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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PRESERVE AT COLWATER CREEK

FILE # 05-7102sjb

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE PRESERVE AT COLDWATER CREEK**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Declaration"), is made on the date hereinafter set forth by **COLDWATER CREEK INVESTMENTS LLC**, a North Carolina limited liability company, hereinafter referred to as "Declarant";

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto to be re-subdivided into Lots 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18,, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 known as **THE PRESERVE AT COLDWATER CREEK**, an unrecorded, preliminary map of which is attached hereto as Exhibit A-1, together with common areas comprised of a conservation easement along the creek, a strip of land for access to the easement, and 2 sign easements; and

WHEREAS, the Declarant desires to insure the attractiveness of the individual lots, community facilities, entrances and the common area and open spaces located in the subdivision, and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values of amenities of the said property and to provide for the continued maintenance of the common area, open spaces, greenway easements, entrances, walkways, private roadways, recreational facilities and other community facilities located in the subdivision, and, in order to accomplish these objectives, deems it advisable to subject the Property, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth; and

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in the subdivision and the residents' enjoyment of the specific rights, privileges and easements in the community properties and facilities that an organization be created to which will be delegated and assigned the powers of owning and maintaining common areas and easements areas, and of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of **The Preserve at Coldwater Creek Homeowner's Association, Inc.** as a non-profit corporation.

NOW, THEREFORE, the Declarant declares that the Property is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the real property (except as

provided in Article VI, Section 10 hereafter) and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns.

This Declaration is made pursuant to the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and any lawful amendments and substitutions thereto. In the event of a conflict between the provisions of the Planned Community Act and the Articles of Incorporation and/or the Bylaws of the Association and this Declaration, the provisions of the Planned Community Act, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

## ARTICLE I

### DEFINITIONS

SECTION 1: "Association" shall mean The Preserve at Coldwater Creek Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

SECTION 2: "Committee" shall mean the Architectural Review Committee established for the purpose of administering architectural review as provided in Article VIII of the Declaration.

SECTION 3: "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and designated as "Common Area" or "Common Open Space" including, but not limited to, paths, walkways, and subdivision entrances shown on any plat of any portion of the Property duly recorded in the Cabarrus County Public Registry in accordance with the provisions of the Declaration. The Common Area which Declarant intends to convey to the Association at the time of Declarant's conveyance to any third party of the first lot shall be that Common Area shown on that plat of the Property to be recorded in the Cabarrus County Public Registry by the Declarant; provided, however, that any land designated as open space which is dedicated to public use on such plat and which is accepted for maintenance purposes by a public authority shall not be part of the Common Area.

SECTION 4: "Declarant" shall mean Coldwater Creek Investments LLC, as well as its successors and assigns, if Declarant shall make an express conveyance of their rights hereunder to such successor or assign.

SECTION 5: "HUD/VA/FNMA/FHLMC" shall refer to the U.S. Department of Housing and Urban Development, and/or the Veterans Administration, and/or the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation, any governmental authority which succeeds said organizations, and/or any other governmental or quasi-governmental authority which governs, regulates or administers the selling of residential dwellings or the issuing of mortgages on such dwellings.

SECTION 6: "Landscape Easements" shall mean any easements designated "Landscape Easement" on any duly recorded plat of any portion of the property recorded in the Cabarrus County Public Registry. The Landscape Easement shall be in favor of the Association and shall be for the maintenance of any landscaping, fencing, signs or irrigation systems located thereon as provided in Article V hereof.

SECTION 7: "Lot" shall mean and refer to any lot of land, with delineated boundary lines, shown upon any plat of any portion of the Property duly recorded in the Cabarrus County Public Registry, with the exception of any streets or easements shown on any such recorded plat. In the event any lot is increased or decreased in size by recombinations or resubdivisions, through recordation of new subdivision plats, any such newly platted lot shall thereafter constitute a lot for the purposes of this Declaration.

SECTION 8: "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 9: "Owner" shall mean and refer to the record owners, 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 and owners of an equity or redemption, but excluding those having such interest in a lot solely as security for the performance of an obligation.

SECTION 10: "Property" shall mean that property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, is located in Cabarrus County, North Carolina and is described on attached Exhibit "A".

SECTION 11: "Sign Easement" and "Landscape Easement" shall mean and refer to any easement designated "Sign Easement" or "Landscape Easement," respectively, on any plat of any portion of the Property duly recorded in the Cabarrus County Public Registry. Any Sign Easement or Landscape Easement shall be in favor of the Association and shall be for the maintenance of any subdivision signs, fences, irrigation systems, and landscaping located within the easement as provided in Article V hereof.

## ARTICLE II

### **PROPERTY SUBJECT TO THIS DECLARATION**

SECTION 1: "Property" shall mean that certain portion of the Property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, is located in Cabarrus County, North Carolina and is described on attached Exhibit A and A-1.

SECTION 2: Pursuant to the Assignment of Declarant's Rights recorded in Deed Book 6573, Page 16, Cabarrus County Registry and as the assignee therein, Declarant hereby re-subdivides into smaller lots the lots in Boxwood Estates purchased by Declarant recorded in Deed Book 6573, Pages 22, 24, and 26, Cabarrus County Registry.

Section 3: Notwithstanding anything herein to the contrary, for a period of one year from the date of recordation of this Declaration, Declarant reserves the exclusive right to remove from the provisions of this Declaration Lots 29, 30, and 31 of The Preserve at Coldwater Creek shown on the preliminary plat attached hereto as Exhibit A-1. Said right may be exercised without the consent of other lot owners and removing Lots 29, 30, and 31 from the provisions of this Declaration shall have the same effect as if said lots had never been described in Exhibit A or A-1.

### ARTICLE III

#### **MEMBERSHIP AND VOTING RIGHTS**

SECTION 1: Every owner of a lot which is subject to assessments shall be a member of the Association. The Membership of the Association shall consist of Class A Members and Class B Members defined below.

SECTION 2: The Association shall have two classes of voting membership:

CLASS A: The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any lot which by covenants of record is subject to assessment by the Association, except Class B Members as defined below. The foregoing is not intended to include persons or entities who hold an interest in a lot merely as security for the performance of any obligation. Such membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Class A Members shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be Members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall a fraction of a vote be cast or more than one vote be cast with respect to any lot.

CLASS B: The Class B Members shall be the Declarant and any and all builders who have purchased a Lot for construction of a dwelling for sale to others. The Class B members shall be entitled to three votes for each Lot that it owns or as to which it has a contract to sell. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- i. When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership;
- ii. Ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds, Cabarrus County, North Carolina;
- iii. Upon written notice of consent to such conversion by all Class B Members.

When Class B membership ceases to exist and is converted to Class A membership, former Class B members shall have the same voting rights as other Class A members.

**ARTICLE IV**

**PROPERTY RIGHTS**

SECTION 1: OWNERS' EASEMENT OF ENJOYMENT: Except as limited by Section 2 of this Article IV, and except in the event of dedication to public use of certain "Common Open Space" as provided herein, every Owner shall have a right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions.

(a) the right of the Executive Board of Directors on behalf of the Association (i) to dedicate or transfer all or any part of the Common Area to any municipality, or any public agency, authority, or utility for the installation and maintenance of sewerage, utilities, including CATV, and drainage facilities upon, over and across the Common Area without the assent of the membership when such easements, in the opinion of said Executive Board of Directors, enhance the use and enjoyment of the Property; (ii) to dedicate or transfer all or any part of the Common Area to any municipality or any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and (iii) to dedicate or transfer all or any part of the Common Area to any municipality or any public agency, authority, or utility for such purposes and subject to such conditions as may be required under the zoning for the Property or by any agreement between Declarant and any municipality or governmental agency as a condition to approval of the zoning of the Property. In the latter event, the Association shall effectuate such dedication upon receipt of such written request, without the assent of the membership. No such dedication or transfer as provided in clause (ii) of the preceding sentence shall be effective unless the members entitled to cast at least two-thirds (2/3) of the votes of the Class A membership and at least two-thirds (2/3) of the votes of the Class B membership agree to such dedication or transfer and signify their agreement by a signed and recorded written document. Additionally, so long as there is a Class B Member, such dedication or transfer shall require the approval of HUD/VA/FNMA/FHLMC.

(b) The right of the Association, with the assent of Members entitled to cast at least two-thirds (2/3) of the votes of each class of membership (Class A and B), to mortgage, pledge, deed of trust, or otherwise hypothecate any or all of its real or personal property, including, but not limited to, the Common Area, as security for money borrowed or debts incurred.

(c) The right of the Association to suspend the voting rights of an Owner and the Owner's right to use any recreational facilities 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.

(d) 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;

(e) The right of the Association, by and through its Executive Board of Directors, to exchange portions of Common Area with the Declarant for substantially equal areas of the Property for the purpose of eliminating unintentional conveyances of Common Areas or unintentional encroachments of improvements onto any portion of the Common Area or for the purpose of enhancing the utility of the Common Area to be retained by the Association.

Provided, however, if ingress or egress to any Lot is through or over any part of the Common Area, then any of the above-noted conveyances of said Common Area shall be made subject to an express easement in favor of that Owner and that Lot.

#### SECTION 2: DELEGATION OF USE:

(a) FAMILY- The right of easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in Cabarrus County, North Carolina.

(b) TENANTS- The right and easement of enjoyment granted to every Owner in Section I of this Article IV may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in Cabarrus County, North Carolina.

### ARTICLE V

#### LANDSCAPE EASEMENTS

The Association, its successors and assigns, shall have an easement over those portions of Lots designated "Sign Easement" or "Landscape Easement" on the recorded maps for the subdivision. Such easements shall be for the purpose of installation, such as Declarant or the Association elect, of subdivision signs, fences or irrigation systems and for the purpose of maintaining any such structures erected by the Declarant or the Association and landscaping such easement areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such areas, other than those installed by Declarant or the Association, without the Association's prior written consent. Declarant and the Association shall at all times have the right of access for its employees, agents and subcontractors over such easements for the purpose of installing, maintaining, repairing and replacing the subdivision's signs, fences and irrigation systems for the purpose of landscaping, planting, mowing and maintaining the area within such easements. The designation of a portion of a Lot as a Sign Easement or a Landscape Easement shall not, in and of itself, give rise to any maintenance obligation. In the event Declarant or the Association elects to erect a sign, fence or irrigation system within any such easement, the Association shall maintain such structure and the cost of such maintenance shall be a Common Area expense, until such time as the Association, in its sole discretion, may elect to remove the structure, in which event, the Association shall have no further maintenance obligation.

**ARTICLE VI**

**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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges and (2) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Any payments made to the Association shall be first applied to costs and attorneys' fees related to collection efforts, then to late charges, then to interest, and only then to such assessments. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such property at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid assessment charges are not the personal obligation upon such Owner's successors in title unless expressly assumed by the successors in title, the unpaid assessment charges continue to be a lien upon the property against which the assessment has been made.

**SECTION 2: PURPOSES OF ASSESSMENTS:** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property, the enforcement of this Declaration and the rules of the Association, and in particular for the improvement, and maintenance of the Common Area and providing the services and facilities devoted to this purpose and related to the use and enjoyment of any Sign Easements and Landscape Easements, and other areas maintained by the Association, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purpose, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planning) and maintenance of the "Common Open Space", walking paths, entranceways, and the maintenance of any Sign Easement and Landscaping Easement areas, Common Areas and other areas to be maintained by the Association under this Declaration.

**SECTION 3: MAXIMUM ANNUAL ASSESSMENT:** The initial annual assessment shall be \$200.00 for each Lot owned by Class A Members and \$200.00 for each Lot owned by Class B Members other than declarant.



(a) From and after January 1, 2007, the maximum annual assessment may be increased by the Executive Board of Directors effective the first day of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1, 2007, the maximum annual assessment may be increased without limitation if such increase is approved by no less than two-thirds (2/3) of the votes cast by each class of members (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

(c) Any annual assessment established by the Executive Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Executive Board.

**SECTION 4: SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS:** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair, replacement of and additions or improvements to capital improvement(s) upon Common Area and any Sign Easement or Landscape Easement areas.

**SECTION 5: ASSESSMENT RATE:** Annual and special assessments for lots owned by Class A Members and lots owned by Class B Members, other than declarant, must be fixed at a uniform rate for all Lots and shall be collected on a monthly, quarterly or annual basis as decided by the Executive Board of Directors of the Association. Notwithstanding anything to the contrary in these restrictions, lots owned by declarant will not be subject to annual or special assessments until a lot is sold and conveyed by declarant.

**SECTION 6: NOTICE OF QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4:** Written notice of any meeting called for any action authorized under Sections 3 and 4 above shall be given not less than ten (10) 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 members (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

**SECTION 7: DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATE: CERTIFICATE OF PAYMENT:** The annual assessment provided for herein shall commence as to all recorded lots on the first day of January, 2007. In addition to annual assessments, at the closing of the sale of a new home to the first occupant, an initial assessment shall be due and payable in the amount of \$200.00. Thereafter, annual assessments shall be due in full on January 1<sup>st</sup> of each following year, and shall be payable, as determined by the Association in its absolute discretion, on a quarterly, semi-annual or annual basis. At least thirty (30) days before January 1<sup>st</sup> of each year, the Executive Board of Directors shall fix the amount

of the annual assessment against each Lot and at least fifteen (15) days before January 1st of each year shall send written notice of any increase in the amount of the assessment over the previous year's annual assessment to every Owner subject thereto. Failure by the Executive Board of Directors to send the written notice of any such increase shall not affect the obligation of the Owner to pay the assessment. The due dates for the payment of annual and special assessments shall be established by the Executive Board of Directors. 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.

Notwithstanding Sections 1 and 7 hereof, the Declarant may, at its election, postpone, in whole or in part, the date on which the assessment shall commence provided that the Declarant maintains any Sign Easements, Landscape Easements and Common Areas for which no assessment is being collected during the period of such postponement.

Failure by any Owner to pay any dues in a timely fashion shall give the Association the right to accelerate all dues for the year in which such deficiency occurs. Upon notice of such acceleration, the delinquent Owner shall immediately be obligated to pay all remaining dues for that year.

**SECTION 8: 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 a minimum rate of twelve percent (12%) per annum or at the rate established by the Executive Board of Directors at the beginning of the fiscal year of the Association, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessment. In addition to the accrual of default interest, the Association may impose a penalty not to exceed four percent (4%) of the amount due for any assessment more than fifteen (15) days past due. Neither non-use of the Common Area or abandonment of his Lot by an Owner, nor damage to or destruction of any improvements on any Lot by fire or other casualty, shall result in any abatement or diminution of the assessments provided for herein.

An Owner's failure to pay any assessment shall not constitute a default under a mortgage given by that Owner, unless expressly agreed to by the Owner in writing.

**SECTION 9: SUBORDINATION OF THE LIEN TO MORTGAGES:** The liens provided for herein shall be subordinate to the lien of any first and second mortgage or first and second deed of trust on a Lot and the sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

SECTION 10: EXEMPT PROPERTY: All property dedicated to, and accepted by, a local public authority and all properties 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 11: APPLICATION OF PAYMENTS: In the event an owner pays any funds after the imposition of any fines, or the incurrence of collection fees, the funds paid shall be applied first to any fines levied, then to any other late fees, if any, then to any special assessment, if any, then to the Annual Assessments, if any.

## ARTICLE VII

### USE RESTRICTIONS

SECTION 1. Land Use And Building Type. All lots shall be used as residential lots and for no other purpose than residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling, not to exceed two and one half (2 1/2) stories, with a private garage of not more than 1 1/2 stories for not more than three (3) vehicles. All garages can be full rear, side entry, or front loaded with wood or carriage style doors with approval by the Architectural Review Committee.

SECTION 2. Building Location. (a) No building shall be located on any lot nearer to the front, side, and rear lot lines than allowed by the zoning ordinance in effect at the time of the building permit for said lot. The architectural committee may allow an adjustment to said building setback requirements if the builder obtains a variance from local government pursuant to the ordinance in effect at the time.

(b) This restriction shall not prevent a person owning two (2) or more adjoining lots from placing a structure on the adjoining lot line when building on two (2) or more lots and using said lot or lots in connection with one (1) residence.

(c) In the event that there is an unintentional, violation of any of the building line restrictions herein set forth, declarant and its successors and assigns reserve the right, by and with the grant of a variance from the local government, to change the building line restrictions set forth herein.

(d) Declarant reserves unto himself, or his heirs, successors, or assigns the right to amend or alter the restrictions related to set back lines and side lot or interior lines or rear lines, to allow for difficult topography that may exist on any particular lot, without the Consent of any person who may hereafter acquire any lot in the subdivision. Furthermore, declarant reserves unto itself the right to subdivide existing lots into such smaller parcels as it may deem appropriate. In the event of the further subdivision of existing lots, declarant reserves unto itself the right to amend or void the existing lot set back lines for those particular lots and it may designate new set back lines for the further subdivided lots so long as it complies with local

ordinances.

(e) No structure shall otherwise be located nearer to any water or Sewer line, if applicable, than permitted by the State, City, or other governmental authority.

(f) All dwellings will be deemed to face Countrywood Road or Countrywood Place except any dwelling erected on lot 8 shall be deemed to face Arrowood Avenue.

SECTION 3. Dwelling Size. In no event shall any dwelling contain less than 2,500 square feet of heated living area. The ground floor of the main structure, exclusive of open porches of any type, terraces and garages, shall contain not less than two thousand five hundred (2,500) square feet of heated area with reference to a one (1) story structure, two thousand (2,000) square feet of heated area with reference to the first floor a one and one-half (1 1/2) story structure, and one thousand eight hundred (1,800) square feet of heated area with reference to the first floor of a two (2) story structure or a structure of more than two (2) stories. As used herein, 'first floor' shall not mean the basement. Each residence shall have an enclosed garage for a minimum of 2 cars and a maximum of 3 cars.

SECTION 4. Dwelling Materials. The exterior veneer of all new structures must be all brick, all stone, stucco, wood siding, cedar shake, or cement siding (ie. Hardie Plank). A combination or exclusive use of any of the above products is subject to the prior approval of the Architectural Review Committee. No log homes, whether the logs are round or not round, shall be permitted.

SECTION 5. Workmanship. No building shall be erected on any lot unless said building shall be constructed in the proper workmanlike manner, built of good grade of materials and shall be painted at regular intervals, if necessary. The exterior of any building shall be completed within six (6) months after construction thereon has begun, unless an extension of time for said completion has been granted in writing by declarant or its heirs, successors, or assigns. No mobile homes, trailers, manufactured homes, or modular homes shall be erected on any lot nor shall any be used at any time in the subdivision as a temporary or permanent residence. As used herein "manufactured" or "modular" homes includes, but is not limited to, a structure which is constructed in sections off-site by a manufacturer. It is the intent of these restrictions that all homes shall be "stick built" on-site as that phrase is customarily understood in the construction trade, but this restriction shall not be deemed to exclude or limit the use of prefabricated trusses, joists, windows, wall panels, or similar items which are constructed off-site but not attached to any component of the building before arrival at the site. Construction activities must take place only between 7 am and 7 pm Monday through Saturday unless individually approved by the Architectural Review Committee.

SECTION 6. Nuisances. (a) No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance to the subdivision.

(b) No house trailer, bus, camper, motor home or any other vehicle of any kind or description (excluding passenger automobiles and small pick up trucks less than three quarter ton) shall be left at any time in front of any residence or dwelling. Any such vehicle shall be maintained at all times at the rear of any dwelling. No inoperative motor vehicle shall be placed in a position so that it can be seen from the front of any dwelling. There shall be no on-street parking of any vehicles except as shall be necessary on a temporary basis for visitors and to provide services for a resident. Residents shall park vehicles only on driveways or in garages.

(c) No cars, trucks, trailers or mobile units of a "junk" nature or portions thereof will be allowed to be exposed on any lot. Mobile units shall be deemed "junk" if they do not have a current license plate displayed thereon.

(d) No motorized dirt bikes, go—carts or cycles, unless licensed by North Carolina Department of Motor Vehicles along with the required safety inspection, will be allowed in the subdivision,

(e) No above-ground pools will be allowed in the subdivision.

(f) No barrier fencing of any kind shall be located in front of the front building setback line. Wood or chain link fences are not allowed. Architectural accent walls made of masonry material will be evaluated on a case by case basis by the Architectural Review Committee.

(g) All improved or unimproved lots shall be kept clear of unsightly debris, weeds, underbrush and other such matter.

(h) All trash and garbage containers must be screened so that none are visible from the street or from other lots or common areas.

SECTION 7. Landscaping and Landscaping Plan. Each lot that is improved by construction of a residence thereon shall be landscaped to the extent of that portion of the lot lying in front and to each side of said residence. Landscaping shall include the proper grading of the lot and seeding it for lawn purposes. Landscaping must be completed within 30 days after the date said residence is first occupied.

Landscaping plans must be submitted to the Architectural Review Committee along with building plans. Minimum requirements will include (15) 3 gallon shrubs, (5) 5 gallon shrubs, (5) evergreen shrubs six feet in height or larger, (4) specimen trees larger than 2 ½ inch in caliber, adequate mulch for planting areas, and the balance of cleared lot to be seeded or in sod.

SECTION 8. Prohibited Structures. (a) Any structure of a temporary character, mobile home, trailer, tent, shack, garage, barn or other out building shall not be used on any lot at any time as a residence either temporarily or permanently. Travel trailers, boats and other forms of recreational vehicles shall be inconspicuously stored at the rear of the dwelling. This restriction shall not prevent declarant, its heirs, successors or assigns from maintaining a temporary office or

building on any lot during the development of declarant's lots.

(b) No shortwave radio or CB towers or other towers or structures known as satellite dishes will be permitted in subdivision without express written permission of declarant, its heirs, successors or assigns. Satellite dishes, not more than 18 inches in diameter, may be located on the exterior of a dwelling or on the lot so long as they are not readily visible from the street where reception is not otherwise adversely affected.

SECTION 9. Driveway. Any driveway constructed in, on, or upon any lot shall have either an asphalt, concrete, cobblestone, brick, or slate surface. Asphalt may not be used on driveways less than 50 feet in length. All residences must have a paved driveway from the street to the garage of the main residence.

SECTION 10. Street Use for Lots. No lots shall be used for the purpose of constructing a public street or to provide access to and from property located within this subdivision, or to provide access to and from properties located in the subdivision to properties surrounding same with the exception of declarant, its heirs, successors and assigns who reserve the right to utilize any lots within said subdivision for the extension of the subdivision to adjoining property.

SECTION 11. Easements. (a) All lots in the subdivision are subject to sight right—of—ways as required by the North Carolina Department of Transportation.

(b) All lots are subject to such rights—of—way as may be reflected on the recorded plats or individual lot surveys with reference to the installation and maintenance of cables, conduits, pipes, and other equipment necessary to or useful for furnishing electric power, gas, telephone service, sewerage, water and other utilities to said lots.

(c) Declarant reserves for itself, its heirs, successors and assigns an easement and right at any time in the future of fifteen (15) feet over, under and along the rear lines of each lot shown on the maps of the subdivision for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electrical power, gas, telephone service or other utilities including water, sanitary sewerage service, and storm water drainage facilities.

(d) Declarant reserves for itself, its heirs, successors and assigns an easement in and right at any time in the future to grant a ten (10) foot right—of—way over, under and along the side lines of each lot for the same uses and purposes as set forth in Section 13(c).

(e) Declarant reserves for itself, its heirs, successors and assigns an easement in and right at any time in the future to grant a ten (10) foot right—of—way over, under and along the property abutting on street rights—of—way expressly for roadway, sidewalk, or public utility purposes.

SECTION 12. Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may

be kept, provided they are not kept, bred or maintained for any commercial purposes and are not in violation of any state, county or municipal law concerning vaccinations, leash restrictions or other rules and regulations pertaining thereto,

SECTION 13. Disposal of Refuse. No lot shall be used or maintained as a dumping ground for refuse. Trash, garbage or other waste shall not be kept except in sanitary containers. All such containers must be kept in a screened area and not otherwise visible from the roadways. There shall not be permitted incinerators or other equipment for the disposal of such garbage or refuse. The owner of any lot shall not place any debris on any street right-of-way or allow any debris to remain on any street right-of-way contiguous to his lot. Containers, trash, leaves, and other materials placed at the street for pick up shall remain at the street only on the day scheduled for pick up or the night before said day.

SECTION 14. Commercial Vehicles. No commercial vehicles, including school buses, and tractor trailer vehicles of more than four (4) wheels shall be kept upon or adjacent to any lots within said subdivision. No unlicensed vehicles may be kept upon any lot, except in an enclosed garage. In addition, there shall be no street parking of any vehicles except that parking on temporary basis shall be permitted.

SECTION 15. Display of Signs. No sign of any kind shall be displayed to the public view on any lot except one (1) sign of not more than six (6) square feet, advertising the property for sale or for rent. Signs may also be used by a builder to advertise property during the construction and sale of residence in accordance with the above size constraints. Notwithstanding the foregoing, during development and sale of the new re-subdivided lots, declarant, its heirs, successors, and assigns may construct a permanent entry feature for the subdivision and may place a temporary sign advertise for sale the new lots and containing information pamphlets.

## ARTICLE VIII

### ARCHITECTURAL REVIEW

SECTION 1: No dwelling, building, fence, wall, outbuilding or any accessory feature to the dwelling or any other structure or improvement of any kind upon any Lot shall be commenced, erected, placed, maintained or altered on any Lot or combination of contiguous Lots, until the completed construction plans (the "Plans") are approved, in writing, by the Architectural Control Committee (Committee) or its designated agent. The review fee for plan approval shall be \$250.00 due and payable at the same time as submission of the plans. The Plans shall include the complete construction plans, the Lot plan (showing proposed location and elevation of such building, fences, walks, drives, parking area, etc.), proposed building plans and specifications, exterior color, finish and materials and the proposed landscaping plan. The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure, and all accessory buildings, the location of the principal residential structure and all accessory buildings, structures, fences, and improvements

on the Lot, the size and plan of the garage or attached carport, location and manner of construction of each driveway, in ground swimming pool, utility building, patio, tennis court and other improvements for athletic, recreational or gymnastic purposes, and all other exterior improvements, the composition and color of raw and finished materials used on the exterior of all structures and the location and type of any shrubbery and other plantings. The Committee or its designated agent shall have 30 days after physical receipt of the Plans to accept or reject the same in whole or in part. If no response by the Committee shall be made in writing within said 30 days, the Lot Owner or his builder shall notify the Committee by certified mail at the address for such notices set forth in the current edition of the Architectural Guidelines for the Subdivision that no response has been made to the Plans submitted and that the Committee has 15 days left to make such response or the Plans will be automatically approved as submitted. Thereafter, if no approval is given within 15 days after such notice is given the Committee and provided the Plans and specifications submitted are complete and do not violated the restrictions set forth in Article VII, hereof, the Plans shall be deemed approved and after the Committee gives written permission for construction to begin, the actual construction shall be commenced and completed in accordance with the approved Plans, together with the requirements in the Declaration. The actual construction shall be the responsibility of the Owner of the Lot and his builder. Any permission granted for construction under this covenant shall not constitute or be construed as approval by Declarant or the Committee or its designated agent of the structural stability, design or quality of any building or other improvement. The architectural approval as provided herein shall remain in the architectural review committee, or its successors and assigns, after initial approval.

SECTION 2: The Committee shall initially be composed of three persons appointed by Declarant, alone, until all Class B Lots are converted to Class A lots. So long as Declarant has the right of appointment, Declarant may also remove said Committee members for any reason and appoint a replacement. Thereafter, the committee shall be composed of three persons who are elected by a majority vote of the Association's Executive Board. Any denial of requested approval by the committee may be appealed to the Association's Executive Board of Directors. In addition, the Executive Board of Directors may promulgate guidelines and standards for review and approval of plans and specification submitted to the Committee and/or the Executive Board. Nothing herein shall be construed to limit or interfere with Declarant's right to improve and develop the Property so long as said development follows the general plan of development for the Property previously approved, and Declarant need not seek approval of the Committee for improvements erected on the Property by or at the direction of the Declarant.

## **ARTICLE IX**

### **MISCELLANEOUS**

SECTION 1. Period of Effect. These protective covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them, for a period of thirty (30) years from the date hereof, at which time, said covenants shall be extended automatically for successive periods at ten (10) years unless revoked by a vote of a majority of



the then owners of the said lots.

SECTION 2. Enforcement. If the parties hereto or any of them or their heirs, successors or assigns, shall violate or attempt to violate any of the covenants or restrictions herein, it shall be lawful for any other person owning any real properties situated in said subdivision to prosecute any action at law or in equity against the person or persons violating or attempting to violate such restrictions, and either to prevent him or them from so doing or to recover damages for such Violations.

SECTION 3. Severability. Invalidation of any one of these covenants at restrictions by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

IN TESTIMONY WHEREOF, the said declarant has hereunto set its hands and seal, this the 3<sup>RD</sup> day of AUGUST, 2006.

**Coldwater Creek Investments LLC**

By: Charles C. Penner

Its: MEMBER/MANAGER

STATE OF NORTH CAROLINA

COUNTY OF Cabarrus

I, Sarah J. Bennett, a Notary Public of the aforesaid County, do hereby certify that Charles C. Penner, a member/manager of Coldwater Creek Investments LLC personally appeared before me this day and acknowledged the due execution and sealing of the foregoing instrument as member/manager on behalf of Coldwater Creek Investments LLC and as the act of the company referred to in this acknowledgment.

WITNESS my hand and notarial seal, this 3<sup>rd</sup> day of August, 2006.

Sarah J. Bennett  
Notary Public

My commission Expires: 9.3.2008

