



FOR REGISTRATION REGISTER OF DEEDS  
KIMBERLY S. HARGROVE  
HARNETT COUNTY, NC  
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DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR THE COLONY  
AT LEXINGTON PLANTATION  
SUBDIVISION

Prepared by and Return to: James Andrew Saputo, Jr., P.O. Box 1328, Cary, NC 27512

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THIS DECLARATION, made on the date hereinafter set forth by Lexington Plantation Investors, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Harnett County, State of North Carolina, commonly referred to as the "THE COLONY AT LEXINGTON PLANTATION", which is more particularly described on Exhibit A attached hereto and incorporated herein by reference;

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

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

ARTICLE I  
DEFINITIONS

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

Section 2. "Association" shall mean and refer to The Colony at Lexington Plantation Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

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

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

Section 5. "Common Areas" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners or Members of the Association, as may be designated on any subdivision map of the Property created by the Declarant, or by the Association. Common Areas shall specifically include but shall not be limited to: (a) all water lines and sewer lines which serve the Property that are located outside of any public street right-of-way or any utility easement (excluding those lines serving a single Lot); (b) all storm drainage pipes or facilities, and any detention pond which serves the Property located outside of any public street right-of-way, (excluding those facilities serving a single Lot); (c) subdivision signage, including but not limited to the subdivision entry marquees; and (d) all easements for installation and maintenance of subdivision signage, including but not limited to the subdivision entry marquees. The Declarant may recombine any portion of the Common Areas with a Lot pursuant to the terms of Article VI, Section 16 herein upon approval by the appropriate governmental authority.

Section 6. "Common Expenses" shall mean and include, as applicable: (a) all sums lawfully assessed by the Association against its members; (b) expenses for maintenance of the roads, streets, private road, rights-of-way; Department of Transportation right-of-way easements, and, as determined by the Association or the Board, maintenance of ditches within the right-of-way easements; and any amenities as provided in this Declaration; (c) expenses of administration, maintenance, repair, or replacement of the Common Areas, including expenses of maintenance of the subdivision entry marquees, lighting, irrigation and landscaping located at the entrance to the Subdivision and or located on any of the Common Areas within the Subdivision; (d) expenses declared to be common expenses by the provisions of this Declaration or the Bylaws; (e) hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase; (f) all taxes and public assessment charges lawfully levied against Common Areas and/or the Association; (g) the expense of the maintenance of private drainage and utility easements and facilities that are within the boundaries of the Property, cross Common Areas of the Property and serve both the Property and lands adjacent thereto; and (h) any other expenses determined by the Board or approved by the members to be common expenses of the Association.

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

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

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

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

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

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

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described and as more fully described on Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association. Declarant reserves the right to annex additional Lots into the Property.

## ARTICLE II

### PROPERTY DEVELOPMENT REQUIREMENTS; PROPERTY RIGHTS; ADDITIONAL PROPERTY

Section 1. Property Development Requirements. The Property shall be developed in accordance with a plan that complies with the applicable governmental zoning regulations and the requirements for detached single-family dwellings as described in the Harnett County Subdivision Regulations in effect at the time of initial development of the Property.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas together with and including the right of access, ingress and egress, on and over the Common Areas, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

(b) the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Areas, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication, sale, lease or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded and provided the dedication, sale, lease or transfer is in compliance with applicable governmental regulations. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the members. Notwithstanding the foregoing, the Declarant may recombine any portion of the Common Areas with a Lot pursuant to the terms of Article VI, Section 16 herein and in accord with applicable governmental regulations and upon approval by the appropriate governmental authority;

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

(d) the right of the Association in accordance with its Articles of Incorporation or Bylaws

to impose rules and regulations for the use and enjoyment of the Common Areas and improvements thereon, which rules and regulations may further restrict the use of the Common Areas; and

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

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas to the members of his family, his tenants, or contract purchasers who reside on the Property, but may not delegate or assign responsibility for the actions of those to whom such right is delegated.

Section 4. Title to the Common Areas. While reserving the right to build and own facilities on the Common Areas and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Areas located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot shown on a recorded map which designates the location of Common Areas, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements.

Section 5. Annexation of Additional Property. The Declarant may annex additional land into the Property and this Declaration in the following manner: (a) if within fifteen (15) years of the date of incorporation of the Association, the Declarant should develop additional lands within the boundaries shown on the general plan of the Village of Lexington submitted to Harnett County, the VA or HUD, such additional lands may be annexed to the Property and the Declaration without the assent of the Members; or (b) if within fifteen (15) years of the date of incorporation of the Association, the Declarant should develop, from time to time, an additional tract or tracts of land, other than as set forth in subsection (a) above, consisting of any property contiguous to the boundaries shown on the general plan of the Village of Lexington submitted to Harnett County, the VA or HUD, such additional lands may be annexed into the property and the Declaration without the assent of the Members. The Declarant may annex to the Property and the Declaration the additional lands described in this Article II, Section 5, by recording in the Harnett County Registry a Declaration of Annexation, duly executed by the Declarant, describing the lands annexed and incorporating the provisions of this Declaration. The additional lands may be deemed annexed to Property and the Declaration on the date of the recordation of the Declaration of Annexation, and no other action or consent shall be necessary except appropriate governmental approval, if applicable. Any such Declaration of Annexation may contain such additions or modifications of this Declaration as pertain to such additional property as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the additional property. Following the annexation of additional property into this Declaration, and prior to the sale of the first Lot for such additional property, the owner of the annexed property shall deed to the Association all Common Areas contained within the additional property. All conveyances of Common Areas shall be free of any mortgages and other liens and encumbrances.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot that is subject to Assessments shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot that is subject to Assessment.

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

Class A. Class A Members shall be all Lot Owners with the exception of the Declarant, and

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

**Class B.** The Class B Member shall be the Declarant and Declarant shall be entitled to one hundred (100) votes for each Lot as may be developed within the Property. The Class B membership shall terminate and cease to exist and shall be converted to Class A membership on the happening of one of the following events, whichever occurs later: (a) a specific written termination recorded by Declarant in the Office of the Register of Deeds of Harnett County, North Carolina; (b) when the total votes outstanding in the Class A membership is equal to or exceeds the total votes outstanding in the Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, as provided hereunder, additional lands are annexed to the Property without the assent of the Members on account of the development of such additional lands by the Declarant, as provided in Article II, Section 5; or (c) December 31, 2027, unless the Declarant in its sole discretion elects to convert the Class B Lots to Class A Lots at an earlier time.

**Section 3.** The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 2(a) herein.

**Section 4.** Notwithstanding anything contained herein to the contrary, until December 31, 2027 or until Declarant has conveyed ninety percent (90%) of the properties shown on the general plan of The Colony at Lexington Plantation submitted to Harnett County, North Carolina, Declarant shall have the right to designate and select two-thirds majority of the Board of Directors of the Association.

#### **ARTICLE IV** **COVENANT FOR MAINTENANCE ASSESSMENTS**

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

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

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by

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

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

Section 3. Amount of Assessment:

(a) Initial Maximum Assessment. Subject to the amendment provisions contained herein, the maximum annual assessment through and including December 31, 2010, shall not exceed Three Hundred and no/100 Dollars (\$300.00) per Lot.

(b) Increase by Association. From and after December 31, 2010, the annual assessment imposed by this Association, initially Three Hundred and no/100 Dollars (\$300.00), effective for any year may be increased effectively from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of ten (10%) percent or the percentage increase reflected in the Consumer Price Index For All Urban Consumers (CPI-U) -South Urban Area Average (1982-84 = 100) (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed that Index, for that twelve-month period ending the immediately preceding October 1. The Board of Directors, at its option, may declare that a special Refurbishment Assessment be levied against all Lots. The Refurbishment Assessments shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) and may be levied no more than once every five (5) years from the date of the recording of this Declaration.

(c) Increase by Members. From and after December 31, 2010, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Areas, any extraordinary maintenance,



including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

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

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half of the required quorum is not met, then in a subsequent meeting the requirement shall be one-fourth (1/4) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

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

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The annual assessments provided for herein shall commence as to all Lots at the time of recording of a deed from the Declarant to the initial property owner. Provided, however, that Lots owned by the builder of the initial improvements on the Lot ("Builder") shall be assessed at a rate of twenty-five percent (25%) of the amount of the assessment due. The assessments on Lots owned by a Builder shall accumulate and shall not be required to be paid by the Builder until the date of closing of the sale of a Lot from a Builder to a consumer-occupant Lot Owner or the date of rental of a Lot from a builder to a consumer-occupant Lot Owner. A consumer-occupant Lot owner shall pay the pro-rata amount of the full annual assessment from the date of closing on any Lot until the first day of the first calendar year following closing of that sale. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each consumer-occupant Lot Owner shall, at the time of the initial sale of a Lot by a Builder to that consumer-occupant Lot Owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the consumer-occupant Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to provisions of the first sentence hereunder.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest from the

due date at the highest rate then permitted by North Carolina law not to exceed twelve (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

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

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

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

Section 12. Telecommunication Assessment. A monthly assessment (the "Telecommunication Assessment") shall be paid by each Owner for the provision of Telecommunication Services to Owner's Lot through Bulk Service Agreements as set forth in Section 8 of Article XI of this Declaration, such assessment to mean the fee and any applicable taxes, franchise fees, surcharges or other amount that may be charged by the service provider for provision of Telecommunication Services. The Telecommunication Assessment may be billed separately from other assessments levied by the Association, shall be in addition to the other assessments set forth in this Declaration, and shall be subject to the terms and conditions applicable to Assessments contained in this Article VI as applicable, provided such terms and conditions are not inconsistent with this Section 12. No Owner may be exempted from liability for the Telecommunication Assessment by reason of waiver of the use or enjoyment of the Telecommunication Services.

## ARTICLE V ARCHITECTURAL CONTROL.

To implement the provisions of this Article V, there is hereby established an Architectural Review Board. Until such time as the Class B Membership terminates, or Declarant has assigned its rights under this Section 5 to the Association, Declarant shall have the exclusive right to (a) establish the number of persons to serve on the Architectural Review Board, which shall be not less than one (1) and not more than five (5), (b) appoint the Persons to serve on the Architectural Review Board, (c) establish the terms of service for any Person



on the Architectural Review Board, and (d) determine the grounds for removal of any Person on the Architectural Review Board.

Except as otherwise provided in this Declaration, no site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, swimming pools, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements relative to their existing and future septic field disposal areas, landscaping or plantings have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, the Architectural Review Board. Without in any way limiting the permissible scope of the Architectural Review Board's review process, or the objective or subjective considerations the Architectural Review Board may utilize in approving or disapproving any request for approval submitted hereunder, the Architectural Review Board shall be fully authorized and empowered to disapprove construction of any proposed improvement for one or more of the following reasons: (a) noncompliance with any provisions of this Declaration; (b) failure to include such information in the request for approval as may be required by this Article V or failure to provide such information or documentation as may be reasonably requested by the Architectural Review Board; (c) objection to the exterior design or materials of the proposed improvement; (d) objection to the location of any proposed improvement on the Lot; (e) objection to the proportions, style of architecture, architectural features, material, color, height, bulk or appropriateness of the improvements as the same relates to other improvements within the Property; or (f) any other matter which, in the commercially reasonable judgment of the Architectural Review Board would render the proposed improvements or use of the Lot in conflict with any ordinance of Harnett County, North Carolina or any general plan of development of the Property.

Upon request, the Association, on behalf of the Architectural Review Board, shall provide any Owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and third parties may rely upon the letter. The Board and the Architectural Review Board, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications.

The Architectural Review Board shall have the power to grant, and may allow, variances of, and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, pursuant to the terms herein, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards. In the event of the grant of any variance in the restrictions established herein, the Association on behalf of the Architectural Review Board shall execute a document acceptable in substance to the Association attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record the document in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Declarant, the Association, its successors and assigns, and other Lot Owners and may be relied upon by third parties to evidence the variance approval.

The Architectural Review Board shall have sole jurisdiction over all proposed improvements to any Lots, and any later changes or additions to such improvements after initial approval thereof, together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements previously approved. The Architectural Review Board shall prepare and promulgate application and review

procedures for obtaining any proposed improvements. The guidelines and procedures shall be those of the Association, and the Architectural Review Board shall have the sole and full authority to prepare and amend the procedures. The Architectural Review Board shall make the procedures available to Owners and any other person who proposes construction of improvements within the Property.

In connection with the improvements to be constructed on a Lot owned by the Declarant, Declarant shall not be required to obtain approval from the Architectural Review Board in connection with any improvements constructed by the Declarant in developing the Property into a residential development, including, but not limited to, streets, storm water drainage pipes, and facilities, water lines, sewer lines, signs, landscaping and other improvements in the Common Areas, and granting of easements to utility companies on any Undivided Property or on any Lot, and in accordance with any approved site plan.

## **ARTICLE VI**

### **USE RESTRICTIONS**

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

Section 2. **Use of Property.** No portion of the Property shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

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

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

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

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

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

Section 8. **Signs.** No Lot Owner shall display, or cause, or allow to be displayed, to public view

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

Section 9. Fences, Walls and Hedges. No fence, wall, hedge or other mass planting shall be erected or permitted in front of a dwelling on any Lot, except as approved by the Architectural Review Board pursuant to Article V herein. Chain-link fencing is not permitted. All fences must be privacy or picket type fencing and must be five (5) feet in height. All fences which (a) separate the front yard from the back yard of a Lot and (b) are placed on a part of a Lot that faces any public or private street, must be made of vinyl material. Fences on the sides and back of any back yard of any Lot may be made of vinyl or wood. The Association or its designee may issue guidelines detailing acceptable fence styles and other specifications consistent with the preceding sentence.

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

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

Section 12. Parking, Driveways and Parking Pads, Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than three (3) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface, a cement concrete surface, or brick pavers.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Property, or the Common Areas, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

Section 13. Trailers, etc. No trailer, mobile house trailer (whether on or off wheels), camper, motor-home or commercial vehicle of any kind shall be parked on any street within the Property, nor shall any such vehicle be parked or kept on any Lot within the Property. Furthermore, no boat or boat trailer shall be parked on any street within the Property. A boat and/or boat trailer may be parked or kept on a Lot if it is parked or kept in such a manner that it is screened from all streets, the Common, and all adjacent Lots. Screening may be either by fence or plantings but, in any case, the screening must be approved pursuant to the conditions in Article V of these Covenants. No tractor trailer trucks or cabs shall be parked on any street or Lot within the subdivision.

Section 14. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Declarant or Association from

erecting, placing or permitting the placing of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 15. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, and to any successor to which Declarant makes a specific assignment of this right, the right to re-plat any two (2) or more Lots and/or Common Properties (so long as re-platting of the Common Properties conforms with applicable governmental regulations and upon approval by the appropriate governmental authority) shown on the plat of any subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots and/or Common Properties to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or Lots and/or Common Areas that are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted Lots suitable and fit as a building site or access area or roadway. Said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said re-platted Lots. If any of the Common Property is recombined with a Lot, the Association shall execute all necessary documents to effect the recombination.

Section 16. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Architectural Review Board.

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

Section 18. Construction Limitations. During all construction projects, all vehicles involved, including those delivering supplies, must enter a designated Lot on a driveway only. Vehicles and heavy machinery are strictly prohibited from entering a Lot over the front lot line where no designated driveway exists. The purpose of this provision is to prevent damage to trees, street paving, utilities and landscaping, and to promote the aesthetic value of all Lots during construction throughout the Subdivision. During construction, builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each Lot by the builder as often as necessary to keep the house and Lot attractive. Such debris shall not be dumped in any area of the Property.

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

Section 20. Drying Areas. Clotheslines or drying yards shall not be permitted on any Lot.

Section 21. Unsightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot. No refuse pile or unsightly objects shall be allowed to be placed or to remain on the Property, including vacant parcels.

Section 22. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the house or in a screened area not generally visible from the road. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided,

however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 23. Swimming Pools. No above-ground swimming pools shall be permitted in the subdivision, except that small, temporary wading pools shall be permitted. All in-ground swimming pools must be approved by the Architectural Review Board prior to any construction taking place.

Section 24. Maintenance of Lot; Construction. Each owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the owner of such Lot shall repair such damage and/or reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the owner may at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

Section 25 Exterior Maintenance. The owner of each Lot shall maintain the grounds and improvements situated on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner satisfactory to the Board of Directors of the Association. Upon the owner's failure to do so, the Association may, at its option, after approval by a majority vote of the Members present and voting in person or by proxy at a meeting duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item, and after giving the owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs, and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, and all expenses incurred by the Association for such work shall be a lien and charge against the Lot on which the work was done and the personal obligation of the then-owner of such Lot.

Upon an owner's failure to maintain the exterior of any structure, including the roof, in good repair and appearance, the Association may, at its option after approval by a majority vote of the Members present and voting in person or by proxy at a meeting duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item, and after giving the owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance of such structure in a reasonable and workmanlike manner. The cost of any work performed by the Association upon the owner's failure to do so shall be immediately due and owing from the then-owner of the Lot on which the work was performed and shall constitute an assessment against the Lot and the personal obligation of such owner, collectable in a lump sum, and secured by the lien against the Lot as herein provided.

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

Section 26. Landscaping. All landscaping shall meet at a minimum the standards promulgated by the VA for residential property. The front yard on each Lot shall be sodded to be back corner of the dwelling constructed on the Lot. The rear yard of each Lot shall be seeded.

Section 27. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 28. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

Section 29. Wetlands. The areas labeled "Wetlands" and shown on that plat entitled "Subdivision Plat The Colony at Lexington Plantation Phase B, Part 1 Lexington Plantation Subdivision" and recorded in Plat Book 2010, Pages 64-66, Harnett County Registry, as conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area: (a) fill, grade, excavate or perform any other land disturbing activities; (b) cut, mow, burn, remove or harm any vegetation; (c) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures; (d) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area; (e) dump or store soil, trash or other waste; and (f) graze or water animals or use for any agricultural or horticultural purpose. This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Declarant and all parties claiming under it.

## ARTICLE VII BUILDING RESTRICTIONS

Section 1. Square Footage. Any dwelling erected on a detached single-family residential Lot shall contain a minimum enclosed dwelling area of one thousand seven hundred (1,700) square feet. In addition thereto, and unless a variance is granted therefore as provided herein, all dwellings shall have an enclosed two (2) car garage attached to the main dwelling. The term "enclosed dwelling area" as used in this Article VII, Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling, and upon approval by Declarant, may include basement space; provided however, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. Variances of these square footage requirements in the amount of 10% may be granted by the Board of Directors of the Association pursuant to Article V hereof, but in no case will the size be less than that required by the governmental agency having jurisdiction over the Property.

Section 2. Setback Lines. No dwelling erected on a detached single-family residential Lot (including garage) shall be constructed nearer than thirty-five (35) feet to the front Lot line, ten (10) feet to any one side Lot line and five (5) feet to any one side Lot line (in no case shall a fixed or operating window, door, or other opening be less than ten feet from a side property line), or twenty-five (25) feet to the rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements in the amount of twenty-five percent (25%) may be granted by Declarant or the Board of Directors of the Association pursuant to Article V hereof, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property.

Section 3. Height and Accessory Building. No structure, except as hereinafter provided, shall be



erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single-family dwelling not to exceed two (2) stories in height and a garage. All garages must be attached to the main dwelling, unless the Board, Declarant or the Architectural Review Board pursuant to Article V hereof, approves in writing a variance permitting a detached garage. The Board, Declarant, or the Architectural Review Board, pursuant to Article V hereof, may approve in writing a variance permitting a single-family dwelling of more than two stories.

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

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

Section 6. Storm Drainage. Each Lot Owner shall maintain the drainage devices on its Lot at its own expense. Furthermore, each Lot Owner shall not allow the diversion or concentration of stormwater runoff without the prior written approval of the Architectural Review Board, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation.

Section 7. Dwelling Façade and Garages. Each dwelling shall be constructed of either constructed of brick or vinyl siding.

Section 8. Impervious Surfaces. Each Lot may contain no more than three thousand four hundred (3,400) square feet of impervious surface.

## ARTICLE VIII EASEMENTS

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

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

Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authorities responsibilities.

Section 3. Specific Utility Easements. There is hereby reserved an easement fifteen (15) feet in width along the front and side property lines, and fifteen (15) feet along the rear property line of each Lot designated for detached single-family residential use for the purpose of installation, repair, maintenance, erection, construction and inspection of water lines, sewer lines, gas lines, electric lines, telephone lines, cablevision lines or other such utility or service lines and for drainage cuts and storm sewer lines.

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

Section 5. Drainage Easement. In addition to the foregoing reserved specific easements, the Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot.

Section 6. Ground Disturbance. These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 7. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Areas, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 8. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 9. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Areas.

Section 10. Communications Easement. In order to make available to Owners state of the art Infrastructure and Telecommunication Services (as further defined in Article XII of this Declaration), an exclusive easement (the "Communication Easement") over the Property has been granted to an infrastructure facilities provider ("IFP") and will be made available as necessary to service providers designated by the IFP for the provision of Telecommunication Services.

Section 11. Telecommunication Services. Declarant reserves for itself, and its successors and assigns, an exclusive easement for the installation, maintenance and supply of radio, telephone and television cables as well as any other equipment and infrastructure for the provision of cable television, high speed internet/intranet, local and long distance telephone services, security monitoring services and/or other

telecommunication services within the rights of way and easement areas depicted upon any plat of any portion of the Property or within any easement reserved by this Declaration.

## **ARTICLE IX INSURANCE**

Section 1. **Insurance to be Maintained by the Association.** The following insurance coverage shall be maintained in full force and effect by the Association: (a) public liability and property damage insurance in such amounts and in such forms as shall be required by the Association; (b) all liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner; (c) such other insurance coverage as it may determine to be desirable and necessary; (d) fidelity bonds for those officers or employees having control over Association funds; and (e) other insurance required by law.

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

Section 3. **Insurance/Beneficiaries.** The Association for the benefit of the Association shall purchase all required insurance policies as specifically set forth in this instrument.

## **ARTICLE X RIGHTS OF INSTITUTIONAL LENDERS.**

Section 1. **Rights Reserved to Institutional Lenders.** "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, U. S. Department of Veterans Affairs, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights: (a) to be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year; (b) to be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings; (c) to be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association; (d) to inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof; (e) to be given notice by the Association of any substantial damage to any part of the Common Areas; and (f) to be given notice by the Association if any portion of the Common Areas, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

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

be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

## ARTICLE XI GENERAL PROVISIONS

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

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

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

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

(a)     the Declarant, prior to the sale of the first Lot, may amend this Declaration;

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

(c)     the Declarant, for so long as it shall retain majority voting control of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status; and

(d)     the Declarant, for so long as it has majority voting control of the Association, may amend this Declaration to include any platting change of the Property as permitted herein or to make amendments correcting minor typographical errors or other similar clerical errors.

Section 5. Governmental Authority Amendments. No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with. In particular, Article VI, section 29, cannot be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Recordation. No amendment shall be effective until recorded in the County in which the property is situated.

Section 7. Utility Company. The Declarant reserves the right to subject the Property to a contract with the Central Electric Membership Corporation, or any successor electric company, for the installation of underground electric cables and/ or the installation of street lighting (such easement is provided in Article VIII, Section 3 of the Declaration), either or both, of which may require a continuing monthly payment to the Central Electric Membership Corporation, or any successor electric company, by the Owner of a Lot

Section 8. Telecommunication Service. Declarant has entered into an agreement with an infrastructure facilities provider ("IFP") for the installation within the Property of facilities and equipment (the "Infrastructure") to provide cable television, high speed internet/intranet, local and long distance telephone services, security monitoring services and/or other telecommunication services (the "Telecommunication Services") and the arrangement for the provision of Telecommunication Services to Owners and the Association pursuant to bulk service agreements ("Bulk Service Agreements") with one or more service providers designated by IFP. Declarant expressly reserves the right to enter into exclusive or non-exclusive agreements for Infrastructure and Telecommunication Services on such terms, and with affiliated or non-affiliated third parties, as may be determined by Declarant in its sole discretion.

Owner understands and acknowledges that any such Bulk Service Agreements may require mandatory participation by all Owners and may result in charges to the Association which are included in the assessments levied by the Association (the "Telecommunication Assessment"). By taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners to pay the Telecommunication Assessment.

The Association acknowledges the Communication Easement and its applicability to the Property and the Common Areas now existing and which may be established from time to time. The Association shall also be responsible for fulfilling its obligations under each Bulk Service Agreement and any agreement between the Association and IFP with respect to the provision of Infrastructure and the arrangement for the provision of Telecommunication Services to the Property. The Association and each Owner acknowledge that provision of Telecommunication Services pursuant to Bulk Service Agreements shall be subject to usage policies and minimum equipment requirements of the service providers with respect to the services provided.

The Declarant shall be entitled to enter into arrangements with the IFP that require the Association to include in its budgets and to levy and collect in accordance with this Declaration the charges incurred in connection with Telecommunications Services (as defined herein) for the services and facilities made available from time to time to the Owners within the Property. The Association shall be obligated pursuant to certain Bulk Services Agreements (as defined herein) to charge and collect from each Owner any and all expenses incurred in connection with the Bulk Services Agreements. Owner shall be obligated to pay to the Association the costs incurred by the Association in connection with the Bulk Services Agreement as a Telecommunication Assessment as provided in this Declaration. EACH OWNER (BY VIRTUE OF ACCEPTANCE OF TITLE TO A LOT) AGREES THAT THE TELECOMMUNICATIONS SERVICES MAY NOT BE AVAILABLE TO OWNER AT CLOSING OF TITLE TO THE LOT OR FOR SOME TIME THEREAFTER.

NOTWITHSTANDING THIS FACT, EACH OWNER (BY VIRTUE OF ACCEPTANCE OF TITLE TO A LOT) AGREES THAT WHEN SUCH TELECOMMUNICATIONS SERVICES BECOME AVAILABLE, SUCH OWNER WILL BE RESPONSIBLE FOR THE PAYMENT OF COSTS IN CONNECTION WITH SUCH SERVICES AS DESCRIBED ABOVE. IN ADDITION, SHOULD ANY OWNER DECIDE TO ENTER INTO ANY OTHER AGREEMENT WITH SERVICES PROVIDERS ON A NON-BULK SERVICES ARRANGEMENT, SUCH OWNER (BY VIRTUE OF ACCEPTANCE OF TITLE TO A LOT) AGREES TO PAY FOR ALL COSTS IN CONNECTION WITH SUCH SERVICES, INCLUDING CANCELLATION FEES AND DISCONNECTION CHARGES. THIS PROVISION SHALL BE A COVENANT RUNNING WITH THE LAND FOR THE BENEFIT OF THE DECLARANT, THE ASSOCIATION AND THE IFP.

[SIGNATURES FOLLOW ON NEXT PAGE]



IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 23<sup>rd</sup> day of February, 2010.

LEXINGTON PLANTATION INVESTORS, LLC

By: Jimmy Pierce (Seal)  
Name: Jimmy Pierce  
Title: Manager

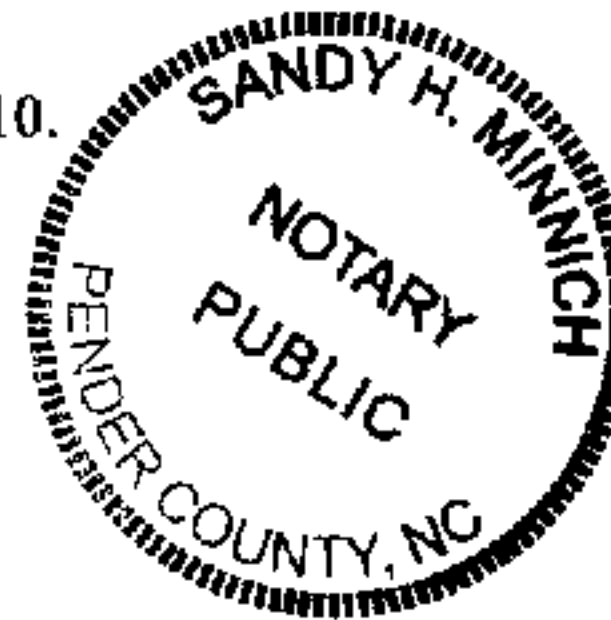
STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Jimmy Pierce, personally came before me this day and acknowledged that he is Manager of the Lexington Plantation Investors, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this 23<sup>rd</sup> day of February, 2010.

Notary Public: Sandy H. Minnich  
Print Name: Sandy H Minnich

My Commission Expires: 10-9-10



**EXHIBIT A**

**LEGAL DESCRIPTION**

**BEING all of Lots 76-117, 121-189, 191, 193-196, 205-227, 230, 239-249 as shown on that plat entitled "Subdivision Plat The Colony at Lexington Plantation Phase B, Part 1 Lexington Plantation Subdivision" prepared by Enoch Engineers, P.A. dated October 2, 2008 and recorded on February 3, 2010 in Plat Book 2010, Pages 64-66, Harnett County Registry.**



KIMBERLY S. HARGROVE  
REGISTER OF DEEDS, HARNETT  
305 W CORNELIUS HARNETT BLVD  
SUITE 200  
LILLINGTON, NC 27546

\*\*\*\*\*  
Filed For Registration: 02/24/2010 01:59:06 PM  
Book: RE 2717 Page: 355-377  
Document No.: 2010002318  
COVENANTS 23 PGS \$77.00  
Recorder: ANGELA J BYRD

State of North Carolina, County of Harnett

KIMBERLY S. HARGROVE , REGISTER OF DEEDS

**DO NOT DISCARD**



2010002318