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NORTH CAROLINA  
 CUMBERLAND COUNTY

**DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS FOR  
 WESTHAVEN SUBDIVISION,  
 SECTION 1, PART 1**

**THIS DECLARATION**, (this "Declaration") made this the 21st day of August, 2014, by **FLOYD PROPERTIES AND DEVELOPMENT, INC.**, a North Carolina Corporation with its principal place of business in Cumberland County, North Carolina, hereinafter referred to as "Declarant" and "Covenantor".

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property located in Cumberland County, North Carolina, which is to be known as WESTHAVEN SUBDIVISION, SECTION 1, PART 1, as shown on the plat of same being duly recorded in Book of Plats 0134, Pages ~~0176~~<sup>0177</sup>, Cumberland County Registry (the "Property");

**NOW, THEREFORE**, Declarant 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.

**ARTICLE I  
 DEFINITIONS**

**Section 1.** "Association" shall mean and refer to WESTHAVEN HOMEOWNERS ASSOCIATION OF FAYETTEVILLE, INC., a North Carolina non-profit corporation, its successors and assigns. A copy of the Articles of Incorporation are attached hereto and incorporated herein as Exhibit "A" and a copy of the By-laws are attached hereto and incorporated herein as Exhibit "B".

**Section 2.** "Common Area" shall mean and refer to all property owned by the Association and/or easements, as designated on the plat, for the common use and enjoyment of the owners, and includes, but is not limited to the USPS Cluster Mailboxes, Park, storm water basin, landscape easement, sidewalks paralleling the main roads in the subdivision, any non-standard Dept. of Transportation sign posts, entrance walls and columns, signs on walls located at the entrance, electrical lights which light up entrance of the subdivision. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All that area designated as "COMMON AREA", "PARK" and/or "STORMWATER BASIN" as shown on the plat of Westhaven Subdivision, Section 1, Part 1, being duly recorded in Book of Plats 0134, Pages ~~0176~~<sup>0177</sup>, in the Office of the Register of Deeds of Cumberland County, North Carolina and as further defined above. Common Area shall include but is not limited to USPS Cluster Mailboxes, parks, permanent retention ponds, stormwater basins, landscape easement, entrance signs, signs on walls located at the

entrance, any non-standard Dept. of Transportation sign posts, electrical lights which light up entrance of the subdivision known as Westhaven, as shown on the afore-referenced plat.

Any permanent retention pond and/or stormwater basin remaining after full development of the within subdivision shall be owned and/or maintained by the Association.

Section 3. "Common Expenses" shall mean any and all expenses incurred by the Association to perform its obligations pursuant to this Declaration for the benefit of all Lot Owners.

Section 4. "Declarant" shall mean and refer to Floyd Properties and Development, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 6. "Owner" shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described. "Properties" shall also include future sections of Westhaven as the same may be developed from time to time except that such future sections of Westhaven 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 Declarant, to reflect the different character, if any, of the new section, but such modification shall have no effect on the Properties shown on the plat of Westhaven, recorded in Plat Book 0134, Pages 217A, described above.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and shall be preserved to the perpetual benefit of the Association, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of 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 or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(c) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Access Rights. Ownership of each Lot shall include easements over the common areas for access, ingress and egress from and to public streets and walkways and easements for enjoyment of the common areas.

### ARTICLE III USE RESTRICTIONS

Section 1. Land Use. All lots in the tract known and described as residential lots may be developed as traditional, single-family residences except that only one residence or dwelling shall be permitted on any one lot.

Section 2. Building Type. No structure shall be erected, altered, placed or permitted to remain on any single-family building lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than three (3) cars and other outbuildings incidental to residential use of the lot. Such outbuildings erected, altered, placed or permitted shall be of the same quality, workmanship and material as the principal dwelling structure, and will be erected and placed according to Section 3 below.

Section 3. Set Back Requirements. All structures shall comply with (i) the City of Fayetteville and/or Cumberland County ordinances with regard to all set-back requirements and (ii) such set-back requirements as are set forth on the plats of Westhaven subdivision. Plat for "Westhaven Subdivision, Section 1, Part 1, a Zero Lot Line Development" is duly recorded in Book of Plat 0134, Pages 0132, Cumberland County, North Carolina, Registry.

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 two thousand four hundred (2,400) square feet for any 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 designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, unheated storage area, garages, and porches shall not be counted. 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, nor shall any addition to or exterior change or alteration thereto be made, unless and until building plans and specifications covering the same, showing the 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 Declarant 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 Declarant and until a copy of all such plans and specifications, as finally approved by the Declarant, have been lodged permanently with the Declarant. The Declarant 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 opinion for any reason, including purely aesthetic reasons connected with future development plans of the Declarant of said land or contiguous lands. In passing upon such building plans and specifications and lot-grading and landscaping plans, the Declarant 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 the surrounding neighborhood and existing structures therein, and the effect and appearance of such constructions as viewed from neighboring properties. In the event the Declarant 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 Declarant 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. Temporary Structures. All trailers, tents, shacks, garages, barns or similar type outbuildings shall be deemed 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 approval of the Architectural Control Committee pursuant to Article VII herein. Nor shall any structure of a temporary character be used as a residence temporarily, permanently, or otherwise.

Section 7. Restricted Activities. No noxious, offensive or commercial trade or activity, including but not limited to daycares, 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 8. Animals. No animals or poultry of any kind, except common pets, shall be placed or kept on any part of the premises. No breed of dogs that may be perceived by members of the general public as being dangerous or having a propensity for being dangerous, including, but not limited to, Pitbulls, American Terriers/Pitbulls, Rottweilers, Dobermans, Chows and German Shepherds, nor any dog whose lineage includes any part of any of said breeds, nor any dog that has at any time bitten a person, nor any dog that has been trained as an attack dog, shall be permitted on the premises

Section 9. Motor Vehicles. No automobile or motor vehicle may be dismantled or repaired on said premises. No mechanically defective automobile, motor vehicle, mechanical device, machine, machinery, or junk car shall be placed or allowed to remain on said property at any time. 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 automobile or motor vehicle shall be parked in the street or public right of way.

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 parked on a permanent parking pad as large as the camping trailer, motor home, or recreational vehicle. The placement of the parking pad is subject to the control and approval of the Architectural Committee. Any permitted camping trailer, motor home, or recreational vehicle must be kept in well maintained condition and appearance, which condition and appearance are subject to the approval and control of the Architectural Committee. 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 10. Fences. All proposed fences must be approved by the Architectural Control Committee. Only wood, vinyl, wrought iron and aluminum fences, measuring no more than seventy-two (72) inches from the ground may be erected on any Lot. No fence or wall shall be erected or maintained nearer to any street than the back, rear corner of the principal dwelling structure on improved Lots or nearer to any street than the setback line on any vacant lot or nearer to any street than thirty (30) feet. On corner lots, no fences shall be erected any closer to the street than the back, rear corner of the principal dwelling structure. 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.

On Lots with designated drainage easements, any fence placed on the Lot must be five (5') feet off of the side property line on the side lot line containing the drainage easement.

No fence shall be erected on the property designated as "landscape easement". Any variation or deviation may be allowed only with the written consent of Floyd Properties and Development, Inc. and/or the Architectural Control Committee.

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 Floyd Properties and Development, Inc., its successors or assigns.

Section 12. Satellite Dishes and Radio Antennas or Towers. 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 24 inches in diameter, attached to the rear of the dwelling, so long as said satellite dish is not visible from the road.

Section 13. Clothes Lines. No outside clothes lines, either of a temporary or permanent nature, shall be allowed on the premises.

Section 14. Signs. Except as otherwise permitted herein, no sign of any character shall be displayed or placed upon any building plot except "For Sale" 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 property. The Declarant may enter upon any building plot and summarily remove and destroy any signs which do not meet the provisions of this paragraph.

Section 15. Outdoor Furniture. No upholstered furniture, of any nature, shall be placed or allowed to remain outside or on the front porch as lawn furniture.

Section 16. Basketball Goals. No basketball goals of any nature, whether stationary or portable, of 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. Grass should be kept at a reasonably short length, and trees, shrubs and bushes shall be properly pruned and all yards shall be kept free of weeds.

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 proper containers approved by the Architectural Control Committee pursuant to Article VII herein, placed where trash is normally picked up, and may only be placed there on the evening before the day trash is normally picked up. Each owner shall promptly remove the trash container from the point of pickup, in no case later than the evening of the day the trash was removed.

Section 19. Above Ground Pools. No above ground swimming pools shall be permitted on the premises. In-ground pools must be surrounded by a four foot (4') privacy fence.

Section 20. Sidewalks. Declarant's development plan for Westhaven calls for sidewalks to parallel each side of each street in the subdivision. Each Owner of a Lot where a sidewalk is designated to be installed will be responsible for the initial installation of said sidewalk. The Association will be responsible for maintenance, repair and replacement of any sidewalk. Installation of a sidewalk as provided herein shall be subject to approval as to plans, design and material by the Architectural Control Committee. The sidewalk shall be installed at the time a house is constructed on each Lot and in no event later than two (2) years from the date of conveyance, whichever period is shorter.

Section 21. The rights-of-way for streets as shown on the recorded plat shall not be used for any purpose other than ingress and egress and placement of one mailbox on a break-away pole for each "lot" as shown on the plat. Any shrubbery, edging, fencing, rocks, basketball goals or other objects in the right-of-way (the area between the front property corners and the actual pavement) may be removed by the Declarant without notice. Any trucks or other commercial vehicles left in a right-of-way overnight may be removed without notice and any towing charges shall be the responsibility of the owner or operator of such vehicle. The provisions of this paragraph shall cease upon the acceptance of the streets by a public entity for public maintenance by that entity.

**ARTICLE IV**  
**UTILITIES AND UTILITY AND DRAINAGE EASEMENTS**

Section 1. Utilities. The Declarant reserves the right to subject the real property in this subdivision to a contract with public utility providers for the installation of 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 providers by the Owner of each Lot.

This property may be subject to an ongoing monthly continuous fee for the installation and/or maintenance of underground utilities and street lighting by public utility providers.

Section 2. Utility and Drainage Easements. Easements for installation and maintenance for utilities and drainage facilities are reserved as shown on the recorded plat, and in addition thereto, an additional ten (10) foot easement for all such purposes is reserved along all interior lot lines, such ten (10) foot easement being five (5) feet on each side of each interior lot line of each of the aforesaid lots, and in addition thereto, an additional five (5) foot easement for all such purposes is reserved along the rear property line on all lots along the perimeter of the subdivision. 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. A five (5) foot easement is reserved along the rear property line on all lots along the perimeter of the subdivision in which the Declarant or the Association may erect and maintain a perimeter fence. 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.

Section 3. Landscape Easement. Landscape easements are reserved as shown on the recorded plat.

Section 4. Drainage Easement. Drainage easements are reserved as shown on the recorded plat.

**ARTICLE V**  
**ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) annual assessments or charges, and
- (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each 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 property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title.

- (c) assessments and fines for violations of this declaration of covenants, conditions and restrictions, as to be established, collected and described herein.

The annual and special assessments, and fines and assessments for violation of this declaration of covenants, conditions and restrictions, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each 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

property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to his successors in title.

(d) Notwithstanding anything in the foregoing to the contrary, under no circumstances will the Declarant be assessed and pay annual assessments, special assessments, and/or assessments and finds for violations of this declaration of covenants, conditions and restrictions as provided for herein.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be for the purpose of maintaining the common area, USPS Cluster Mailboxes, park, street lighting, sidewalks, maintaining the entrance walls and structures, maintaining subdivision signage, and any non-standard Dept. of Transportation sign posts, maintaining the landscape and drainage easements, maintenance of Storm Water Basin and any designated common area, and green spaces, and for such other purposes as may be consistent with maintenance of the high character of the development for the benefit of all the owners and protecting the value and desirability of the real property and enhancing of homes and lots. The assessments levied by the Association shall also be for the purpose of paying all taxes, insurance and utilities associated with those items identified herein above.

Section 3. Annual Assessment.

(a) Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment shall be Three Hundred Sixty and No/100 (\$360.00) Dollars per lot.

(b) From and after January 1 of the year immediately following conveyance of the first lot to an Owner, the annual Assessment may be increased by up to ten percent (10%) annually above the assessment for the previous year by a vote of a majority of the Board of Directors. Any assessment that is greater than ten percent (10%) annually, must be approved by a vote of two-thirds (2/3) of the Association members who are voting in person or by proxy at a meeting duly called for this purpose. Such a meeting and vote may be held by mail in ballot.

(c) The annual assessment shall not be increased above the foregoing limit without the approval of two-thirds of the members.

(d) There shall be a one time initial set up fee of One Hundred Seventy Five and No/100 (\$175.00) Dollars for each Lot, paid by the initial purchaser, to include a general licensed contractor or builder, to the Homeowners Association at the time of the initial sale from the Declarant to the Purchaser.

(e) Notwithstanding anything in the foregoing to the contrary, under no circumstances will the Declarant be assessed and pay annual assessments as provided for herein.

Section 4. Notice and Quorum for Any Action Authorized under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) 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 fifty (50%) per cent of all the membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Assessments must be fixed at a uniform rate for all lots and shall be collected on an annual basis.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of January following the conveyance of the common area to the Association. 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 notices of the annual assessment shall be sent to every owner subject

thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 7. Fines and Assessments for Violations of This Declaration of Covenants, Conditions and Restrictions, and Aesthetic Rules, Regulations and Decisions of the Architectural Committee.

(a) The Declarant, prior to conveyance of all lots in the subdivision, or an Architectural Committee composed of three (3) or more representatives appointed by the Board of Directors after the conveyance of all lots in the subdivision, shall cause to be issued letters of warning to any owners deemed to be in violation of any covenants, conditions or restrictions or Aesthetic Rules, Regulations and Decisions of the Architectural Committee.

(b) If the violation or decision is not remedied, a second letter of warning shall be issued to the owner, advising the owner of the date of imposition of the daily fine, as well as the amount thereof, if the violation is not remedied by the imposition date.

(c) Alternatively, in the event an owner neglects or otherwise refuses to remedy any violation of the covenants, conditions or restrictions, or Aesthetic Rules, Regulations and Decisions of the Architectural Committee, then and in that event, the Architectural Committee may effect such remedy or maintenance and the cost of such remedy or maintenance shall be added to and become a part of the assessment to which such lot is subject pursuant to Article V.

(d) Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum fine or assessment shall be \$10.00 per day per lot in violation, enforceable by lien as set forth in Article V, Section 9.

(e) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum fine or assessment may be increased each year not more than ten (10%) per cent above the assessment for the previous year by a vote of two-thirds of the members who are voting in person or by proxy at a meeting duly called for this purpose.

(f) The maximum fine or assessment shall not be increased above the foregoing limit without the approval of two-thirds of the members of the Homeowner's Association.

(g) Notwithstanding anything in the foregoing to the contrary, under no circumstances will the Declarant be assessed and pay annual assessments, special assessments and/or assessments and fines for violations of the declarations of covenants, conditions and restrictions as provided for herein.

Section 8. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) per cent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

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 first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior Owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof

Section 11. 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, repair or replacement of public and private capital improvement upon the Common Area or as required in accordance with the purpose of the assessments as set forth in Section 2 above, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose.

Section 12. Taxes and Insurance. The Association shall levy against the Owners equally an amount sufficient to pay the annual cost of liability insurance premiums for such insurance on the Common Area and the amount of ad valorem property taxes and/or special assessments levied by any lawful governmental authority on the Common Area. It shall be the duty of the Association to pay all such premiums and taxes promptly when they shall become due. Upon default by the Owners Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the common areas or assessments for public improvements to the common areas, which default shall continue for a period of six (6) months, each owner of a building site in the development shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by allocating a portion of the total taxes and/or assessments due by a percentage of the tax valuation each office building bears to the total tax valuation. If such sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the building site of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the owner personally obligated to pay the same or may elect to foreclose the lien against the property of the owner.

## ARTICLE VI MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A members shall be all owners of detached units 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. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B members shall be the Declarant and shall be entitled to eighty (80) votes for each Lot owned. The Class B Membership shall cease and be converted to a Class A membership respectively upon the happening of either of the following events, whichever occurs earlier:

- (a) When the total aggregate votes outstanding of Class A equals the total votes outstanding in the Class B Membership; or
- (b) on January 1, 2042.

## ARTICLE VII

## ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected, replaced or maintained upon the Properties, nor shall any exterior color, exterior addition to or change or alteration therein be made until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, prior to the conveyance of all lots in the subdivision, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors after the conveyance of all lots in the subdivision. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

The Architectural Committee shall further be empowered to oversee all matters of aesthetics in the subdivision, including, but not limited to yard landscaping and maintenance, yard or house decoration, structures and any item placed within a yard or driveway, or upon a house, as well as to oversee violations of these covenants, restrictions and conditions. The Architectural Committee may from time to time promulgate Aesthetic Rules and Regulations or may find that an owner has violated the Aesthetic Rules and Regulations, or has violated the spirit of the Rules and Regulations, or the Aesthetic goals and objectives of the subdivision. In such case, the Architectural Committee shall have the remedies and follow the procedures set out in Article V, Section 7, above.

## ARTICLE VIII EXTERIOR MAINTENANCE

The Association shall provide maintenance for the Common Area, including, but not limited to the Storm Water Basin, USPS Cluster Mailboxes, park, landscape and drainage easements, permanent retention ponds, sidewalks, the entrance walls and structures, entrance sign, subdivision signage and any non-standard Dept. of Transportation sign posts, street signs, stop signs, street lighting, common area landscaping and landscape lighting, and common areas in Westhaven recorded in Book of Plats ~~0134~~, Pages ~~0172~~<sup>0177</sup>, Cumberland County Registry, or otherwise associated with the subdivision and for such other purposes as may be consistent with maintenance of the high character of the development for the benefit of all the owners and protecting the value and desirability of the real property and enhancement of homes and lots. Additionally, the Association shall provide maintenance for any Storm Water Basin, recreation lands, USPS Cluster Mailboxes, parks, landscape easement, sidewalks, entrance signs and any non-standard Dept. of Transportation sign posts, lighting, sprinkler systems, landscaping, landscape lighting, and common areas added to the subdivision in the future. The cost of such maintenance, repairs and replacements shall be paid for out of the assessments provided for in Article V above. In the event an Owner neglects or otherwise refuses to maintain his or her house and other accoutrements in a state of repair consistent with the beauty and welfare of the remaining area, including but not limited to painting of the exterior, then and in that event, the Architectural Control Board may effect such maintenance, repairs or replacement, and the cost of such maintenance, repairs and replacements shall be added to and become a part of the assessment to which such lot is subject pursuant to Article V.

## ARTICLE IX ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A Members and two-thirds of the Class B Members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of Members or of proxies entitled to cast sixty (60%) percent of the votes of each Class of Membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class B Membership are not present in person or by proxy, Members not present may give

their written assent to the action taken thereat.

Section 2. Declarant presently intends, but is not obligated to develop contiguous properties. In the event Declarant elects to add additional phases to the subdivision or develop adjoining properties, then and in that event, Declarant shall have the right to file an amendment to this Declaration at any time and from time to time prior to December 31, 2042, without the further consent of the Owners of any Lot in the within subdivision, to incorporate into the Declarations and Association of the subdivision any or all of the adjoining lands. In the event that this Declaration is so amended, the terms "Lot" and "Property" as used herein shall be deemed to mean and include the adjoining property and all improvements and structures now or hereafter placed by Declarant thereon, all easements, rights and appurtenances thereto, and all articles of personal property provided by Declarant and intended for use in connection therewith. No amendment made by Declarant in accordance with this paragraph shall divest an Owner of any portion of his property without the consent of such Owner and no such amendment shall materially alter the plan of development set forth herein without the consent of all Owners affected thereby. Each Owner shall be deemed by his acceptance of a deed to a Lot to have consented to the powers of amendment herein reserved by Declarant and to any amendments previously or thereafter executed by Declarant pursuant thereto.

## ARTICLE X GENERAL PROVISIONS

Section 1. Amendment. It is understood and agreed, and the present Owners and all subsequent grantees of present Owners and of the Declarant expressly agree by the acceptance of any lot within the above described subdivision area that the covenants and restrictions of the Declaration shall run with and bind the Properties, including all of the Lots, 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.

Notwithstanding anything contained herein, these restrictive covenants may be released, changed, modified or amended by Floyd Properties and Development, Inc., its successors and/or assigns, so long as Floyd Properties and Development, Inc., its successors and/or assigns, owns (or holds a purchase money deed of trust on) any one lot contained in Westhaven subdivision, Plat Book <sup>0177</sup> ~~0176~~ <sub>0134</sub>, Pages <sup>0177</sup> ~~0176~~ Cumberland County Registry or subsequent sections of Westhaven to make the covenants less restrictive, with respect to all "Lots" or with respect to one or more specific "Lots" at any time.

Notwithstanding anything contained herein, this Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than sixty-six and two-third percent (66 2/3%) of the Lots, and thereafter by an instrument signed by the Owners of not less than fifty-one (51%) percent of the Owners of Lots. Any amendment must be properly recorded in the Office of the Register of Deeds for Cumberland County, North Carolina. However, any proposed Amendment must be approved by the Declarant until such time as the Declarant relinquished control of the Board of Directors of the Association, as provided in the Bylaws.

Section 2. Enforcement. If the parties hereto, or any of them or their heirs or assigns shall violate or attempt to violate any of the covenants herein it shall be lawful for the Homeowners Association or the Architectural Committee to enforce these restrictions as agents of the homeowners, or persons owning real property situated ins aid development for subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate said covenants and either to prevent him or them from so doing or to recover damages or other dues or for such violation.

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

Section 4. These restrictive covenants are submitted and executed in accordance with Chapter 47A of the North Carolina General Statutes, which are incorporated herein by reference.

Where these restrictive covenants are inconsistent with either state law or the County Code, state law or the County Code shall prevail, in that order.

Section 5. FHA/Department of Veterans Affairs Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs: annexation of additional properties, dedication of common area and amendment of this Declaration of Covenants, Conditions and Restrictions.

**ARTICLE XI**  
**COMPLIANCE WITH WETLANDS REGULATIONS**

Section 1. A portion of this subdivision or property that may be annexed into the subdivision has been determined to meet the requirements for designation as a regulatory wetland. A 401 Water Quality Certification was issued for this subdivision with the condition that the regulatory wetland not be filled. No subdivision filling or alteration of the wetland portion of this subdivision shall be accomplished unless said filling or alteration conforms to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. All lots abutting or including within its lot dimensions a portion of any now existing ditch or any ditch as relocated shall be responsible for the maintenance of said open ditch and charged with the obligation to retain and protect the free-flowing character of the water contained therein subject to the provisions of Article XI, Section 1 *et. seq.*

Section 2. The areas shown on the recorded plat as wetland areas shall be maintained in perpetuity in their natural condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activities; nor cut, remove or harm any vegetation, nor construct any structures on such wetland areas.

Section 3. The property owner shall report the name of the subdivision, Westhaven, in any application pertaining to said wetland rules.

Section 4. This covenant is intended to ensure continued compliance with the mitigation condition of authorizations issued by the State of North Carolina, Division of Water Quality and the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the State of North Carolina and by the United States of America.

Section 5. This covenant is to run with the land and shall be binding on the Owner and all parties claiming under it.

Section 6. Article XI, Compliance with Wetlands Regulations cannot be amended without the express written consent of the U.S. Corps of Engineers, Wilmington District.

**ARTICLE XII**  
**FAYETTEVILLE INFRASTRUCTURE PERMIT AND STORMWATER**

The following covenants are intended to ensure ongoing compliance with City of Fayetteville Infrastructure Permit Number 550 as issued by the City of Fayetteville under the Stormwater Management Regulations.

1. The City of Fayetteville is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
2. These covenants are to run with the land and be binding on all persons and parties claiming under them.
3. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the City of Fayetteville.
4. Alteration of the drainage as shown on the approved plan may not take place without

the concurrence of the City of Fayetteville.

5. The maximum allowable built-upon area per lot is 5,000 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

6. Each lot will maintain a 50 foot wide vegetated buffer between all impervious areas and surface waters.

7. All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished through a variety of means including roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect the lot runoff and directing them into a component of the stormwater collection system. Lots that will naturally drain into the system are not required to provide these additional measures.

8. The Inspection/Maintenance of Stormwater Management Facility, Transfer of Maintenance Responsibilities for Westhaven Subdivision, Section 1, Part 1, is attached hereto and incorporated herein as Exhibit "C".

**ARTICLE XIII  
CONFLICTING PROVISIONS**

To the extent the provisions of this Declaration conflict with any applicable provisions of the Cumberland County Code or North Carolina General Statute, the conflicting provisions of the North Carolina General Statute or the Cumberland County Code shall control in that order.

TO THE TRUE AND FAITHFUL PERFORMANCE OF THESE COVENANTS AND AGREEMENTS, FLOYD PROPERTIES AND DEVELOPMENT, INC., has caused this instrument to be signed in its name by its Vice President all by proper authority duly granted by its Board of Directors, this the 13<sup>th</sup> day of August, 2014.

**FLOYD PROPERTIES AND DEVELOPMENT, INC.**

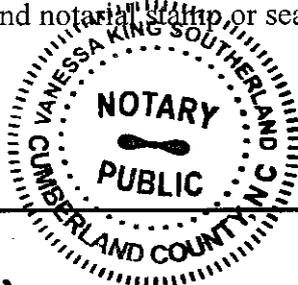
By: Gregory W. Floyd  
Name: Gregory W. Floyd  
Title: Vice President

NORTH CAROLINA  
CUMBERLAND COUNTY

I, Vanessa King Southard, the undersigned Notary Public of the County and State aforesaid, certify that Gregory W. Floyd, personally came before me this day and acknowledged that he is the Vice President of **FLOYD PROPERTIES AND DEVELOPMENT, INC.**, a North Carolina corporation and that by authority duly given and as an act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and notarial stamp or seal this the 13<sup>th</sup> day of August, 2014.

My Commission expires:  
11/29/2018



Vanessa King Southard  
Notary Public

(N.P. SEAL)

BK09495 PG0828

EXHIBIT "A"  
ARTICLES OF INCORPORATION



# NORTH CAROLINA

## Department of the Secretary of State

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To all whom these presents shall come, Greetings:

I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

### ARTICLES OF INCORPORATION

OF

**WESTHAVEN HOMEOWNERS ASSOCIATION OF FAYETTEVILLE, INC.**

the original of which was filed in this office on the 27th day of August, 2012.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 27th day of August, 2012.

*Elaine F. Marshall*

Secretary of State

Document Id: C201223600303

Verify this certificate online at [www.secretary.state.nc.us/verification](http://www.secretary.state.nc.us/verification)

SOSID: 1275453  
Date Filed: 8/27/2012 12:13:00 PM  
Elaine F. Marshall  
North Carolina Secretary of State  
C201223600303

ARTICLES OF INCORPORATION  
OF  
WESTHAVEN HOMEOWNERS ASSOCIATION  
OF FAYETTEVILLE, INC., a non profit corporation

IN COMPLIANCE with the requirements of Chapter 55A of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

ARTICLE I

The name of the corporation is WESTHAVEN HOMEOWNERS ASSOCIATION OF FAYETTEVILLE, INC., hereinafter called the "Association".

ARTICLE II

The principal office and the registered office of the Association is located at 901 Arsenal Avenue, Fayetteville, Cumberland County, North Carolina, 28305.

ARTICLE III

Gregory W. Floyd, whose address is 901 Arsenal Avenue, Fayetteville, Cumberland County, North Carolina, 28305, is hereby appointed the initial registered agent of this Association.

ARTICLE IV

F. Stuart Clarke, whose address is 150 N. McPherson Church Road, Ste B., Fayetteville, Cumberland County, North Carolina, 28303, is the initial incorporator of this Association.

ARTICLE V

The Association will have members. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE VI  
DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public

agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE VII  
DURATION

The Association shall exist perpetually.

This the 17<sup>th</sup> day of August, 2012.



(Seal)

F. Stuart Clarke, Incorporator  
Post Office Box 670  
Fayetteville, NC 28302-0670  
(910) 323-4111

EXHIBIT "B"  
By-laws

**BY-LAWS  
OF  
WESTHAVEN SUBDIVISION  
HOMEOWNERS ASSOCIATION, INC.**

Article I

PURPOSES AND OBJECTIVES

The purpose of the corporation shall be the management of a homeowner's association for a subdivision known as WESTHAVEN SUBDIVISION, including but not limited to the management, use and maintenance of the common area, stormwater basin, if any and, storm water management and the setting of assessments for the upkeep of same.

Article II

OFFICES

Section 1. PRINCIPAL OFFICE: The principal office of the Corporation shall be located at the residence of the person holding the office of Secretary of the corporation.

Section 2. REGISTERED OFFICE: The registered office of the Corporation required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office. Until otherwise changed by the Board of Directors, the registered office shall be 901 Arsenal Avenue, Fayetteville, NC.

Article III

BOARD OF DIRECTORS

Section 1. GENERAL POWERS: The business and affairs of the Corporation shall be managed by the Board of Directors.

Section 2. NUMBER, TERM AND QUALIFICATION: The affairs of the Association shall be managed by a Board of three (3) Directors. The original Board of Directors shall consist of three (3) members. At the first annual meeting the members shall elect one Director for a term of one (1) year, one Director for a term of two (2) years, and one Director for a term of three (3) years. Each Director shall hold office until the expiration of his or her term, or until his or her successor is elected and qualified.

No director shall serve more than two (2) consecutive terms (including the initial term).

Section 3. ELECTION OF DIRECTORS: Except as provided in Section 2 of Article III, the Directors shall be elected at the annual meeting of the Association. Those persons who receive the highest number of votes shall be deemed to have been elected. In the event any vacancy shall occur because of death, resignation, incapacity to act, or removal of a Director, the members shall within a reasonable time, fill the vacancy.

Section 4. REMOVAL: Directors may be removed from office with or without cause by a vote of three-fifths (3/5) of the majority of the members of the Association. If any Directors are so removed, new Directors may be elected at the same meeting.

Section 5. VACANCIES: A vacancy occurring in the Board of Directors shall be filled by a majority of the members of the Association, even though less than a quorum. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

Section 6. COMPENSATION: The members of the Board of Directors may not be compensated for their services in fulfilling their duties to the corporation.

Section 7. INDEMNIFICATION OF DIRECTORS AND OFFICERS: Each present and former Director and officer of the corporation shall be indemnified by the corporation against expenses reasonably incurred by him or her in connection with any threatened, pending, or completed action, suit or proceeding to which he or she may be made a party by reason of his or her being or having been an officer or Director of the corporation (whether or not he or she continues in that capacity at the time of incurring such expenses), except in disputes between himself or herself and the corporation; and in those events, he or she shall be entitled to indemnification should a court of competent jurisdiction find the corporation to be at fault. The foregoing right of indemnification shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of other rights to which any Director or officer may be entitled as a matter of law.

Section 8. EXECUTIVE COMMITTEE: There shall be elected annually by the members of the association three (3) members thereof, who with the Chairman, Secretary, Treasurer and any Executive Committee shall act on behalf of the corporation in any manner (except as provided in Article VII) when the Board of Directors is not in session, reporting to the Board of Directors for its ratification of their action at each regular or special meeting called for that purpose. Four (4) members shall constitute a quorum for the transaction of business. Meetings may be called by the Chairman or by two (2) members.

Section 9. SPECIAL COMMITTEES: The Chairman may, at any time, appoint other committees on any subject for which there are no standing committees, or terminate any standing committee which does not serve any purpose. Each committee shall consist of at least one (1) Director.

Section 10. COMMITTEE QUORUM: A majority of any committee of the corporation shall constitute a quorum for the transaction of business, unless any committee shall by majority vote of

its entire membership decide otherwise.

Article IV

MEETINGS OF THE DIRECTORS

Section 1. REGULAR MEETINGS: Regular meetings of the Board of Directors shall be held at 7:30 p.m. on the first Thursday of each month at a time and place designated by a majority of the Directors.

Section 2. ANNUAL MEETINGS: The annual meetings of the Board of Directors shall be held at 7:30 p.m. on the first Thursday in February of each year, if not a legal holiday, for the purpose of electing Directors of the corporation and for the transaction of such other business as may be properly brought before the meeting.

Section 3. SUBSTITUTE ANNUAL MEETINGS: If the annual meeting shall not be held on the day designated by these by-laws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 4. SPECIAL MEETINGS: Special meetings of the homeowners may be called at any time by the President, on or at such other place, as shall be designated in the notice of the meeting agreed upon by a majority of the Directors entitled to vote thereat.

Section 5. NOTICE OF MEETINGS: Written or printed notice stating the time and place of the meeting shall be delivered not less than five or more than fifty days before the date thereof, either personally or by mail, by or at the direction of each President, Secretary or other person calling the meeting, to each member of record entitled to vote at such meeting. In case of an annual or substitute meeting, the notice of meeting need not specifically state the business to be transacted. In case of a special meeting, the notice of meeting shall not necessarily state the purpose or purposes for which the meeting is called.

When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty days in any one adjournment, it is not necessary to give notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

Section 6. QUORUM: A majority of the duly elected or appointed and qualified Directors of the corporation shall constitute a quorum for the transaction of business at any meeting of the Board

of Directors. A majority of the Directors present at any meeting, whether or not a quorum is present, may adjourn the meeting from time to time without notice, other than announcement at the meeting, until a quorum shall attend.

Section 7. MANNER OF ACTING: Except as otherwise provided in this Section, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. INFORMAL ACTION BY DIRECTORS: Action taken by a majority of the Directors without meeting is nevertheless Board action if written consent to the action in question is signed by all the Directors and filed with the Minutes of the proceedings of the Board, whether done before or after the action is so taken.

## Article V

### OFFICERS

Section 1. NUMBER: The Corporation shall have a Chairman, Secretary, Treasurer and such Vice-Chairman, Assistant Secretaries, Assistant Treasurers and other officers as the members may from time to time elect. Any two or more offices may be held by the same person, except the office of Chairman and Secretary. However, no officer may act in more than one capacity where the action of two (2) or more offices is required.

Section 2. ELECTION AND TERM: The officers of the Corporation shall be elected by the Board of Directors. Such elections may be held at any regular or special meeting of the membership. Each officer shall hold office for one (1) year, or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified, unless otherwise specified by the members. The members may fill any vacancy in any office occurring for whatever reason.

Section 3. REMOVAL: Any officer or agent elected or appointed by the members may be removed by the members with or without cause, except that in the case of the Chairman, he shall not be removed by less than a three-fourths (3/4) majority of the members.

Section 4. CHAIRMAN: The Chairman shall be the chief executive officer of the corporation and shall preside at all meetings of the members and the Board of Directors. Subject to the direction and control of the Board of Directors, he shall have general charge and authority over the business of the corporation. He shall make reports of the business of the corporation for the preceding fiscal year to the Directors at each annual meeting. He shall sign with any other proper officer any deeds, mortgages, bonds, contracts, or other instrument which may be lawfully executed on behalf of the corporation, except where the signing and execution thereof shall be delegated by the Board of Directors to some other office or agent. In general he shall perform all duties as may be prescribed by the Board of Directors from time to time, including the appointment of various committees from the membership in order to carry out the business of the corporation as approved by the Board of

Directors.

Section 5. VICE-CHAIRMAN: The Vice-Chairman shall perform the duties of the Chairman in his absence or during his inability to act. The Vice-Chairman (or Vice-Chairmen) shall have such other duties and powers as may be assigned to or vested in them by the Board of Directors.

Section 6. SECRETARY: The Secretary shall keep accurate records of the acts and proceedings of all meetings of homeowners and Directors. He shall give all notices required by law and by these by-laws. He shall have general charge of all corporate books and records and of the corporate seal, and he shall affix the corporate seal to any lawfully executed instrument requiring it. He shall then sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may be assigned to him from time to time by the Chairman, the Executive Committee, or by the Board of Directors.

Section 7. TREASURER: The Treasurer shall have custody of all funds and securities belonging to the Corporation and shall receive, deposit or disburse the same under the direction of the Board of Directors or the Executive Committee. The Board of Directors or the Executive Committee may appoint a custodian or a depository for any such funds and securities and may designate those persons upon whose signature or authority such fund and securities may be disbursed or transferred. He shall keep full and accurate accounts of the finances of the Corporation in books especially provided for that purpose; and he shall cause a true statement of its assets and liabilities as of the close of each fiscal year within four (4) months after the end of such fiscal year. The Treasurer shall, in general, perform all duties incident to this office and such other duties as may be assigned to him from time to time by the Chairman, the Board of Directors, or the Executive Committee.

Section 8. ASSISTANT SECRETARIES AND TREASURERS: The Assistant Secretaries and Assistant Treasurers shall, in the absence of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or Treasurer, respectively, or by the Chairman, Board of Directors, or Executive Committee.

## Article VI

### MEMBERS

Section 1. This corporation shall be a nonprofit corporation organized and existing under all Laws of the State of North Carolina, being governed by a Board of Directors as set forth in Article III of the By-laws, and shall be with voting members.

Section 2. Any person owning a lot in the subdivision known as WESTHAVEN SUBDIVISION, located in Cumberland County, North Carolina, will be a member of the corporation.

Section 3. ANNUAL MEETING: There shall be an annual meeting of the members of this corporation to hear the annual report of the corporation and to transact other business in accordance with the decision of the Board of Directors. Unless otherwise determined by the Board of Directors, the annual meeting of members shall be held in the first Thursday in May at a time and place designated by the Chairman of the corporation; provided, however, that should said day fall upon a legal holiday, then any such meeting shall be held at the same time and place to be determined by the Board of Directors. Notice of the annual meeting shall be given to all members of the Board of Directors and members of the corporation. The notice required by this Section shall in all respects comply with the notice required by Article IV, Section 4 of these By-laws for notice to members of the Board of Directors in case of a special meeting of said Board.

## Article VII

### CONTRACTS, LOANS, DEPOSITS, AND MISCELLANEOUS PROVISIONS

Section 1. CONTRACTS: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. LOANS: No loans shall be contracted on behalf of the Corporation, and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the members. Such authorization may be general or confined to specific instances.

Section 3. CHECKS AND DRAFTS: All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. DEPOSITS: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories as the Board of Directors shall direct.

Section 5. FISCAL YEAR: Unless otherwise ordered by the Board of Trustees, the fiscal year of the corporation shall be from January 1 through December 31 of each calendar year.

Section 6. AMENDMENTS: Except as otherwise provided herein, these By-laws may be amended or repealed and new By-laws may be adopted by the affirmative vote of 3/5 of the members at any regular or special meeting of members.

Section 7. SEAL: The corporate seal of the corporation shall consist of two concentric circles between which in the name of the corporation and in the center of which is inscribed "Seal".

## Article IX

## PROHIBITED ACTIVITIES

Other provisions of these By-laws notwithstanding, the corporation shall not engage in any act of self-dealing as defined in Section 4941, Subdivision (d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal excise law; nor retain any excessive business holdings as defined in Section 4943, Subdivision (c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws; nor make any investment in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945, Subdivision (d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954, or the corresponding provisions of any subsequent federal tax laws.

## Article X

## 501(c)(3) REQUIREMENTS

Section 1. EARNINGS: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, Directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered, and to make payments and distributions in furtherance of the purposes set forth in the Articles hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of a candidate for public office.

Section 2. EXEMPT FUNDS: Notwithstanding any other provisions of these Articles, this corporation shall not carry on any other activities not permitted to be carried on by (a) corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954 or the corresponding provisions of any future United States Internal Revenue Law or (b) corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1954 or any other corresponding provisions of any future United States Internal Revenue law.

Section 3. DISSOLUTION: Upon the dissolution of the corporation, the Board of Directors shall, after paying and making provision for payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall

determine. Any such asset not so disposed of shall be disposed of by the Superior Court of the county in which the principal office of the corporation is then located exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

IN TESTIMONY WHEREOF, the undersigned have set their hands and seals this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_(Seal)

\_\_\_\_\_(Seal)

\_\_\_\_\_(Seal)

BK 09495 PG 0841

EXHIBIT "C"

Prepared by/ Mail after recording to:

Brian Meyer, Esq.  
Assistant City Attorney  
c/ o City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301

Parcel ID #9485-62-9757-, #9485-71-0212-  
#9485-71-1745-, #9485-72-3560-  
#9485-73-3061-, #9485-73-4367-  
#9485-73-5812-, #9485-73-5850-  
#9485-73-9370-

**DECLARATION OF COVENANTS  
INSPECTION/MAINTENANCE OF STORMWATER  
MANAGEMENT FACILITY, TRANSFER OF MAINTENANCE RESPONSIBILITIES**

THIS DECLARATION (this "Declaration"), made this 20th day of August, 2014, between Floyd Properties & Development, Inc., hereinafter referred to as the "Covenantor," owner(s) of the following property: Westhaven Subdivision, (the "Property"), and the City of Fayetteville, North Carolina, hereinafter referred to as the "City".

**WITNESSETH:**

The Covenantor, with full authority to execute deeds, mortgages, other covenants, and all rights, titles and interest in the property described above, does hereby covenant with the City as follows:

1. In accordance with Section 23-38 of the City of Fayetteville Stormwater Management Ordinance (the "Stormwater Ordinance"), the City shall accept functional maintenance responsibility of structural structural stormwater management facilities (the "stormwater management facility or facilities", or the "BMP or BMP(s)") that are installed following a warranty period of one (1) year from the date of record-drawing certification described in Section 23-37 of the Stormwater Ordinance, or from the date the facility ceases to

function as an erosion control measure and starts to function as a stormwater management facility, whichever is later, provided the stormwater management facility:

- (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage, which Covenantor intends to develop upon all the Property;
- (2) Is satisfactorily maintained during the one-year warranty period by the Covenantor;
- (3) Meets all the requirements of the Stormwater Ordinance;
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance repair, or reconstruction; and
- (5) Prior to the release of the installation performance guarantee as outlined in Section 23-41(b), the Covenantor shall pay into a City maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of the Stormwater Ordinance;

The City engineer must receive an application for transfer of maintenance responsibilities for the structural stormwater management facility along with the stormwater design plan submittal.

2. The Covenantor must maintain the easement area(s) (the "Easement Area(s)") as referenced on the plat of the Property (the "Final Plat") as shown on **Exhibit A** attached hereto and incorporated herein by reference, by providing trash removal, grass cutting, and landscaping on the Property and performing other nonfunctional maintenance, as described in the maintenance plat (the "Maintenance Plan" or the "Plan") as shown on **Exhibit B** attached hereto and incorporated herein by reference. Therefore, the Covenantor shall develop and attach to this Declaration for recording at the Cumberland County Register of Deeds Office a Maintenance Plan that has been reviewed and approved by the City of Fayetteville or its designee. This Maintenance Plan shall describe the nonfunctional maintenance practices to be performed for the above referenced stormwater management facility and include a schedule for implementation of these practices. The Plan shall specify the name, mailing address and phone number of the party responsible for the fulfillment of the Maintenance Plan.
3. The City must provide routine inspection and structural maintenance for the BMP(s) as needed to ensure that the BMP(s) remain(s) in proper working condition in accordance with approved design standards. The City shall undertake all reasonable measures to return the Easement Area(s) to its original condition whenever the City undertakes repairs and maintenance in accordance with this Declaration.
4. The Covenantor must provide and maintain perpetual access from public rights-of-way to the BMP(s) for the City, its agents and its contractors.

5. The Covenantor must grant the City, its agents and its contractors a right of entry to the BMP(s) for the purpose of inspecting, operating, monitoring, installing, constructing, reconstructing, modifying, altering or repairing the BMP(s).
6. Except in the case of an emergency, the City shall provide not less than seven (7) days prior notice to the Covenantor before performing any structural maintenance or repair of the BMP(s) in accordance with this Covenant. The City shall also notify the Covenantor after completing the maintenance or repair work specified in the notice.
7. If, after reasonable notice by the City, the Covenantor fails to maintain the Easement Area(s) in accordance with this Covenant, the City may perform any nonfunctional maintenance needed to correct a condition that impacts the effectiveness of routine structural maintenance and collect any costs incurred as a result from each owner of the BMP(s) and in the same manner as real property taxes are collected. In addition, the City may seek reimbursement under any other method legally available to collect debts owed to the City.
8. The Covenantor agrees to indemnify and save the City harmless, including the City's elected officials, employees, agents, successors, and assigns, from any and all liability and any and all claims for any personal injury or property damage arising from maintenance of the Easement Area(s) in accordance with this Covenant.
9. Upon Covenantor's transfer of title of the BMP(s) to the applicable homeowners association for the single-family residential development (the "Association"), as evidenced by a recorded warranty deed from the Covenantor to the Association recorded with the Cumberland County Register of Deeds Office of Cumberland County, North Carolina, then the Covenantor shall be automatically released from all obligations hereunder, and such obligation shall be automatically assumed by the Association. The Covenantor agrees to promptly notify the City when the Covenantor legally transfers title to the BMP(s) to the Association, and shall include a copy of the recorded warranty deed from Covenantor to the Association with such notice.
10. The covenants contained herein shall run with the land and shall bind the City, the Covenantor and the Covenantor's successors and assignees, and shall bind all present and subsequent owners of property served by the BMP(s).
11. This Covenant shall be recorded in the Cumberland County Register of Deeds Office of Cumberland County, North Carolina.
12. This Covenant runs to the benefit of the City and may not be released or modified except by written consent of the City.

**[Remainder of This Page Intentionally Left Blank; Signature Page Attached Hereto]**

IN WITNESS WHEREOF, the Covenantor and the City have executed this Declaration of Covenants on the date first above written.

ATTEST:  
*Veronica A. Page*  
Signature  
Veronica A. Page  
Printed Name

FOR THE COVENANTOR(S)  
*Gregory W. Floyd*  
Signature  
Gregory W. Floyd  
Printed Name  
Vice President  
Title

*Pamela J. Megall*  
Signature  
Pamela J. Megall  
Printed Name



CITY OF FAYETTEVILLE, NORTH CAROLINA  
*Theodore L. Voorhees*  
Signature  
Theodore L. Voorhees  
Printed Name  
City Manager

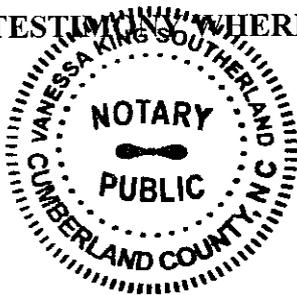
(Jurats follow)

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

: ss

I hereby certify that on this 20<sup>th</sup> day of August, 2014, before the subscriber, a Notary Public of the State of NC and for the County of Cumberland, personally appeared Gregory W. Floyd, Vice President, known to me (or satisfactorily proven) to be the person(s) described in the foregoing instrument, who did acknowledge that (he)(she)(they), having been properly authorized, executed the same in the capacity therein stated and for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my hand and official seal.



*Vanessa King Santell*  
NOTARY PUBLIC  
My Commission Expires 11/29/2018

STATE OF  
COUNTY OF

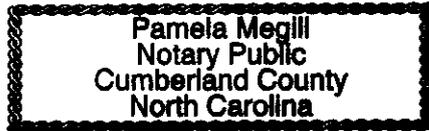
: ss

I hereby certify that on this 25<sup>th</sup> day of August, 2014, before the subscriber, a Notary Public of the State of North Carolina and for the County of Cumberland, personally appeared Theodore L. Voorhees, City Manager, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who did acknowledge that (he) (she), having been properly authorized, executed the same on behalf of Fayetteville, North Carolina in the capacity therein stated and for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my hand and official seal.

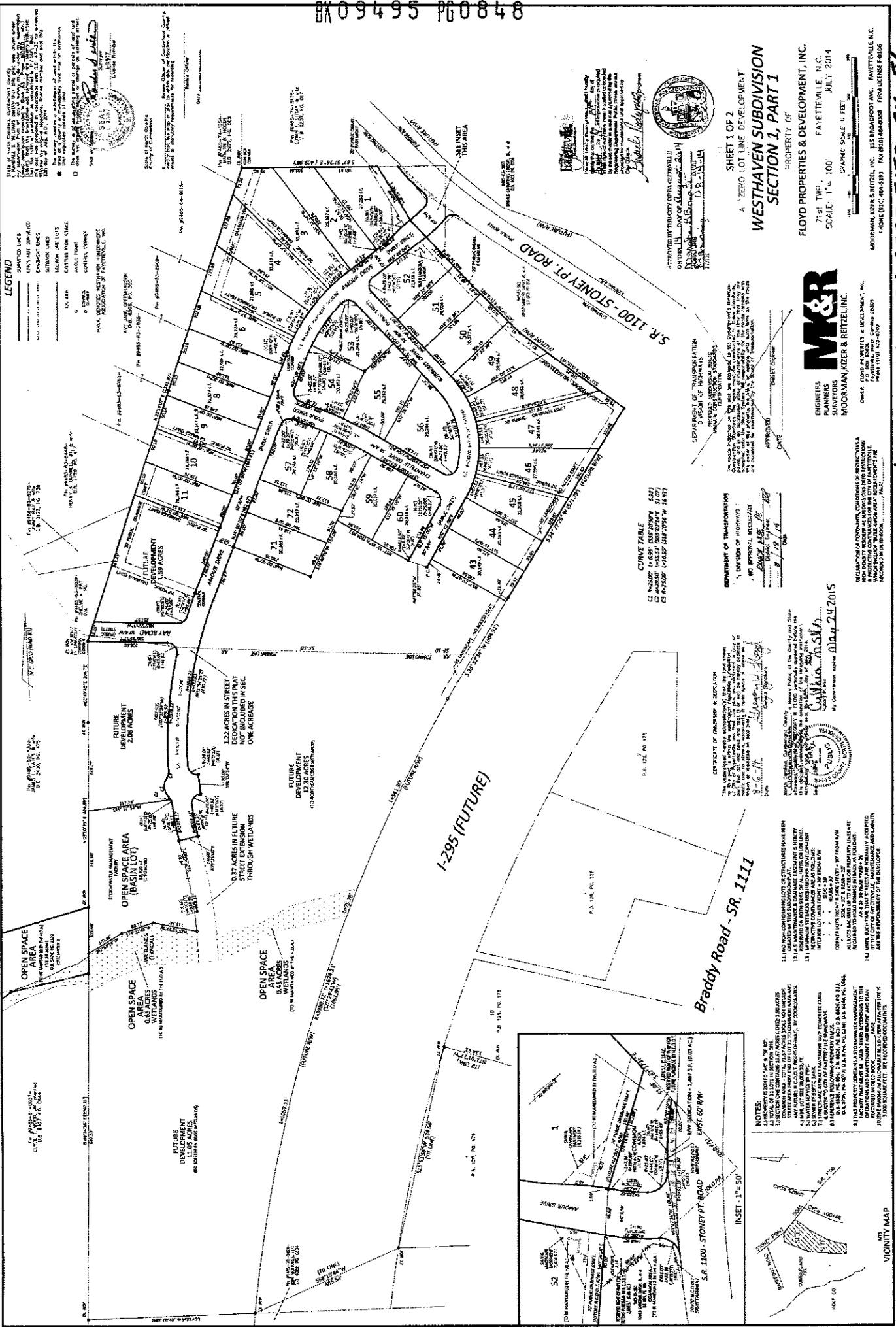
Pamela Megill  
NOTARY PUBLIC

My Commission Expires October 30, 2016



**EXHIBIT A**

[Describe Plat and Easement Area(s)]



**LEGEND**

- SHOWN LINES
- LINES NOT DRAWN
- EXHIBIT LINES
- SECTION LINES
- SECTION AND LOTS
- CENTER LINE STAKE
- CENTER POINT
- CORNER
- PROPERTY OF FUTURE DEVELOPER

**CURVE TABLE**

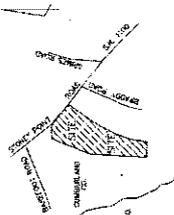
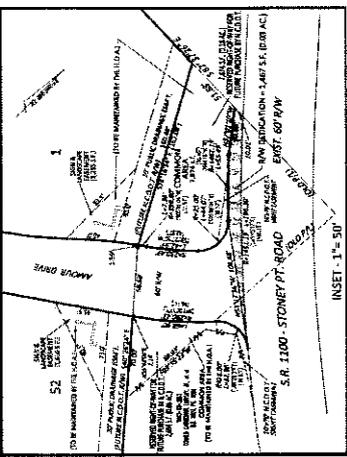
1	Radius	14.85'	155.20°	6.87'
2	Radius	14.85'	155.20°	6.87'
3	Radius	14.85'	155.20°	6.87'

DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
APPROVED FOR THE ROADWAY

DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
APPROVED FOR THE ROADWAY

NOTES:

1. PROPERTY ZONING: "R-10"
2. SECTION ONE CONTAINS 60 LOTS AND 1.22 ACRES OF OPEN SPACE AREA.
3. ANY FUTURE ROADWAY CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF FAYETTEVILLE ZONING ORDINANCES.
4. LOT 52 IS A 1.22 ACRE OPEN SPACE AREA.
5. THE CITY OF FAYETTEVILLE HAS REVIEWED THIS SUBDIVISION MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF FAYETTEVILLE ZONING ORDINANCES.
6. THE CITY OF FAYETTEVILLE HAS REVIEWED THIS SUBDIVISION MAP AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF FAYETTEVILLE ZONING ORDINANCES.



VICINITY MAP

**SHEET 1 OF 2**  
**A "ZERO LOT LINE DEVELOPMENT"**  
**WESTHAVEN SUBDIVISION**  
**SECTION 1, PART 1**

PROPERTY OF  
**FLOYD PROPERTIES & DEVELOPMENT, INC.**  
7184 TWP.  
FAYETTEVILLE, N.C.  
SCALE: 1" = 100'  
JULY 2014

**M&R**  
ENGINEERS  
PLANNERS  
SURVEYORS  
WOODMAN, KIZER & RETZELING, INC.

WOODMAN, KIZER & RETZELING, INC.  
133 BROADWOOD AVE., FAYETTEVILLE, N.C.  
PHONE (910) 884-5393 FAX (910) 884-0388 FIRM LICENSE #4106

**THIS MAP IS NOT A CERTIFIED SURVEY  
AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY**



BK09495 PG0850

**EXHIBIT B**

[Attach Maintenance Plan]

**BMP Maintenance Plan**

Westhaven – Section 1, Single Family Residential  
 City of Fayetteville  
 July 2014

[This document must be recorded as an Addendum to the Operation & Maintenance Agreement]

**I. General BMP Information**

BMP ID Name	Street with Block Number	Parcel Tax ID
Westhaven Section 1 – Wet Detention Basin “A”	Amour Drive	Not Available

**II. BMP Site Location Map (attached)****III. Maintenance Annual Budget** [Provide a simple annual budget for maintenance and inspection of BMPs and list the source of funding, i.e. owner, trust, HOA, etc. Edit chart below as necessary]

Annual Budget for BMP Maintenance / Inspections		
Expenses	Estimated Costs	Source
Routine inspections	\$300	Home Owner’s Association upon completion of Warranty Period
Sediment removal	\$2,500	Home Owner’s Association upon completion of Warranty Period
Plant management / weed control / mowing / litter removal	\$5,500.00	Home Owner’s Association upon completion of Warranty Period
Replacement supplies, rock, plants, soil media, mulch	\$500.00	Home Owner’s Association upon completion of Warranty Period
Mowing and litter removal	See Above	See Above
Seeding	\$500.00	Home Owner’s Association upon completion of Warranty Period
[15% Contingency]	\$1,395.00	City of Fayetteville (Maintenance Fund)
<b>Total</b>	<b>\$10,695.00</b>	

**IV. Escrow Account Activity**

Provide documentation of BMP maintenance escrow account activity. This may be provided in the form of a bank statement which includes the current balance, deposits and withdraws for the previous 12 months. **(Not Applicable)**

**V. Maintenance Inspection Reports**

As indicated in the Stormwater Control Ordinance, annual maintenance inspection reports shall be submitted to the City Engineer. The first report shall be submitted one year following the final approval date of the BMP and each year thereafter on or before the approval anniversary date. All maintenance activities and inspection reports shall be documented using the forms contained in the Administrative Manual. Annual maintenance inspection reports shall be performed by a qualified professional as defined in Section 23-38 of the Ordinance. These inspections shall be discontinued only if the BMPs are accepted for maintenance by the City of Fayetteville.

**VI. Routine Maintenance Tasks and Schedule**

<b>Wet Detention Basin Maintenance Tasks and Schedule</b>	
<b>TASK</b>	<b>SCHEDULE</b>
Forebay observation and cleanout	Monthly
Bank mowing and observation / stabilization of eroded areas	Monthly
Outlet / inlet observation and cleanout	Monthly
Unwanted vegetation and trash removal	Monthly
Visual observation of water quality	Monthly
Overall facility observation	Within 24 hours after every storm event greater than 1.0 inch
Inspect / exercise all mechanical devices, valves, etc.	Yearly
Inspect for structural damage, leaks, etc.	Yearly
Inspect the embankment	Yearly
Forebay inspection and cleanout	Yearly-- Remove sediment every 7 years or when the sediment volume exceeds 50% of storage volume.
Volume measurement	Yearly -- Dredging needed every 20 years or when 25% of permanent pool volume has been lost.
Rodent management	As needed
Security	As needed

Important maintenance procedures:

- Immediately after the wet detention basin is established, the plants on the vegetated shelf and perimeter of the basin should be watered twice weekly if needed, until the plants become established (commonly six weeks).
- No portion of the wet detention pond should be fertilized after the first initial fertilization that is required to establish the plants on the vegetated shelf.
- Stable groundcover should be maintained in the drainage area to reduce the sediment load to the wet detention basin.
- If the basin must be drained for an emergency or to perform maintenance, the flushing of sediment through the emergency drain should be minimized to the maximum extent practical.