval. As long as there is a Class B membership, and if Declarant determines to qualify this Property for Federal Housing Administration or U. S. Department of Veterans Affairs approval, the following actions will require the prior written approval of the Federal Housing Administration or the U. S. Department of Veterans Affairs: Annexation of additional property, dedication of Common Properties, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Recordation. No amendment shall be effective until recorded in the County in which the Property is situate.

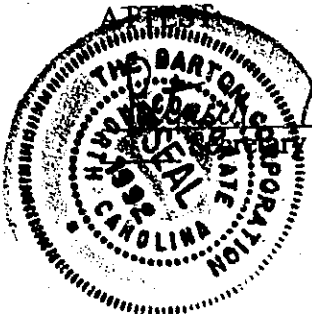
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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 22 day of October, 1996

THE BARTON CORPORATION, a
North Carolina corporation

(CORPORATE SEAL)

By: [Signature]
President

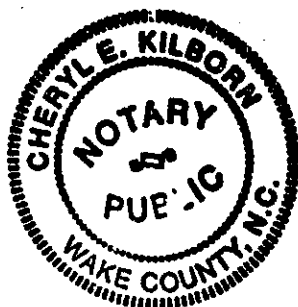


STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

I, the undersigned Notary Public of the County and State aforesaid, certify that Patricia M. MacNair personally came before me this day and acknowledged that she is Secretary of The Barton Corporation, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal, this 22nd day of October, 1996



Cheryl E. Kilborn
Notary Public

My Commission Expires: 6/18/2001

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Cheryl E. Kilborn

Notary Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By Cheryl A. Kelly
Asst./Deputy Register of Deeds

BK 7203PG0115

EXHIBIT A

BEING all of that tract or parcel of land shown on that plat entitled "Property of Sheffield Estates" by John A. Edwards & Company, dated June 28, 1996 and recorded in Book of Maps 1996, page 1338 Wake County Registry.

38703-1/ARC/ARC/10594-T17311