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J. LEE WARREN JR.
REGISTER OF DEEDS
CUMBERLAND CO., N.C.

SUPPLEMENTAL AND AMENDED DECLARATION OF COVENANTS
JAMES CREEK SECTION TWO PART A

Prepared by / Return to: Jeff Dunham
THIS SUPPLEMENTAL AND AMENDED DECLARATION OF COVENANTS is
made and entered into this 2nd day of November, 2005 by Hoke Loop Partners, LLC,
hereinafter referred to as "Developer":

WITNESSETH:

WHEREAS, Developer executed and caused to be recorded a certain Restrictive
Covenants of James Creek at Treyburn in Book 6987, Page 005, Cumberland County, NC,
Registry (hereinafter the "Declaration"), the terms of which are incorporated herein by this
reference; and

WHEREAS, said Declaration by its terms applied to and covered to that portion of the
James Creek subdivision shown on plat recorded in Plat Book 112, Page 160, of the Cumberland
County, NC, Registry; and

WHEREAS, said Declaration provided that future sections of James Creek Subdivision
would become subject to the Declaration after recording of the plat for said new section and
recording of a Supplemental Declaration which expressly made the new section subject to them
by either of the entities named as Developer; and

WHEREAS, Developer is the owner of and has caused to be recorded a plat of James
Creek South at Treyburn, Section Two, Part A as recorded in Plat Book 115, Page 68,
Cumberland County, North Carolina Registry; and

WHEREAS, the Developer desires Section Two, Part A as set forth on plat in Plat Book
115, Page 68 to be subject to bound by the Covenant except as amended herein, and further
desires that the said real property as shown on said plat be held, transferred, sold, conveyed,
given, donated, leased, occupied and used subject to the Declaration, as amended herein;

NOW, THEREFORE, in consideration of the premises, the Developer hereby expressly
declares that the property described as James Creek South at Treyburn Section Two, Part A, a
plat of which is recorded at Plat Book 115, Page 68 aforesaid Registry, be and hereby is subject

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to that certain Declaration recorded in Book 6987, Page 005.

IN WITNESS WHERE, Developer has set its hand and seal the day and year first above written.

Hoke Loop Partners, LLC, by:
Elmwood Partners, LLC its manager, by:

By: Thomas L. Bradford

Name: Thomas L. Bradford
Title: Member/Manager

D. Ralph Huff
Name: D. Ralph Huff
Title: Member/Manager

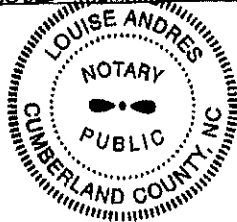
State OF NORTH CAROLINA -- COUNTY OF CUMBERLAND

I, Louise Andres, a Notary Public of said County and State do hereby certify that Thomas L. Bradford and D. Ralph Huff as member/managers of Elmwood Partners, LLC, the manager of Hoke Loop Partners, LLC personally appeared before me this day and being by me duly sworn say that they executed the foregoing and annexed instrument for and on behalf of the limited liability company and that they acknowledged the due execution of the foregoing instrument for the purposes therein expressed for and on behalf of and for herself individually.

WITNESS my hand and Notarial Seal, this the ^{2nd} day of, November 2005

Louise Andres
NOTARY PUBLIC

My commission expires: 6-3-2007



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8-25-2005 AM 10:46: 2
J. LEE WARREN JR.
REGISTER OF DEEDS
CUMBERLAND CO., N.C.

NORTH CAROLINA

RESTATEMENT OF

CUMBERLAND COUNTY

RESTRICTIVE COVENANTS OF

JAMES CREEK AT TREYBURN

(NORTH AND SOUTH)

Return to Jeff Dunham

THIS RESTATEMENT OF RESTRICTIVE COVENANTS is made this 22nd day of August, 2005, by HOKE LOOP PARTNERS, LLC, a North Carolina limited liability company, ("Hoke Loop") and FLOYD CONSTRUCTION CO., INC., a North Carolina corporation ("Floyd"), hereinafter collectively referred to as "Developer";

WITNESSETH:

WHEREAS, Hoke Loop is the owner of a certain tract of land located in Seventy-First Township, Cumberland County, North Carolina, which is known as James Creek South At Treyburn; and

WHEREAS, Floyd is the owner of a certain tract of land located in Seventy-First Township, Cumberland County, North Carolina, which lied immediately north of Hoke Loop's property and is known as James Creek North at Treyburn; and

WHEREAS, Hoke Loop and Floyd intend to develop James Creek South and North jointly with shared homeowner's association and amenities, including club house, soccer field and pool lying upon land constituting a portion of James Creek South and a portion of James Creek North; and

WHEREAS, Hoke Loop and Floyd desire to provide for the preservation of the values and amenities of both tracts of land and for the maintenance of common properties under a joint development plan or scheme of improvement and thus desires to subject said properties to covenants, restrictions, easements, affirmative obligations, charges and liens as hereinafter set forth, hereinafter referred to as the "Covenants" or the "Declaration", all of which is hereby declared to be for the benefit of said properties and each and every owner of any and all parts thereof; and

WHEREAS, Hoke Loop has previously recorded Restrictive Covenants for James Creek at Treyburn which are recorded in Book 6740, Page 325 of the Cumberland County Registry which Hoke Loop would like to amend and restate as set forth in the Restatement;

NOW, THEREFORE, Developer hereby declares that all of the properties described above 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 real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

PART I

ARTICLE I

DEFINITIONS

Section 1. "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 Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Properties" shall mean and refer to that certain real property known as James Creek South Section One as shown on plat recorded in Plat Book 112, Page 160, of the Cumberland County Registry. herein before described. "Properties" shall also include future sections of James Creek North or James Creek South [collectively "James Creek" or "James Creek at Treyburn") as the same may be developed from time to time except that such future sections of James Creek shall become subject to these covenants only from and after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration which incorporates by reference this Declaration and which expressly makes the new section(s) subject to these covenants, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Developer, to reflect the different character, if any, of the new section, but such modification shall have no effect on the Properties shown on plat recorded in Plat Book 112, Page 160 described above.

Section 3. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties, either presently recorded or to be recorded in the future and incorporated into James Creek Subdivision.

Section 4. "Association" shall mean and refer to James Creek at Treyburn Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina.

ARTICLE II

USE RESTRICTIONS

Section 1. Land Use. All Lots shall be used for single-family residential purposes only and shall not be used for any business or commercial purposes, provided, however, that Developer reserves the right to use any Lot and any improvement thereon owned by Developer as a model home with sales office. Group family homes are prohibited.

Section 2. Building Type. All Lots shall be residential Lots, and no structure shall be erected, altered, placed or permitted to remain on any of said Lots except one detached single home dwelling of not more than two and one-half stories in height, a private garage for not more than three cars and other outbuildings in the rear of the dwelling house which may be incidental to normal residential use in subdivisions of similar category. Such outbuildings erected, altered, placed or permitted shall be of the same quality, workmanship and material as the principal dwelling structure and must be centered along the rear Lot line, and must comply with Section 3 below. Any outbuilding erected, altered, or placed on any lot must be approved by the Developer, Developer's agent, or the Association prior to construction. Manufactured outbuildings shall be placed upon a Lot only with the prior consent of the Developer or the Developer's agent. All outbuildings whether constructed or manufactured, must have an asphalt shingle roof. No mobile home (Class A or B) or modular home will be allowed on any Lot to which these covenants apply.

Section 3. Set Back Requirements. There shall be no structure on any of the designated single-family Lots within thirty (30) feet of the street on which the Lot fronts, nor within less than five (5) feet of the side lines of the Lot or less than fifteen (15) feet from any side street, and for an "interior" Lot, not less than twenty (20) feet from the rear lot line. For an "exterior" Lot, that is one that borders the boundary of Property or Subdivision, the rear set back shall be thirty five (35) feet. For the purposes of this covenants, eaves, steps, overhangs and chimneys shall not be considered as a part of the building, provided however, that this shall not be construed to permit any portion of an improvement on a Lot to encroach upon another Lot. When consistent with the Zoning Ordinance, the building line set-back as provided for in this Paragraph may be varied by as much as ten percent (10%) with the express consent of Developer, which said consent document need not be recorded in the Office of the Register of Deeds, Cumberland County, North Carolina.

Section 4. Minimum Size of Each Dwelling. The ground floor of the main structure exclusive of one-story porches and garages, shall not be less than Twelve Hundred (1200) square feet for a one-story dwelling and not less than Seven Hundred (700) square feet for the first floor of a two-story dwelling. Square footage is determined by the outside dimensions of the main structure, excluding any unheated space. Heated area living space shall mean the ordinary living space in a house which is designated and constructed so as to be capable of being heated for regular living space in cold weather. In the computation of floor space, unheated storage area, garages, and porches shall not be counted. Houses shall be constructed using either "crawl space" or "slab" on "grade" construction. No residence or other building, and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether

attached to or detached from the main residence, shall be commenced, placed, erected or allowed to remain on any building plot, not shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same, showing the same nature, kind, shape, height, size, materials, floor plans, exterior color schemes with paint samples, location and orientation on the building plot and approximate square footage, construction schedule, on-site sewage and water facilities, and such other information as the Developer shall require, including, if so required, plans for the grading and landscaping of the building plot showing any changes proposed to be made in the elevation of surface contours of the land, have been submitted to and approved in writing by the Developer and until a copy of all such plans and specifications, as finally approved by the Developer, have been lodged permanently with the Developer. No alteration in the exterior color of the home or the color of the shingles shall be made without prior written approval of the Developer. The Developer shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and lot-grading and landscaping plans which are not suitable or desirable in its option for any reason, including purely aesthetic reasons connected with future development plans of the Developer of said land or contiguous lands. In passing upon such building plans and specifications and lot-grading and landscaping plans, the Developer may take into consideration the suitability and desirability of the proposed constructions and of the materials of which the same are proposed to be built to the building plot upon which it proposes to erect the same, the quality of the proposed workmanship and materials, the harmony of external design with surrounding neighborhood and existing structures therein, and the effect and appearance of such constructions as viewed from neighboring properties. In the event the Developer fails to approve or disapprove such building plans and specifications within thirty (30) days after the same have been submitted to it as required above, the approval of the Developer shall be presumed and the provisions of this paragraph four (4) shall be deemed to have been complied with. However, no residence or other building, structure or improvement which violates any of the covenants and restrictions herein contained or which is not in harmony with the surrounding neighborhood and the existing structures therein shall be erected or allowed to remain on any part of a building plot on said land.

Section 5. Driveways. All driveways shall be constructed of concrete.

Section 6. Fences. No fence shall be constructed or erected closer to the street on which the house fronts than the rear corners of the house. Provided further that on a corner Lot no fence of any description may be erected closer to any street line than the corner of the house closest to the street line. If a house has a screened porch on either rear corner, the fence may come off either the back or the front corner of the screened porch. All fences that are visible from the street shall be white vinyl privacy, white vinyl picket, or ornamental iron/aluminum. Any portion of the fence that is not visible from the street shall be white vinyl privacy, white vinyl picket, ornamental iron/aluminum, wood picket, wood privacy, or split rail with welded wire. Prior to construction, the Developer and/or the Association must approve all fences.

Section 7. Temporary Structures. No trailer, tent, shack, garage, barn or similar type outbuilding shall be placed, erected or allowed to remain on said property without the written consent of Developer its successors or assigns. Nor shall any structure of a temporary character be used as a residence temporarily, permanently or otherwise.

Section 8. Restricted Activities. No commercial, noxious or offensive trade or activity shall be carried on upon any plot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 9. Animals. The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Lot, except the keeping of not more than two (2) orderly domestic pets (dogs or cats) shall be permitted; provided however, that such pets are not kept or maintained for commercial purposes for breeding and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property. All pets shall be registered and inoculated as required by law. No dangerous dogs, including, but not limited to, pit bulls, rottweilers, dobermans, and chows, shall be permitted on the premises, unless the Lot owner installs a six (6) foot privacy fence that complies with Section 6, above, and in addition installs a six (6) foot chain link fence, with said chain link fence installed at least ten (10) feet inside the perimeter of the privacy fence. The above-listed breeds of dog may not be exercised in the neighborhood, even if the dog is on a leash. Any of the above-listed breeds of dogs may be removed at the sole discretion of the Developer and/or the Association. All owners of the above-listed breeds must annually provide the Association with a current copy of liability insurance in the minimum amount of \$1,000,000.00.

Any dog house or dog containment structure or system must be located to the rear of the principal dwelling structure and must be located within twenty (20) feet of the rear of the main structure. No such permitted dog house or dog containment structure or system shall be placed, erected or maintained closer to any street than the rear corner of the principal dwelling structure, and in no event closer to any street than thirty (30) feet.

Section 10. Motor Vehicles. No automobile or motor vehicle may be dismantled or stored on said property; and no mechanically defective automobile, motor vehicle, mechanical machine, or machinery, shall be placed or allowed to remain on said property at any time. Notwithstanding the above, these restrictions shall not apply if such vehicle is kept in an enclosed garage. No commercial trucks, including but not limited to eighteen wheelers, shall be permitted to be parked on the premises except in the course of delivery, pick up, or discharge of a specific commercial duty.

No camping trailer, motor home or recreational vehicle (not including sports utility vehicles) shall be permitted on the premises except in accordance with restrictions contained herein. No camping trailer, motor home, or recreational vehicle may be parked closer to the front street than either the front corner of the house on the premises or the front corner of the adjacent house, whichever is further from the street, and must be within

the yard setbacks. Any permitted camping trailer, motor home, or recreational vehicle must be kept in a well-maintained condition and appearance. On corner Lots, no camping trailer, motor home, or recreational vehicle shall be permitted any closer to any street than the principal dwelling structure. In no event shall any permitted camping trailer, motor home, or recreational vehicle be used as a residence temporarily, permanently, or otherwise.

Section 11. Exterior Alterations. No exterior alterations, additions, or changes of any kind may be made to the structure or design of the residence and improvements now on said property without the written consent of Developer, its successors or assigns.

Section 12. Mailboxes. All mailboxes shall be uniform to those initially installed by the Developer.

Section 13. Signs. No sign of any character shall be displayed or placed upon any Lot except "For Sale" or "For Rent" signs, which signs may refer only to the particular premises on which displayed, shall not exceed two (2) square feet in size, shall not extend more than four (4) feet above the surface of the ground, shall be fastened only to a stake in the ground and shall be limited to one (1) sign to a Lot. The Declarant may enter upon any building plot and summarily remove and destroy any signs which do not meet the provisions of this section.

Section 14. Satellite Dishes. No satellite dish antennas, radio tower or antenna of any nature shall be placed or allowed to remain on said property except for a satellite dish measuring no more than eighteen (18) inches in diameter, attached to the rear of the dwelling, so long as said satellite dish is not visible from the road.

Section 15. Clothesline. Clotheslines are not permitted.

Section 16. Basketball Goals. No basketball goals of any nature, whether stationary or portable, regulation size or otherwise, shall be allowed in the street or public right of way. Basketball goals shall be allowed in owners' yards or driveways, provided they are properly maintained in good repair and condition.

Section 17. Yard Maintenance. Each owner shall landscape and maintain his yard in a well-manicured style, so as to enhance his own as well as his neighbors' homes and Lots. The grass of each Lot shall be kept at a reasonably short length, and all trees, shrubs and bushes shall be properly pruned. If the yard is not maintained properly, the Association has the right to perform the required work and to bill the Lot owner for said work. The Association may obtain a lien against any Lot owner who fails to timely pay any bill for maintenance work done by the Association.

Section 18. Trash and Yard Debris. No trash of any kind, whether household or yard debris shall be placed or allowed to remain on said property, except in containers made for that purpose with secure tops. Containers should only be placed by the street on

the evening before the day trash is scheduled to be picked up. Each owner shall promptly remove the trash container from the street, in no case later than the evening of the day the trash was removed.

Section 19. Swimming Pools. There shall be no aboveground swimming pools. In-ground pools are permitted and must be surrounded by a four (4) foot privacy or ornamental fence.

Section 20. Mutual Benefit. It is understood and agreed that these restrictions are made for the mutual benefit of the grantors and grantees and any and all subsequent grantees, and all such parties shall be deemed to have a vested interest in these restrictions and the right to enforce the same.

ARTICLE III
UTILITIES AND UTILITY AND DRAINAGE EASEMENTS

Section 1. Utilities. Developer reserves the right to subject the real property in this entire subdivision to a contract with Public Utility Provider(s) for the installation of overhead and/or underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to public Utility Provider by the owner of each building: Developer and its successors in title may devote any Lot or portion thereof, not already sold, for any construction and uses which it, in its discretion, deems necessary in order to provide the subdivision with utilities.

Section 2. Utility and Drainage Easements. Easements for installation and maintenance for utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water. All areas indicated as streets and easements on the recorded plat are hereby dedicated to public use for such uses forever except side yard easements which are for the use and benefit of those persons and Lots as described herein.

ARTICLE IV
GENERAL PROVISIONS

Section 1. Enforcement. So long as Developer is an owner of a Lot shown on the plat, Developer, or any Owner, at any time, 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 these Restrictive Covenants. Failure by the Developer 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. Amendment. It is understood and agreed, and the present owners and

all subsequent Grantees of present owners expressly agree by the acceptance of land within the Property that the covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date the Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Notwithstanding anything contained herein, these restrictive covenants may be amended at any time by (a) written consent of Developer, or either of them, their successors or assigns, so long as Developer, or either of them, their successors or assigns, owns any one Lot in James Creek at Treyburn.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provision, which shall remain in full force and effect.

ARTICLE V

CONFLICTING PROVISIONS

To the extent the provisions of this Declaration conflict with any applicable provisions of the Cumberland Zoning or Subdivision County Ordinance, the conflicting provisions of the County Ordinance shall control.

PART II

ARTICLE I

DEFINITIONS

Section 1.1 "Annual Organizational Board Meeting" means the annual organizational board meeting of the Board, which shall take place immediately after each Annual Meeting of the Members.

Section 1.2 "Annual Meeting" means the annual meeting of the Members held in Cumberland County, North Carolina, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.

Section 1.3 "Articles" or "Articles of Incorporation" shall mean those articles, filed with the Secretary of State of North Carolina, incorporating James Creek at Treyburn Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.4 "Assessments" means Regular Assessments, Special Assessments, Working Capital Assessments, Individual Assessments and Fine Assessments.

Section 1.5 Intentionally deleted.

Section 1.6 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.7 "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.8 "Class A Members" shall mean as defined in Section 4.5.1 below.

Section 1.9 "Class B Members" shall mean as defined in Section 4.5.2 below.

Section 1.10 "Constituent Documents" shall mean the Declaration, the Bylaws, the Articles of Incorporation, the Recreational Facilities Easement Agreement, the Roadway Declaration and the Rules and Regulations, if any, and any other basic documents used to create and govern the Subdivision.

Section 1.11 "Common Areas" shall mean all the real estate (including retention ponds, storm drainage improvements, entrance signage, streets (including any dedicated streets prior to their acceptance for public maintenance) and all landscaping and other improvements thereon) owned by the Association for the common use and enjoyment of the Owners. Common Areas shall include, but not be limited to, the Recreational Facilities and parcels designated on the Subdivision plat as "Park" (unless such parks are later dedicated to the public by a subsequent dedication plat or conveyance), "COS," "Open Space," "Alley (Private)," swimming pools, club-house, or any other recreational facilities, "Common Area" or reserved as an access drive or private street.

Section 1.12 "Common Expenses" shall mean, refer to, and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefore; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to judicial sale; and all administrative, accounting, legal, and managerial expenses. "Common Expenses" shall also include the cost of operation, maintenance, improvement, and replacement of any Recreational Facilities, including establishing reserves therefore. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision, including, but not limited to private road and parking lot resurfacing. "Common Expenses" shall also include all reserve funds or other funds established by the Association. "Common Expenses" shall be construed broadly.

Section 1.13 "Declarant" or "Developer" shall mean and refer to Hoke Loop

Partners, LLC, a North Carolina limited liability company, and Floyd Construction Company, Inc., a North Carolina corporation, their successors and assigns as Declarants.

Section 1.14 "Default" shall mean any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

Section 1.15 "Development Period" means the period commencing on the date on which this Declaration is recorded in the Cumberland County Register of Deeds and terminating on the earlier to occur of (i) when Declarant, or either of them, no longer owns a Lot in James Creek; (ii) the date that Declarant relinquishes in writing Declarant's right to appoint Directors; or (iii) the occurrence of the date ten (10) years from the date of recording the Declaration, renewable for an additional ten (10) year period with the consent of a majority of Lot Owners other than the Declarant.

Section 1.16 "Dwelling Unit" shall mean and refer to the individual family living unit on an individual Lot.

Section 1.17 "Fine Assessment" means the charge established by Section 5.4.2 of this Declaration.

Section 1.18 "Individual Assessment" means the charge established by Section 5.3 of this Declaration.

Section 1.19 "Lot" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed.

Section 1.20 "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.21 Intentionally deleted.

Section 1.22 "Plat" shall mean and refer to the record plat of James Creek recorded by Declarant, or either of them, as the same may be amended or supplemented by Declarant, or either of them, from time to time.

Section 1.23 "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.24 Intentionally deleted.

Section 1.25 "Recreational Facilities" shall mean and refer to the common community and recreational facilities located upon the Properties and so designated on any recorded Plat of James Creek at Treyburn including, but not limited to, the swimming pool, clubhouse (including exercise room) and the related grounds, landscaping and

improvements located, or to be located thereon.

Section 1.26 "Regular Assessment" means the charge established by Article V of this Declaration.

Section 1.27 "Resident" shall mean and refer to any person, not an Owner, living in the Owner's Dwelling Unit, including, but not limited to, temporary guests and Tenants.

Section 1.28 "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.29 "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.3 below.

Section 1.30 "Special Assessment" means the charge established by Section 5.2 of this Declaration.

Section 1.31 "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The Properties, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration. Developer reserves the following special declarant rights for the Properties, including any future sections of James Creek Subdivision during the Development Period:

- (a) To complete any and all improvements indicated on the plats and plans;
- (b) To exercise any development right reserved in this Declaration;
- (c) To construct and maintain any sales office, signs advertising the Properties or any property which may be added thereto, management office or model on any of the Lots or on any of the Common Properties shown on the plat;
- (d) To use easements through the Common Properties for the purpose of making improvements within the Property or any property added thereto; or
- (e) To alter the size of any Lot, combine or merge two or more Lots, to subdivide

Lots or other Properties into Common Property.

ARTICLE III

PROPERTY RIGHTS IN COMMON AREAS

Section 3.1 Owner's Easements of Enjoyment. Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Each Tenant shall have a non-transferable right to use and enjoy the Common Areas, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

3.1.1 The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;

3.1.2 The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time;

3.1.3 All applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas, including, without limitation, the Recreational Facilities Easement Agreement and the Roadway Declaration;

3.1.4 The right of the Association to grant permits, licenses and public or private easements over Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or

3.1.5 The right of Declarant or the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities for park purposes.

Section 3.2 Extension of Use. Any Owner may extend his right of enjoyment to the Common Areas to the immediate and/or extended members of his family, his Tenants, guests or contract purchasers of the Owner's Lot.

Section 3.3 Title to Common Areas. The Declarant shall convey by deed all Common Areas to the Association in fee simple absolute after the final platting of all Lots in

the Subdivision. Any such conveyance shall be subject to taxes for the year of conveyance, and to restrictions, conditions, limitations and easements of record.

Section 3.4 Use of Common Areas by Declarant. In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Areas as the Class A Members during the Development Period, and shall have the same right to use Common Areas for promotional, sales and similar purposes until all of the Lots have been sold.

ARTICLE IV

HOMEOWNERS ASSOCIATION

Section 4.1 Homeowners Association. There is or will be created a North Carolina non-profit corporation, known as Scotts Mill at Treyburn Homeowners, Associations, Inc., which shall be responsible for the maintenance, management and control of the Common Areas and upon each Lot and Dwelling Unit as more specifically set forth in this Declaration.

Section 4.2 Board of Directors and Officers. The Board of Directors, and such officers as the may elected or appointed in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board of Directors may also appoint committees and managers or other employees and agents, who shall, subject to the general direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 4.3 Rules and Regulations. By a majority vote of the Board of Directors, the Association may, from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration; provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 4.4 Membership of Association. Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration, when due, and shall comply with decisions of the Board. Conveyance of fee simple title to a Lot automatically transfers membership in the Association without necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to Assessment.

Section 4.5 Classes of Membership. The Association shall have two (2) classes of Membership:

4.5.1 Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has been erected within the Property, shall automatically be a Class A Member of the Association except the Declarant during the Development Period; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed that is subject to Assessment. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any Lot, then the vote for the membership appurtenant to such Lot portion shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event agreement is not reached, the vote attributable to such Lot shall not be cast.

4.5.2 Class B Members. The Class B Member during the Development Period shall be the Declarant. The Class B Membership shall cease and be converted to Class A membership upon the expiration of the Development Period.

4.5.3 Voting. Each Member shall have one vote with respect to each Lot owned by such Member, but a Class A Member shall not be entitled to exercise any vote until the expiration of the Development Period.

Section 4.6 Maintenance Obligations of the Association. The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces; (b) all lawns, trees, grass and landscape areas, shrubs and fences, except as otherwise set forth herein below; (c) the Recreational Facilities; (d) all conduits, ducts, utility pipes, plumbing, wiring and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not for the exclusive use of a single Dwelling Unit, and (e) all drainage easements and ditches and any drainage water retention pond.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. Declarant shall have the right to employ a manager to oversee and implement the Association's

maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Section 4.7 Maintenance Obligation of the Lot Owners. The responsibilities of each Lot Owner shall include:

4.7.1 To clean, maintain, keep in good order, repair and replace at his or her expense all portions of his or her Lot and Dwelling Unit. Any repair, replacement and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony.

4.7.2 To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Subdivision.

4.7.3 Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exists.

4.7.4 Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any guest, invitee, Tenant or licensee of such Lot Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.3 and Section 7.7 below.

Section 4.8 Construction Defects. The obligations of the Association and of Owners to repair, maintain and replace the portions of the Subdivision for which they are respectively responsible shall not be limited, discharged or unreasonably postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the project. The undertaking of repair, maintenance or replacement by the Association or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved. Likewise, this Section 4.8 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if by repairing the defect, Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 4.9 Effect of Insurance or Construction Guarantees. Notwithstanding the

fact that the Association and/or any Lot Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Association or any Lot Owner in performing his obligation hereunder. Likewise, this Section 4.9 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by Association may be delayed if Association does not have the means or the funds to repair the defect or if, by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 5.1 Regular Assessments. Regular Assessments for the payment of the Common Expenses shall be made in the manner provided herein, and in the manner provided in the Bylaws. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses.

Section 5.2 Special Assessment. In addition to levying Regular Assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may levy Special Assessments to construct, structurally alter, or replace improvements which are a part of the Common Areas, provided that funds shall not be assessed for any capital improvement in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) for any one item or in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) in the aggregate in any one calendar year ("Capital Expenditure Limit") without the prior written consent of two-thirds (2/3) of the votes of each Class of Members who are voting either in person or by proxy at a meeting duly called for such purpose or unless expressly stated in the annual budget. The Board of Directors shall have the authority to adjust the Capital Expenditure Limit annually to account for inflation, which adjustment shall be effective each January (hereinafter referred to as the "Adjustment Date") commencing January 1 of the next year following the year during which the sale of the first Lot by Declarant. As of each Adjustment Date, the Capital Expenditure Limit shall be increased from the Capital Expenditure Limit on the date of this Declaration ("Effective Date") by a percentage equal to the percentage increase, if any, in the Consumer Price Index, All Urban Consumers ("CPI-U"), (1982-1984=100), All Items, as compiled and published by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI") from the Effective Date to the Adjustment Date. If after the date of this Declaration the CPI is converted to a different standard reference base or otherwise revised or ceases to be available, the determination of any new amount shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by any other nationally recognized publisher or similar statistical information gathered by the Board. Until the expiration of the Development Period or the date on which Declarant no longer owns a Lot, whichever is

earlier, Declarant shall be one of the consenting Members, or the capital improvement shall not be made. The Board of Directors shall calculate each Lot's proportionate share of the Special Assessment for the capital improvements, and shall give the Lot Owner(s) written notice of the proportionate share and of the date(s) that the Special Assessment is due and payable. Notwithstanding the foregoing, Declarant shall have no obligations to pay any Special Assessment with respect to any Lot owned by it unless there is a Dwelling Unit located upon the Lot that is occupied as a residence.

Section 5.3 Individual Assessment. In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, his family, his pet(s), tenant, the cost of such maintenance, repairs or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.4 Date of Commencement of Assessments; Due Dates; Determination of Regular Assessments; Fine Assessments.

5.4.1 The annual Regular Assessment provided for herein shall commence as to each Owner of a Lot, except Declarant, on the first day following the initial conveyance of the Dwelling Unit to the Owner. The Declarant, its successors and assigns, shall not be required to pay the Regular Assessment for any Lot which it owns until such time as Declarant transfers the Lot to a third party. The Board of Directors shall fix the amount of the annual Regular Assessment to be paid by each Class A Member against each Lot at the beginning of each calendar year. Written notice of the annual Regular Assessment shall be sent to every Class A Member subject thereto. The Board of Directors shall establish the due date.

5.4.2 The Board of Directors, or an adjudicatory panel established by the Board of Directors, may levy a reasonable Fine Assessment, as a fine or penalty for violation of this Declaration, all in accordance with the Planned Community Act. A lien may be filed for this Fine Assessment and this Fine Assessment may be enforced by foreclosure and otherwise treated as a Regular Assessment.

5.4.3 Both Regular and Special Assessments for a Lot Owner shall be determined by the Association based upon the proportion that each Lot bears to the aggregate number of Lots located on the Property, except those owned by Declarant which are not assessed in accordance with Section 5.4.1 above. The Association's governing body may, at its discretion, waive the Regular Assessment for any year or part of a year for any Lot not occupied as a residence.

Section 5.5 Billing. The Association shall inform each Lot Owner of the amount of the total Regular Assessment due from the Owner of that particular Lot. This Regular

Assessment shall be paid in one annual installment. The Owner of each Lot must pay his Lot's required Regular Assessment in advance of the first calendar day of each year, unless the Association otherwise directs. Payment is to be made to such person at such an address as Association determines. Special Assessments are due thirty (30) days after the bill for the Special Assessment has been mailed or otherwise sent out by Association, unless the Association otherwise directs. The Owners of the initial Lots in the Subdivision, except Declarant, shall be obligated to pay the Regular Assessment on the first day of the initial conveyance of the Lot from Declarant to the Owner. If the Subdivision is expanded and additional Lots are brought into the Subdivision during a given Assessment year, those additional Lots shall pay the Regular Assessment on the first day of the initial conveyance of the Lot from Declarant to the Owner.

Section 5.6 Common Surplus. If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Regular Assessment for the following year; or (c) apply the Common Surplus to the reserve.

Section 5.7 Assessment Certificate. The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate.

Section 5.8 Books and Records of the Association. The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners. All books and records must be kept in accordance with good accounting procedures and must be reviewed at least once a year by an independent accounting firm.

Section 5.9 Non-Payment of Assessment. Any Assessments levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Lot which shall bind the Lot in the hands of the then Owner and the Owner's successors and assigns.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of ten percent (10%) per year or at such other reasonable rate set by Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, in either of

which events interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment and be subject to the lien thereof. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Lot.

Section 5.10 Priority of Association Lien. The lien provided for in this Article V shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record before a claim of this lien hereunder has been docketed in the office of the clerk of superior court in Cumberland County, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the Planned Community Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 5.11 Disputes as to Common Expenses; Adjustments. Any Owner who believes that the portion of Common Expenses chargeable to his Lot, for which an assessment lien has been filed by the Association, has been improperly charged against his or her Lot, may bring action in an appropriate court of law.

Section 5.12 Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association. Any purchaser of a Lot at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 5.13 Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage first deed of trust or by deed in lieu of foreclosure, such acquirer of title, his, her or its successors and assigns, shall not be solely liable for the share of the Common Expenses or other Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by such acquirer, other than Assessments for which a claim of lien has been docketed with the Cumberland County clerk of superior court prior to the recordation of the lien being foreclosed. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Lot from paying future Assessments.

Section 5.14 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor

due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs and reasonable attorneys fees shall be a lien against the Lot in accordance with Section 5.10 and Section 5.11 herein.

Section 5.15 Late Charge. The Association may impose a charge against any Lot Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as allowed by law.

Section 5.16 Miscellaneous.

5.16.1 The Association may change the interest rate due on delinquent Assessments (including any late charges), except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all Assessments then delinquent.

5.16.2 The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Lot owned. Otherwise notice sent by Association to the Lot is sufficient for any notice requirement under this Declaration.

5.16.3 The Assessment lien includes, without limitation, all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.

5.16.4 No Owner of a Lot may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Lot.

5.16.5 This Section 5.16 applies to every type of Assessment.

ARTICLE VI

EASEMENTS AND ENCUMBRANCES

Section 6.1 Easement for Encroachments. The Dwelling Units, all utility lines, and all other improvements as originally constructed by or on behalf of Declarant or its assigns shall have an easement to encroach upon any setback, Lot or Common Area as a result of the location of the building, utility lines and other improvements across boundary lines between and along Lots and/or the Common Areas, or as a result of building or improvement movement or alterations or additions from time to time, provided that such alterations or additions have complied with the requirements of this Declaration.

Section 6.2 Lot's Utility Easements. Easements are granted in favor of each Lot Owner to and throughout the Common Areas and, if necessary, the setback areas of any other Lots, as may be necessary for the installation, maintenance, repair and use of underground water, gas, sewer, power and other utilities and services including power and communication, now or hereafter existing, including maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components. The foregoing notwithstanding, no Lot Owner (other than Declarant) may exercise the easement rights reserved in this Section 6.2 without the prior written approval of the Board as described in Section 6.6 below and the Declarant, so long as it owns a Lot in the Subdivision.

Section 6.3 Utility Easements. Easements are reserved hereby in favor of the Declarant and/or the Association through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon any Lot) and the Common Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components throughout the Common Areas. Without limiting any other provision in this Article 6, it is understood that Declarant's easement rights reserved herein may be utilized for the benefit of property within or outside of the Subdivision. Each Lot Owner and/or his respective mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Declarant, or the Association, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 6.3. The easements may be assigned and/or granted by the Declarant and/or the Association to any utility or service company.

Section 6.4 General Easements. An easement is hereby reserved and/or granted in favor of the Declarant and/or the Association in, on, over and through the Common Areas, the Lots and/or Dwelling Units for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing any improvements located thereon and otherwise dealing with the Common Areas, Lots and/or Dwelling Units, including all improvements thereon as required or permitted by the Constituent Documents or applicable law. An easement is hereby reserved in favor of Declarant over the Common Areas for the purpose of advertising or promoting sales of Lots or Dwelling Units in the Subdivision.

Section 6.5 Access Easement. Appurtenant to each Lot is an easement over any Common Area for necessary pedestrian and vehicular ingress and egress to and from any such Lot over the Common Areas, to and from a public thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Declarant and/or the Association and shall be subject to the terms of the Constituent Documents.

Section 6.6 Use of Easement. Any use of the rights and easements granted and reserved in this Article VI shall be reasonable. If any damage, destruction, or disturbance occurs to a Lot or Common Area as a result of the use of any easement or right, the Lot or Common Area shall be restored by, or at the direction of, the Association promptly in a reasonable manner at the expense of the person or persons making the use of the easement or right that resulted in the damage, destruction or disturbance. Before beginning work, Association may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. Additionally, should any Lot Owner other than Declarant elect to exercise its easement rights hereunder, it shall be required to obtain the Board's prior written approval (not to be unreasonably withheld), after providing the Board with detailed plans of its proposed work, as well as evidence of appropriate insurance and other such reasonable information or assurances as the Board may require. No easement may be granted across, through, over, or under any Lot or Common Area, which materially restricts ingress and egress to the Lot or Common Area, unless reasonable alternate ingress and egress is provided or unless the restrictions is only temporary. All easements reserved hereunder shall be perpetual and non-exclusive.

Section 6.7 Reservation of Access Easement by Declarant. Declarant reserves an easement for itself, its grantees, successor and assigns, to enter upon the Subdivision for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. The easement shall be over the streets, sidewalks, bridges and other access ways of the Subdivision. Declarant further reserves the right to connect, at Declarant's expense, to any street, roadway, walkway or other means of access that are located on the Common Areas of the Subdivision. This reservation of access easements and the right of connection should be construed liberally in favor of the Declarant, in order to facilitate the development of all or any portion of the Subdivision.

Section 6.8 Reservation of Construction Easement by Declarant. The Declarant reserves the non-exclusive right and easement to temporarily go upon the Subdivision in order to complete the development of the Subdivision and the construction of the improvements to be located therein, and to develop other neighboring land. The easement should be construed broadly in favor of the Declarant, including giving Declarant the right to store temporarily construction materials, equipment or dirt. After the construction is finished, Declarant must, at Declarant's cost, repair any damage done to the Subdivision including to any landscaping. As soon as reasonably possible after Declaration has completed construction on the neighboring land, Declarant must remove all debris, equipment, materials and dirt from the Subdivision.

Section 6.9 Roadway Easement. Declarant has reserved for the benefit of and hereby grants to all Lot Owners, the non-exclusive right of ingress and egress on, over and across all public and private roadways (the "Roadways") located on or to be located on a portion of the Subdivision which private roadways extend from one or more publicly dedicated streets. Roadways other than those (if any) that have been accepted by

applicable governmental authorities for maintenance, constitute Common Areas and shall be maintained, insured, and repaired by the Association in accordance with this Declaration. The Declarant hereby reserves the right (but not the obligation), in its sole discretion, to annex additional Roadways into the Subdivision. Notwithstanding the foregoing to the contrary, no part of the Roadway shall be dedicated or transferred to a unit of local government without acceptance of the unit of local government involved.

Section 6.10 Declarant's Easements: General. The easements and grants reserved for and granted to the Declarant also benefit and bind any heirs, successors and assigns of Declarant and their respective guests, invitees or lessees, including, without limitation, assignees of Declarant who do not own property within the Subdivision.

Section 6.11 Easements to Run with Land. All easements and rights described in this Article VI are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Declarant, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

Section 6.12 Reference to Easements and Deeds. Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

ARTICLE VII

INSURANCE

Section 7.1 General Insurance. In addition to such insurance as is required to be maintained by the Association pursuant to the Recreational Facilities Easement Agreement, the Association shall carry a master policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and if required by law, workmen's compensation insurance with respect to the Subdivision and the Association's administration thereof in accordance with the following provisions:

7.1.1 The Association shall purchase a master policy for the benefit of the Association, the Lot Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Bylaws. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.

7.1.2 All Common Areas now or at any time hereafter constituting a part of the Subdivision shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one hundred (100%)

percent of the replacement value thereof, with a deductible agreed to by the Board of Directors, exclusive of the cost of the land, foundations, footings, excavation, and architect's fees, without deduction for depreciation. The policy shall have cost of demolition, water damage (excluding floods, backing up of sewers and drains, the running off of surface water, and the overflow of a body of water), and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board of Directors, after carefully considering and comparing the increased premium costs resulting from a low deductible with the lower premium costs but higher per loss risk resulting from a high deductible, together with all other pertinent factors. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement cost thereof (subject to the deductible provisions described above) and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Lot Owner as hereinafter permitted. Such policy shall also contain either a waiver by the insurer of any increased hazard clause, a severability of interest endorsement, or a provision stating that the coverage will not be affected by the act, omission or neglect of any person unless such act, omission or neglect is within the knowledge and control of the Association prior to the occurrence of the loss. Such policy shall not provide coverage for any items of personal property owned by any Lot Owner.

7.1.3 Such master policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Association and to any mortgagee or mortgagees of any Lot Owner not less than thirty (30) days prior to any expiration, substantial modification or cancellation of such coverage.

7.1.4 Such insurance by the Association shall not prevent an Owner of a Lot to obtain insurance on his own property, but no Lot Owner may at any time purchase individual policies of insurance covering any item which the Association is required to insure. If any Lot Owner does purchase such a policy, he shall be liable to the Association for any damages, expenses or losses which it suffers or incurs as a result thereof, and the Association shall have the same lien rights provided by Article V hereof for Common Expense payments with respect to any such damages, expenses or losses not paid to it by such Owner.

7.1.5 The Board of Directors shall review the insurance coverage required under this Section 7.1 at least annually, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage that most closely approximates the required coverage with the deductible provisions as determined by the Board of Directors. In any event, all such insurance must comply, at a minimum, with the applicable requirements set forth in the North Carolina Planned Community Act.

7.1.6 If the required insurance coverage under this Section 7.1 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Subdivision may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Subdivision; and shall be due and payable to the mortgagee by the Association immediately. The repayment of this obligation shall be secured by a Special Assessment against all Lot Owners under Article V of this Declaration and shall not require a vote of the Members of the Association, anything to the contrary in this Declaration notwithstanding.

7.1.7 The Association shall also maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The Association shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Lot Owners, individually and as a group (arising out of their ownership interest in the Common Areas), to another Lot Owner.

Section 7.2 Fidelity Insurance. The Association may have fidelity coverage against dishonest acts on the part of Officers and employees, Members of the Association, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Lot Owners.

Section 7.3 Directors' and Officers' Errors and Omissions Insurance. The Association shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present against expenses actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and indemnification for Directors and Officers as the law of North Carolina permits. The policy or policies shall be in an amount to be reasonably determined by the Association.

Section 7.4 Premiums. All premiums upon insurance purchased by the Association shall be Common Expenses. Notwithstanding the foregoing, the Lot Owners may be responsible for certain deductibles to the insurance policies purchased by the Association as outlined in Section 7.1 and Section 7.7 herein.

Section 7.5 Proceeds. Proceeds of all insurance policies owned by the Association shall be received by the Association for the use of the Lot Owners and their mortgagees as their interest may appear; provided, however, the proceeds of any insurance received by the Association because of property damage shall be applied to repair and reconstruction of the damaged property, except as may otherwise be permitted by this Declaration.

Section 7.6 Power of Attorney. Each Lot Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Association. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds and to distribute the same to the Association, the Lot Owners and their respective mortgagees as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Lot Owners and the Subdivision as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

Section 7.7 Responsibility of Lot Owner. The Association shall not be responsible for procurement or maintenance of any insurance covering any Lot or Dwelling Unit, or the contents of and Lot or Dwelling Unit nor the liability of any Lot Owner for injuries not caused by or connected with the Association's operation, maintenance or use of the Common Areas or other property located in the Subdivision. Each Lot Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his Lot or Dwelling Unit. In addition, each Lot Owner shall maintain fire and extended coverage insurance on his Dwelling Unit, and the contents of his Dwelling Unit. The Association may request the Lot Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time.

Each Lot Owner agrees that if any Owner(s) damages a building or other improvements now or at any time hereafter constituting a part of the Common Areas of the Subdivision which is covered under the Association's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy; or (b) the cost to repair and/or replace any damage to a building or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event a Lot Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner as an Individual Assessment, which shall be due and payable following seven (7) days written

notice.

Section 7.8 Release. All policies purchased under this Article VII by either the Association or the individual Lot Owners shall provide for the release by the issuer thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Lot Owners, member of their family, their employees, their tenants, servants, agents and guests, the Association, any employee of the Association, the Board, or any occupant of a Dwelling Unit in the Subdivision, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 7.9 Deleted.

Section 7.10 Additional Policy Requirements. All such insurance coverage obtained by the Association shall be written in the name of the Association, for the use and benefit of the Association, the Lot Owners and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

7.10.1 Exclusive authority to adjust losses under policies in force on the Subdivision obtained by the Association shall be vested in the Board provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

7.10.2 In no event shall the insurance coverage obtained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

7.10.3 All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.

7.10.4 The Association shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

7.10.4.1 A waiver of subrogation as discussed in Section 7.8;

7.10.4.2 That no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;

7.10.4.3 that no policy may be canceled, invalidated or suspended on account of 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 and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and

7.10.4.4 That any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

ARTICLE VIII

ASSOCIATION

Section 8.1 Association. The administration of the Subdivision shall be vested in the Association. The Owner of any Lot, upon acquiring title, shall automatically become a Member of the Association and shall remain a Member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall automatically cease. The Association shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Subdivision including but not limited to, the powers and responsibilities to make prudent investments of funds held by it; to make reasonable Rules and Regulations; to borrow money; to make Assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the Bylaws and any other documents or instruments relating to the establishment, existence, operation, alternation of the Subdivision. The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in Section 47F-3-102 of the Planned Community Act.

Section 8.2 Board of Directors. Unless otherwise specifically stated in this Declaration, the Association shall act exclusively through its Board. The Association in accordance with the Bylaws shall choose the Board. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

Section 8.3 Limitations on Association's Duties.

8.3.1 The Association did not construct the improvements, including the Dwelling Units. The Association does not warrant in any way or for any purpose, the improvements in the Subdivision. Construction defects are not the responsibility of the Association.

8.3.2 The Association shall have a reasonable time in which to make any repair or do any other work, which it is required to do under the Constituent Documents. The Association must first have actual knowledge of a problem. Any evaluation of the reasonableness of the Association's response, must allow for the facts that the Association is volunteer and that the funds available to the Association are limited.

8.3.3 In case of ambiguity or omission, the Board may interpret the Declaration and the other Constituent Documents, and the Board's interpretation shall be final if made without malice or fraud. Notwithstanding the foregoing, the Declarant may overrule any interpretation affecting it, for so long as Declarant owns

any portion of the Property; and such interpretation cannot be enforce against the Declarant, its successors or assigns.

ARTICLE IX

MORTGAGEE'S RIGHTS

Section 9.1 Notice of Rights of Mortgagee of a Lot. As used herein, the term "Mortgagee" shall mean the holder of a first lien mortgage or deed of trust on a Lot who provides notice to the Association with its name and address with a request to receive any notices and other rights provided to "Mortgagees" under this Article IX. A Mortgagee of a Lot shall be entitled to receive written notification of any default, not cured within sixty (60) days after its occurrence, by the Owner of the Lot with respect to any obligation of the Owner under the Declaration, the Bylaws of the Association or the Articles of Incorporation of the Association. Any Mortgagee of a Lot can make the request for notification. The notification shall be sent not later than the 65th day after the occurrence of an uncured Default.

Section 9.2 Rights of First Refusal. Any right of first refusal now or hereafter contained in this Declaration or any amendment or modification hereto or otherwise arising in favor of the Association or certain Owners shall not apply to or preclude or impair in any way the right of the first Mortgagee to (i) foreclose or take title to the Lot pursuant to the remedies provided in its mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of a default under the Mortgage; or (iii) sell or lease a Lot and Dwelling Unit acquired by the Mortgagee.

Section 9.3 Rights of Mortgagee. Unless at least seventy five percent (75%) of the Mortgagees (based upon one vote for each first mortgage or deed of trust owned), and a vote of seventy-five percent (75%) of the votes allocated to the Members entitled to vote hereunder so approve, the Association shall not:

9.3.1 by an act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Subdivision or Common Areas or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the Lots (the granting of easements for public utilities or for other purposes consistent with the intended use of the Subdivision, or the conveyance of Common Area (not including the Recreational Facilities) to a local governmental authority for public park purposes or the conveyance or dedication of Roadways shall not be deemed a transfer within the meaning of this clause);

9.3.2 change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

9.3.3 by act or omission change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior

appearance of the Dwelling Units, the exterior maintenance of the Dwelling Units, the maintenance of common fences or driveways or the upkeep of lawns and plantings in the Subdivision;

9.3.4 fail to maintain fire and extended coverage insurance on insurable Common Areas on current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

9.3.5 Use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of such Common Areas.

Section 9.4 Right to Examine Books and Records. Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

Section 9.5 Taxes and Insurance. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Lot, and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Lot Owner.

Section 9.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or any other document or instrument affecting the title to the Property, Common Areas, any Lot or the organization or operation of the Association shall give an Owner or any other party priority over any rights of first mortgagees of Lots within the Subdivision pursuant to their mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Common Areas.

ARTICLE X

NON-DEDICATED STREETS

Section 10.1 Use. All non-dedicated streets constructed within the Subdivision are reserved as easements of access for the common use of Owners and their families, guests and invitees, by commercial vehicles authorized to make pick-ups and deliveries, by public and private utilities' personnel, trucks and equipment, by postal authorities and mail carriers, by emergency personnel and vehicles such as police, fire and ambulance, and by such other persons or classes of persons authorized by the Board of Directors of the Association, as a means of ingress or egress, and for such other uses as may be authorized from time to time by said Board. Such non-dedicated streets may also include underground utility lines, mains, sewers or other facilities to transmit and carry sanitary sewerage and storm water drainage as well as for natural gas, electricity or any other utility. Except as provided by this Declaration, no acts shall be taken or things done by an Owner or the Association which are inconsistent with the reservation and grant of use and enjoyment hereinabove provided.

Section 10.2 Snow Removal, Maintenance, Reconstruction or Resurfacing. The Association, at the cost and expense of the Association, shall provide snow removal from, maintenance to and resurfacing or reconstruction of any non-dedicated streets or any storm water drainage facilities included as a part thereof or installed there under as it deems necessary or appropriate from time to time within its sole discretion.

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IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year first above written.

HOKE LOOP PARTNERS, LLC, a North Carolina limited liability company

By: Elmwood Partners, LLC, Manager,

BY: *D. Ralph Huff*
D. Ralph Huff
Member/Manager

FLOYD CONSTRUCTION COMPANY, INC.

By: *Gregory W. Floyd*
Name: Gregory W. Floyd
Title: Vice President

BY: *Thomas L. Bradford* Thomas
Member/Manager

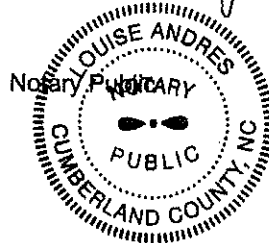
STATE NORTH CAROLINA
COUNTY OF CUMBERLAND

I, Louise Andres, a Notary Public of said County, State of North Carolina, certify that D. Ralph Huff and Thomas L. Bradford, personally came before me this day and, being duly sworn, acknowledged that they are Members/Managers of Elmwood Partners, LLC, a North Carolina limited liability company, which is the manager of HOKE LOOP PARTNERS, LLC, a North Carolina limited liability company, and that said writing was signed and sealed by him/her in behalf of Elmwood Partners, LLC as manager of said limited liability company by its authority duly given.

Witness my hand and official stamp or seal this 23rd day of August, 2005.

My Commission Expires: 6-3-2007
Louise Andres

[NOTARY SEAL]



NORTH CAROLINA
CUMBERLAND COUNTY

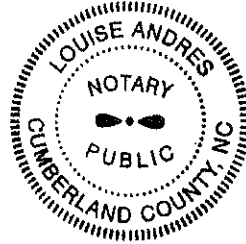
I, Louise Andres, a Notary Public for said County and State, do hereby certify that Gregory W. Floyd personally appeared before me and acknowledged that she is the vice President of FLOYD CONSTRUCTION CO., INC., a North Carolina corporation, and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by

^{by} herself as its vice President.

Witness my hand and notarial seal, this the 23rd day of August, 2005.

Louise Andres
Notary Public

My commission expires: 6-03-2007



The foregoing Certificate(s) of Louise Andres

~~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

By Patricia A. Nichols J. LEE WARREN, JR. REGISTER OF DEEDS FOR CUMBERLAND COUNTY, Deputy/Assistant - Register of Deeds