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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**AUTUMN HALL NON-RESIDENTIAL PROPERTIES**

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## TABLE OF CONTENTS

PART ONE	INTRODUCTION TO THE AUTUMN HALL COMMUNITY... ..	1
Article I	Creation of Covenants, Conditions, and Restrictions . . . . .	1
1 1	Purpose and Intent . . . . .	1
1 2	Binding Effect; Duration . . . . .	1
1 3	Additional Covenants; Conflicts . . . . .	2
1 4	Autumn Hall Residential Community . . . . .	2
1 5	Covenant to Share Costs . . . . .	2
Article II	Concepts and Definitions . . . . .	3
2 1	Defined Terms . . . . .	3
2 2	Interpretation of Certain References . . . . .	5
PART TWO	CREATION AND MAINTENANCE OF COMMUNITY STANDARDS	5
Article III	Use and Conduct . . . . .	5
3 1	Compliance with Laws . . . . .	5
3 2	Restricted Activities . . . . .	6
3 3	Prohibited Conditions . . . . .	7
3 4	Prohibited Uses . . . . .	7
3 5	Antennas and Satellite Dishes. . . . .	9
Article IV	Architecture and Landscaping . . . . .	10
4 1	General . . . . .	10
4.2.	Design Review Authority . . . . .	10
4 3	Guidelines and Procedures . . . . .	11
4 4	No Waiver of Future Approvals . . . . .	13
4 5	Variances . . . . .	13
4 6	Limitation of Liability . . . . .	13
4 7	Certificate of Compliance . . . . .	14
Article V	Maintenance and Repair . . . . .	14
5 1	Maintenance of Parcels . . . . .	14
5 2.	Obligation to Insure . . . . .	14
Article VI	Enforcement . . . . .	14
6 1	Parties Entitled to Enforce . . . . .	14
6 2	Remedies for Violations . . . . .	15
6 3	Recovery of Costs . . . . .	16
PART THREE	COMMUNITY DEVELOPMENT . . . . .	16
Article VII	Expansion of the Non-Residential Properties . . . . .	16
7 1	Annexation by the Founder . . . . .	16

7.2.	Additional Covenants and Easements . . . . .	17
Article VIII Additional Rights Reserved to the Founder . . . . .		17
8 1	Withdrawal of Property ... ..	17
8 2	Marketing and Sales Activities . . . . .	17
8 3	Right to Develop . . . . .	17
8 4	Right to Approve Changes in Autumn Hall Standards ..	18
8 5	Right to Transfer or Assign the Founder Rights .....	18
8 6.	Community Systems . . . . .	18
8 7	Exclusive Rights to Use Name of Development. . . . .	18
8 8	Right to Notice of Design or Construction Claims . . . . .	19
8 9	Future Changes in Development Scheme . . . . .	19
8 10	Exclusion of Other Lands of the Founder . . . . .	19
PART FOUR PROPERTY RIGHTS WITHIN AUTUMN HALL		19
Article IX Easements . . . . .		19
9 1	Easements of Encroachment . . . . .	19
9 2	Easements for Utilities and Other Infrastructure.....	20
9 3.	Easements to Serve Additional Property.....	21
9 4	Easements for Maintenance, Emergency, and Enforcement	21
9 5	Easements for Lake and Pond Maintenance and Flood Water.....	21
9 6	Rights to Stormwater Runoff and Water Reclamation . . . . .	21
9 7	Stormwater Management Permit . . . . .	21
Article X Party Walls and Other Shared Structures		22
PART FIVE RELATIONSHIPS WITHIN AND OUTSIDE AUTUMN HALL		23
Article XI Dispute Resolution and Limitation on Litigation . . . . .		23
11.1.	Agreement to Encourage Resolution of Disputes Without Litigation . . . . .	23
11 2	Dispute Resolution Procedures . . . . .	24
Article XII Private Amenities . . . . .		25
12 1	General . . . . .	25
12 2	Conveyance of Private Amenities . . . . .	25
Article XIII Disclosures and Waivers . . . . .		26
13 1	Safety and Security . . . . .	26
13 2	View Impairment .. . . .	26
13 3	Notices and Disclaimers as to Community Systems ...	26
PART SIX CHANGES IN AUTUMN HALL ...		27
Article XIV Transfer of Title . . . . .		27
Article XV Amendment of Declaration . . . . .		27
15 1	By the Founder . . . . .	27

15 2	Validity and Effective Date . . . . .	28
15 3	Assignment of the Founder's Rights . . . . .	28
15 4	Exhibits . . . . .	28

**- TABLE OF EXHIBITS -**

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Mentioned</u>
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	17

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**AUTUMN HALL NON-RESIDENTIAL PROPERTIES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made this 29 day of November, 2011, by Autumn Hall, Inc., a North Carolina corporation ("Founder")

**PART ONE: INTRODUCTION TO THE AUTUMN HALL COMMUNITY**

**Article I      Creation of Covenants, Conditions, and Restrictions**

**1.1.      Purpose and Intent.**

The Founder, as the owner of the real property described in Exhibit "A" (or if not the owner, with the owner's consent), has established and recorded this Declaration to establish covenants, conditions, and restrictions affecting the development of non-residential properties within Autumn Hall, a mixed-use, planned community

**1.2.      Binding Effect; Duration.**

This Declaration governs the property described in Exhibit "A" and any other property submitted to this Declaration in the future. This Declaration shall run with the title to such property and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns

This Declaration applies to all Owners and any occupants of a Parcel. It also applies to tenants, guests, visitors, and invitees. Any lease must require that tenants and all occupants of the leased Parcel be bound by and obligated to comply with this Declaration

This Declaration is intended to be of perpetual duration. However, if North Carolina law restricts the duration of covenants running with the land, any provision in this Declaration affected by such law shall run with and bind the land for so long as permitted under the law, after which time the provisions shall be automatically extended for successive 10-year periods unless the Master Organization (by and through its board of directors), at least 90% of the then Owners, and the Founder, for so long as the Founder or any Affiliate of the Founder owns any property within Autumn Hall, sign a document stating that the Declaration is terminated (a "Termination Document") and record the Termination Document within the year before any extension

In any event, if any provision of this Declaration would be unlawful, void, or voidable by reason of any North Carolina law restricting the period of time that covenants on land may be

enforced, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England

This section does not permit termination of any easement created in this Declaration without the consent of the holder of such easement

**1.3. Additional Covenants; Conflicts.**

Additional, more restrictive restrictions or provisions may be imposed on any portion of the Non-Residential Properties. However, no Person shall record any additional covenants, conditions, or restrictions affecting any portion the Non-Residential Properties without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

If there are conflicts between this Declaration and North Carolina law, North Carolina law shall control. If there is a conflict between this Declaration and any other covenants or restrictions applicable to any portion of the Non-Residential Properties which the Founder has approved and which are recorded subsequent to this Declaration, such other covenants or restrictions will control. Otherwise, this Declaration controls over other recorded covenants affecting the Non-Residential Properties.

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

**1.4. Autumn Hall Residential Community.**

The Founder has created, or shall create, the Residential Association as the entity primarily responsible for the management of residential real property within Autumn Hall, and to enforce restrictions and standards established for Autumn Hall's residential community. Unless the Founder specifically assigns the rights to enforce this Declaration to the Residential Association in writing, the Residential Association shall have no such right.

It is the Founder's intent that the Residential Association and the Owners of Parcels within the Non-Residential Properties work together and cooperate in performing their complementary roles within the Autumn Hall community.

**1.5. Covenant to Share Costs.**

The Founder has recorded or shall record that certain Master Community Covenant for Autumn Hall ("Community Covenant"), which shall be applicable to and binding upon the Non-Residential Properties, to provide for the maintenance, operation, and insurance of certain shared areas and improvements within Autumn Hall that benefit generally the Non-Residential Properties and Autumn Hall's residential community. The Community Covenant provides for or shall provide for an equitable allocation of costs between and among the Non-Residential Properties and the residential community, and for easements relating to maintenance and use of,

and access to, such areas and improvements Autumn Hall Master Organization, Inc (the "Master Organization") is or shall be charged with the responsibility for maintaining, operating, and insuring such shared areas and the Owners of Parcels within the Non-Residential Properties shall be obligated to contribute to the Master Organization's costs in such regard in the manner and in the amounts set forth in the Community Covenant The Community Covenant also sets forth requirements relating to the architectural review of the Non-Residential Properties.

## **Article II Concepts and Definitions**

### **2.1. Defined Terms.**

The terms used in this Declaration are given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms are defined as follows

**"Affiliate"** Any Person which (either directly or indirectly, through one or more intermediaries) controls, is controlled by, or is in common control with, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing For the purposes of this definition, the term "control" means the direct or indirect power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract, or otherwise

**"Autumn Hall"** That certain master planned community located in New Hanover County, North Carolina, of which the Non-Residential Properties are a part, as shown on the Master Plan, and including, without limitation, the real property described on Exhibit "A" and such this property as is made subject to the Community Covenant and/or this Declaration from time to time

**"Community Systems"** Central telecommunication receiving and distribution systems (e g , cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve Autumn Hall

**"Community-Wide Standard"** The standard of conduct, maintenance, or other activity generally prevailing throughout Autumn Hall. The Founder initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements which are subject to the Founder's discretion The Community-Wide Standard may evolve as development progresses and as Autumn Hall grows and changes

**"Design Guidelines"** The architectural, design, and construction guidelines and review procedures adopted for the Non-Residential Properties pursuant to Article IV

**"Founder"**. Autumn Hall, Inc , a North Carolina corporation , and any successor or assign acting as developer of all or any portion of Autumn Hall who is designated as the Founder in a

recorded instrument the immediately preceding Founder executes. On all matters, the Founder may act through any of its Affiliates.

**"Improvements"** Any site work, landscaping, structures, improvements, and other items placed on a Parcel in a manner or location visible from outside of any existing structures on the Parcel

**"Master Plan"**: The land use plan(s) for Autumn Hall approved by New Hanover County, North Carolina, as may be supplemented and amended. The Founder is not obligated to submit property shown on the Master Plan to this Declaration, nor is it prohibited from submitting property which is not shown on the Master Plan

**"Non-Residential Properties"**. The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article VII

**"Owner"** The titleholder to any Parcel, but excluding, in all cases, anyone holding an interest merely as security for the performance of an obligation (*e g*, a mortgagee). If a Parcel is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Parcel"** A portion of the Non-Residential Properties, whether improved or unimproved, which may be independently owned or leased, and is intended for development, use, and occupancy for non-residential purposes. The term shall refer to the land, if any, which is part of the Parcel as well as any Improvements, including any structure, on the Parcel. The boundaries of each Parcel shall be shown on a Plat, provided, in the case of a building containing multiple units for individual sale or lease (*e g*, attached for-sale units), each such unit shall be a separate Parcel

A parcel of land shall be a single Parcel until such time as a Plat subdivides all or a portion of the parcel, or a lease divides all or a portion of the parcel. Thereafter, the subdivided portion shall contain the number of Parcels shown on the Plat, and the leased portion shall contain the number of Parcels as may be separately leased. Any portion not subdivided or leased shall continue to be a single Parcel.

**"Person"** An individual, a corporation, a partnership, a limited liability company, or any other legal entity.

**"Plat"** Any recorded land survey plat for all or any portion of Autumn Hall.

**"Private Amenities"**. Real property and facilities located within or adjacent to Autumn Hall, which are owned and operated for recreational and related purposes on a club membership basis or otherwise. The Private Amenities shall include, without limitation, any recreational amenities owned and operated by the Residential Association

"Residential Association". Autumn Hall Community Association, Inc , a North Carolina nonprofit corporation, its successors, or assigns

"Supplement" A recorded instrument, including a deed, which subjects additional property to this Declaration and/or modifies or imposes additional restrictions and obligations on the land described.

"Use Restrictions" The use restrictions, rules, and regulations governing the use of and activities on the Parcels

**2.2. Interpretation of Certain References.**

(a) Recording All references in this Declaration to a "recorded" legal instrument, or to "recordation" or the "recording" of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument in the official records of New Hanover County, or such other place designated as the official location for filing documents affecting title to real estate in New Hanover County in order to make them a matter of public record

(b) Consent or Approval All references in this Declaration to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required

(c) Discretion and Determination. All references in this Declaration to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in this Declaration, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction

**PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*Standards for use and conduct, maintenance, and architecture are what give Autumn Hall its identity and make it a place where people want to work, live, and play This Declaration establishes standards and restrictions applicable to the Non-Residential Properties*

**Article III Use and Conduct**

**3.1. Compliance with Laws.**

Land uses within the Non-Residential Properties shall conform to all zoning requirements, any requirements or restrictions set forth in any applicable Supplement, and any other applicable recorded covenants or restrictions, all of which shall be enforceable as if fully incorporated in this Declaration Without limiting the generality of the foregoing, each Owner shall comply with applicable development orders; site plan approvals, zoning ordinances or resolutions, and Federal, state, county, and local governments and administrative agencies No

deviation from any requirements shall be made without the specific prior written approval of (a) the appropriate regulatory agency, and (b) the Founder

### **3.2. Restricted Activities.**

The following activities are prohibited within the Non-Residential Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Founder or any Supplement

(a) any activity which tends to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Parcel,

(b) any activity or condition which constitutes a nuisance or an unreasonable source of annoyance to others, which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Parcel, which creates noise, unreasonable risk of fire or explosion, or which tends to disturb the peace or threaten the safety of others, all as determined in the Founder's discretion, provided, nothing herein shall preclude normal and customary operation of any permitted non-residential use,

(c) any activity that violates local, state, or Federal laws or regulations,

(d) outside burning of trash, leaves, debris, or other materials, except during the normal course of construction on a Parcel or in the normal course of constructing or maintaining any Private Amenity,

(e) obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except with the Founder's written consent;

(f) digging any well for any purpose, provided, the Founder may dig wells or approve of additional wells subject to applicable governmental approvals,

(g) installation or use of any sprinkler or irrigation systems of any type which draw water from creeks, streams, rivers, ponds, wetlands, canals, or other surface waters within Autumn Hall,

(h) outdoor storage of goods, materials, or equipment, except that the following shall be permitted (i) outdoor storage of building materials during construction on the Parcel, and (ii) the storage of inventory requiring outdoor storage incidental to a permitted business or enterprise In addition, the Founder may permit outdoor retail displays and outdoor dining facilities;

(i) placement of any sign, whether freestanding or attached to a structure, unless prior written approval has been obtained pursuant to Article IV,

(j) except during construction or major repairs of its facilities or during an emergency, the parking of trucks or other commercial motor vehicles, including vehicles

identified with the Owner (or its tenants or Affiliates) by color and/or design, overnight or on legal holidays or other non-work days (e.g., Sundays), on any public or private street within Autumn Hall, and

(k) subdivision, re-zoning, or re-platting of a Parcel or changing a Parcel's boundary lines, except with the Founder's prior written approval, provided, the Founder may subdivide, re-zone, change the boundary line of, and re-plat any Parcel it or any Affiliate of the Founder owns

### **3.3. Prohibited Conditions.**

The following conditions are prohibited within the Non-Residential Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Founder or any Supplement

(a) plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy others' enjoyment of Autumn Hall, as determined in the Founder's sole discretion. No animals of any kind, including livestock and poultry, shall be raised or bred for commercial purposes on any portion of the Non-Residential Properties. A reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Parcel,

(b) septic systems, other than those installed by or with the Founder's permission;

(c) private wells or propane tanks,

(d) any structure of a temporary nature, such as a tent, shack, or utility shed, except for construction trailers during ongoing construction on the Parcel and temporary party tents for special events the Founder approves in advance, and

(e) overhead electrical distribution lines, except for temporary lines as required during construction and as may otherwise be required by law or safety considerations

### **3.4. Prohibited Uses.**

In addition to uses which are restricted by zoning or other recorded covenants, conditions, restrictions, or easements, the following uses are prohibited within the Non-Residential Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Founder or any Supplement:

(a) trailer courts, mobile home parks, recreation vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers,

(b) oil, gas, or mineral exploration, drilling, boring, development, refining, quarrying, or mining operations and all construction and equipment incident thereto, oil or gas wells, bulk fuel storage, related equipment or facilities, excavations for minerals, and mine shafts,

(c) junkyards, scrap metal yards, automobile used parts sales facilities, motor vehicles sales operations or dealerships, motor vehicle dismantling operations, and sanitary landfills, except that nothing herein shall preclude recycling centers established solely for the collection and sorting of household recyclable materials,

(d) commercial excavation of building or construction materials, except in the usual course of construction of Improvements,

(e) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage, or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;

(f) pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of used goods or merchandise, excess inventory, and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales, provided, antique shops and periodic events or activities (such as, without limitation, craft fairs, arts festivals, or farmers markets) shall be permitted;

(g) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited);

(h) massage parlors or any establishment which offers entertainment or service by nude or partially dressed male or female persons, except that this provision shall not preclude massage services offered by fully clothed, trained personnel as part of a legitimate fitness or health facility or a day spa operation that also offers beauty, body care, skin care, or similar services,

(i) "adult entertainment uses," which term shall include, for the purposes of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature (but not including the sale or rental of movies, films, or videos for in-room viewing within a hotel), or (ii) sexually explicit games, toys, devices, or similar merchandise,

(j) tattoo parlors, body piercing shops, and so-called "head shops" (*i e.*, shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs),

(k) any crematorium or mortuary;

(l) mini-warehouses, warehouse/distribution centers, and motor and freight terminals,

- (m) any facility for the dying and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum,
- (n) cemeteries or mausoleums,
- (o) engine and motor repair facilities including automobile service stations,
- (p) heavy machinery sales and storage facilities;
- (q) kennels (outdoor animal pens),
- (r) airports,
- (s) portable building or manufacture home sales,
- (t) truck and bus leasing or repair facilities, and
- (u) any use which would cause or threaten the cancellation of any insurance maintained by Owners, or which would measurably increase insurance rates for any insurance maintained by Owners above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Master Plan

**3.5. Antennas and Satellite Dishes.**

No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted on a Parcel, except those the Founder specifically approves or those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter) Notwithstanding such protection, an application for such an antenna or other device must be submitted for approval pursuant to Article IV of this Declaration and approval will be granted only if

- (a) the antenna or other device is designed for minimal visual intrusion (*i e*, is located in a manner that minimizes visibility from outside the Parcel and is consistent with the Community-Wide Standard), and
- (b) the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (*i e*, without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device)

Notwithstanding the above, the Founder may erect an antenna, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Autumn Hall, including the Non-Residential Properties In addition, notwithstanding the above, the Founder may permit such equipment or devices as are necessary or appropriate for the Parcel use. For example, the Founder may permit a Parcel being used for school purposes to

install and maintain equipment or devices necessary or appropriate for providing desired educational programming

#### **Article IV Architecture and Landscaping**

##### **4.1. General.**

The placement or construction of Improvements on a Parcel are subject to the Design Guidelines and the approval procedures set forth in this Article, except as this Article or the Design Guidelines may otherwise specify

No prior approval is necessary to repaint the exterior of structures on any Parcel using the most recently approved color scheme or to rebuild or restore any damaged structures on a Parcel in a manner consistent with the plans and specifications most recently approved for such structures Generally, no approval is required for work done to the interior of a structure, however, modifications to the interior of portions of a structure visible from outside a structure may require prior approval

Any structure constructed on a Parcel shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Founder or its designee otherwise approves

Approval under this Article is not a substitute for any approvals or reviews required by New Hanover County or any municipality or governmental agency or entity having jurisdiction over architectural or construction matters

This article shall not apply to the Founder's design and construction activities

##### **4.2. Design Review Authority.**

By accepting a deed or other instrument conveying any interest in a Parcel, each Owner acknowledges that, as the developer of Autumn Hall, the Founder has a substantial interest in ensuring that the improvements to the Non-Residential Properties enhance the Founder's reputation as a community developer and do not impair the Founder's ability to market, sell, or lease its property Therefore, no Person shall place or construct any Improvement, or modify the appearance of any existing Improvement, on a Parcel unless and until the Founder or its designee has reviewed and given its prior written approval of a request to perform such work

In reviewing and acting upon any request for approval, the Founder or its designee shall act in the Founder's interest and shall owe no duty to any other Person The rights reserved to the Founder under this Article shall continue so long as the Founder or any Affiliate of the Founder owns any portion of the Non-Residential Properties or any other real property within or adjacent to Autumn Hall, unless the Founder earlier terminates such rights in a recorded instrument

The Founder may designate one or more persons to act on its behalf in reviewing any request In addition, from time to time, the Founder may delegate any or all of its rights under

this Article to other Persons or committee. Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (a) the Founder's right to revoke such delegation at any time and reassume its prior control, and (b) the Founder's right to veto any decision that it determines to be inappropriate or inadvisable. So long as the Founder has any rights under this Article, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

Unless and until such time as the Founder delegates any of its reserved rights or the Founder's rights under this Article terminate, no Person other than the Founder shall have jurisdiction over architectural matters under this Article.

Upon termination of the Founder's rights under this Article, the Non-Residential Properties shall be subject to architectural review in accordance with the Community Covenant.

The Founder may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

#### **4.3. Guidelines and Procedures.**

(a) Design Guidelines. The Founder may prepare Design Guidelines, which may contain general provisions applicable to all of the Non-Residential Properties as well as specific provisions that vary from Parcel to Parcel. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Founder. The Design Guidelines are not the exclusive basis for the Founder's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines in its discretion. The Founder's right to amend shall continue even if its reviewing authority is delegated to a third-party unless the Founder also delegates the power to amend the Design Guidelines.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines, as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

If prepared, the Founder shall make the Design Guidelines available to Owners and their contractors upon request. In the Founder's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Unless the Design Guidelines provide otherwise, and whether the Design Guidelines are prepared or not, no construction or other activities within the scope of this Article may begin on any portion of any Parcel until a written application is submitted to and approved by the Founder. The application must be accompanied by plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, and the proposed schedule for such construction, and such other information the Founder or the Design Guidelines require.

In reviewing each application, the Founder may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements.

The Founder shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations are not subject to review so long as they are made in good faith and in accordance with the required procedures.

The Founder shall make a determination on each application after receipt of a completed application with all required information. The Founder may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission. The Founder may (i) approve the application, with or without conditions, (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Founder shall notify the applicant in writing of the final determination on any application within 30 days after its receipt of a completed application and all required submissions. If the Founder fails to respond in such 30 day period, approval shall be deemed given, provided, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient with proof of receipt and shall be deemed given at the time of confirmed delivery to the applicant.

As part of any approval, the Founder may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Founder grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Founder or any aggrieved Owner. The Founder reserves the right to

require performance and/or completion bonds and/or damage deposits in conjunction with approving such work

The Founder may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard

#### **4.4. No Waiver of Future Approvals.**

The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Founder may require that objectionable features be corrected or it may elect not to require changes to objectionable features, provided, the Founder may not require the removal of features or Improvements constructed in conformance with plans which it has previously approved. However, the Founder may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### **4.5. Variances.**

The Founder may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance or if the Founder otherwise reasonably deems a variance to be appropriate under the particular circumstances, however, the Founder shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing, (b) be contrary to other sections of this Declaration, or (c) prevent the Founder from denying a variance in other circumstances.

#### **4.6. Limitation of Liability.**

This article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Autumn Hall, it does not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Founder is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Founder shall not be liable for (a) soil conditions, drainage, or other general site work, (b) any defects in plans revised or approved hereunder, (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a builder within Autumn Hall, or (d) any injury, damages, or loss arising out of the

manner or quality or other circumstances of approved construction on or modifications to any Parcel

#### **4.7. Certificate of Compliance.**

Any Owner may request in writing that the Founder issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Founder shall either grant or deny such written request within 45 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Founder from taking enforcement action against an Owner for any condition known to the Founder on the date of such certificate.

### **Article V Maintenance and Repair**

#### **5.1. Maintenance of Parcels.**

Each Owner shall maintain its Parcel, including all structures, landscaping, and other Improvements comprising the Parcel, in a manner consistent with this Declaration, the Community-Wide Standard, and any other applicable covenants. Responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

#### **5.2. Obligation to Insure.**

Each Owner shall carry (or cause to be carried) property insurance for the full replacement cost of all insurable Improvements on his or her Parcel, less a reasonable deductible.

The Owner of any Parcel which is damaged or destroyed shall work diligently to repair or reconstruct the structure within a commercially reasonable period and in a manner consistent with the original construction or such other plans and specifications approved in accordance with Article IV unless otherwise approved by the Founder. For any period prior to commencement of reconstruction of a structure on a Parcel, the Owner shall act diligently and in a commercially reasonable manner to clear the Parcel of debris and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard unless otherwise approved by the Founder. The Owner shall pay any costs insurance proceeds do not cover.

### **Article VI Enforcement**

#### **6.1. Parties Entitled to Enforce.**

This Declaration may be enforced by the Founder, its successors, and such assigns as the Founder specifically assigns its enforcement rights in writing. An assignment of enforcement rights may be of all or only certain enforcement rights under this Declaration and may be made on an exclusive or non-exclusive basis. In the event of a specific assignment, any reference to the Founder in this Declaration shall be deemed a reference to such assign. In any event, no joinder or consent of any Owner is required to effectuate such assignment.

Absent an express assignment (and, in the event of an assignment, except as specifically assigned), and except as otherwise expressly set forth in this Declaration, no Person (including, without limitation, any owner of adjacent or nearby property, the Residential Association, any other homeowners', condominium, merchants', or other association, or any governmental or quasi-governmental authority) shall be deemed a third party beneficiary of this Declaration or have any rights to enforce any of the provisions contained in this Declaration, nor shall the Founder have any duty to such Persons to do so

## **6.2. Remedies for Violations.**

(a) Generally The provisions of this Declaration may be enforced by all available legal and equitable means (including an action to enjoin violative actions, compel compliance, or to require the demolition of Improvements) The Founder also may pursue the specific remedies provided in Sections 6 2(b) and (c) in addition to and not in lieu of any remedies otherwise available at law or in equity

In any action to enforce this Declaration, the prevailing party may recover all of its costs incurred in the action, including, without limitation, court costs and reasonable attorneys' fees.

(b) Architectural Violations. Any construction, alteration, or other work done in violation of Article IV or the Design Guidelines is subject to enforcement action. Upon written request from the Founder, an Owner shall, at its own cost and expense and within a reasonable time frame identified in the request, cure the violation or restore the Parcel to substantially the same condition as existed before the violation occurred Should an Owner fail to cure the problem or otherwise restore the property as required, the Founder shall have the right to enter the property, remove the violation, and restore the property All costs incurred in taking such enforcement action may be charged to the benefited Parcel.

Approvals granted under Article IV are conditioned upon completion of all elements of the approved work, unless approval to modify an application has been obtained In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, the Founder may, after notifying the Owner and allowing a reasonable opportunity to cure, enter upon the Parcel and remove or complete any incomplete work and charge all costs incurred against the Parcel and its Owner

Any act of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines may be excluded from Autumn Hall, subject to notice In such event, the Founder shall not be held liable to any Person for exercising the rights granted by this paragraph

(c) Remedies for Failure to Maintain If an Owner fails properly to perform its maintenance responsibility under this Declaration, the Founder may perform the required

maintenance and assess its costs against the Parcel and the Owner. Except in an emergency situation, the Founder shall provide the Owner written notice and a reasonable opportunity to cure the problem prior to taking such enforcement action. An Owner may demonstrate its intent to cure by taking immediate corrective action and diligently and without interruption prosecuting such action to completion. The sufficiency of such efforts to cure shall be determined in the Founder's reasonable discretion.

A decision not to perform maintenance under the above circumstances shall not prevent the Founder from later performing such maintenance nor shall it prevent the Founder from enforcing any other provision of this Declaration or any Supplement.

### **6.3. Recovery of Costs.**

After providing written notice to the Owner and a reasonable opportunity to cure, the Founder may, at the Founder's option, enter upon the Parcel and remedy and correct any violation of this Declaration at the Owner's expense. All costs incurred, together with interest (computed from the date paid by the Founder at the maximum rate permitted under North Carolina law), and attorneys' fees reasonably incurred in taking any enforcement and/or collection action (regardless of whether suit is filed or appeal taken), shall be the personal obligation of the Owner and a lien upon the Parcel until paid in full. Upon a transfer of title to the Parcel, the grantee shall be jointly and severally liable for any amounts due at the time of conveyance. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Parcel. Such liens, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure.

Unless North Carolina law requires, no further action is required to create or perfect the lien. However, the Founder may, as further evidence and notice of the lien, execute and record a document setting forth as to any Parcel the amount due the Founder at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Founder to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

## **PART THREE: COMMUNITY DEVELOPMENT**

*This Declaration reserves various rights to the Founder in order to facilitate the smooth and orderly development of Autumn Hall and to accommodate changes in the Master Plan which will inevitably occur as Autumn Hall grows and matures.*

### **Article VII Expansion of the Non-Residential Properties**

#### **7.1. Annexation by the Founder.**

From time to time, the Founder may submit to the terms of this Declaration all or any portion of the property described in Exhibit "B" by recording a Supplement describing the

additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand the Non-Residential Properties under this section expires when all property described in Exhibit "B" has been subjected to this Declaration or 25 years after this Declaration is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be memorialized in a recorded instrument executed by the Founder.

Nothing in this Declaration shall require the Founder or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

### **7.2. Additional Covenants and Easements.**

Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement in order to reflect the different character and intended use of such property. If someone other than the Founder owns the property being submitted to the terms of any Supplement, then the Supplement must be signed by such owner evidencing such owner's consent.

## **Article VIII Additional Rights Reserved to the Founder**

### **8.1. Withdrawal of Property.**

So long as it has a right to annex property pursuant to Section 7.1, the Founder may amend this Declaration to remove any Parcel from the coverage of this Declaration, provided such withdrawal does not materially adversely impact the general plan of development for Autumn Hall. Such amendment shall not require the consent of any Person other than the owner(s) of the property to be withdrawn, if not the Founder.

### **8.2. Marketing and Sales Activities.**

Notwithstanding anything in this Declaration to the contrary, the Founder and its designees or assigns may construct, use, and maintain upon any property it or any of its Affiliates owns, leases, or otherwise has use rights in, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of real property within Autumn Hall.

### **8.3. Right to Develop.**

Each Owner acknowledges that Autumn Hall is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) development, construction, or operation of the various components of

Autumn Hall, (b) requests for a special use, variance, or other zoning changes to property within Autumn Hall, or (c) changes in the Master Plan

**8.4. Right to Approve Changes in Autumn Hall Standards.**

No amendment to or modification of any Use Restrictions or the Design Guidelines shall be effective without prior notice to and the written approval of the Founder so long as the Founder or any Affiliate of the Founder owns any real property within or adjacent to Autumn Hall

**8.5. Right to Transfer or Assign the Founder Rights.**

Any or all of the Founder's rights and obligations set forth in this Declaration may be transferred in whole or in part to other Persons, including, without limitation, any successor developer, business entity, or the Master Organization. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Declaration where the Founder does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise. An assignment shall not require the joinder or consent of any Owner.

**8.6. Community Systems.**

The Founder reserves for itself, its Affiliates, and their respective successors and assigns, a perpetual right and easement over the Non-Residential Properties to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to service the buildings and the structures within any Parcel or other portions of Autumn Hall. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide Community Systems and other related services in the region. The Founder also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charges for such services, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

**8.7. Exclusive Rights to Use Name of Development.**

No Person shall use the name "Autumn Hall" or any derivative of such name or in any logo or depiction associated with "Autumn Hall" in any way, including without limitation any printed or promotional material, without the Founder's prior written consent. However, Owners and any tenants of such Owners may use the name "Autumn Hall" in printed or promotional matter where such term is used solely to specify that particular property is located within Autumn Hall.

### **8.8. Right to Notice of Design or Construction Claims.**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or other Improvements within the Non-Residential Properties in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder, to the extent it has been involved in the design or construction, has been first notified in writing and given an opportunity to meet with the owner of the property and to discuss the owner's concerns and conduct its own inspection

### **8.9. Future Changes in Development Scheme.**

Each Owner acknowledges and agrees that the present scheme for Autumn Hall's development may change and that it has not relied on any representation, warranty, or assurance by any Person (a) that any Parcels, residential lots, or other property or facilities will be added to, modified, or eliminated within Autumn Hall, or (b) as to the financial or other impact of such action on any Owner Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to (aa) the design, construction, completion, development, use, benefits, or value of real property and improvements within Autumn Hall, or (bb) the number, types, sizes, prices, or designs of any residential or non-residential structures or improvements built or to be built in any part of Autumn Hall

### **8.10. Exclusion of Other Lands of the Founder.**

Each Owner, by accepting a deed to a Parcel, specifically acknowledges that nothing contained in this Declaration shall in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by the Founder of any property the Founder or any of its Affiliates owns, whether contained within or contiguous to Autumn Hall The Founder shall have full, free, and unrestricted use of its other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Parcels Each Owner, by accepting a deed to a Parcel, specifically and expressly disclaims any reciprocal negative easement in any property the Founder owns

## **PART FOUR: PROPERTY RIGHTS WITHIN AUTUMN HALL**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Founder, and others within Autumn Hall*

### **Article IX Easements**

#### **9.1. Easements of Encroachment.**

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Parcel and any adjacent

Parcel A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

## **9.2. Easements for Utilities and Other Infrastructure.**

(a) Installation and Maintenance The Founder reserves for itself, for so long as the Founder or any Affiliate of the Founder owns any real property within or adjacent to Autumn Hall, and grants to all utility providers, for perpetual duration, non-exclusive easements throughout the Non-Residential Properties, including each Parcel (but not through a structure) to the extent reasonably necessary to

(i) install utilities and infrastructure, other Community Systems, propane and other fuel generation and delivery systems, security and similar systems, and drainage systems to serve Autumn Hall,

(ii) install walkways, pathways and trails, golf cartpaths and crossings, streetlights, and signage on property the Founder or any Affiliate of the Founder owns or within public rights-of-way or easements reserved for such purpose on a Plat,

(iii) inspect, maintain, repair, and replace the utilities, infrastructure, and other improvements described above, and

(iv) access and read utility meters

Notwithstanding the above, the Founder reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements The Founder also reserves for itself the non-exclusive right and power to grant and record such specific easements as it deems necessary to develop the property described in Exhibits "A" and "B". The location of the easement shall be subject to the written approval of the burdened property owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference All work associated with the exercise of the easements described in Section 9.2(a) and (b) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Parcel, nor shall it unreasonably interfere with the use of any Parcel and, except in an emergency, entry onto any Parcel shall be made only after reasonable notice to the Owner or occupant.

### **9.3. Easements to Serve Additional Property.**

The Founder hereby reserves for itself and its duly authorized agents, successors, and assigns, an easement over the Non-Residential Properties for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to the Declaration. This easement includes, but is not limited to, a right of ingress and egress for construction of roads and for connecting and installing infrastructure, roads, and utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Non-Residential Properties as a result of their actions in connection with development of such property.

### **9.4. Easements for Maintenance, Emergency, and Enforcement.**

The Founder, and its successors and assigns under this Declaration, shall also have the right, but not the obligation, to enter upon any Parcel for emergency, security, and safety reasons, to perform maintenance and to inspect for compliance with to enforce this Declaration. Such right may be exercised by the Founder's duly authorized agents and assigns, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or occupant of the Parcel.

### **9.5. Easements for Lake and Pond Maintenance and Flood Water.**

The Founder reserves for itself, and its successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over each Parcel (but not inside a structure) adjacent to or within 100 feet of bodies of water and wetlands within Autumn Hall, in order to (a) temporarily flood upon and maintain water over such portions of Autumn Hall; (b) alter in any manner and generally maintain bodies of water and wetlands within Autumn Hall, and (c) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, their intentional exercise of such easements. Nothing herein shall be construed to obligate the Founder to take such actions or to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.

### **9.6. Rights to Stormwater Runoff and Water Reclamation.**

The Founder reserves for itself and its designees, including, but not limited to, its successors, assigns, and designees, all rights to ground water, surface water, and stormwater runoff within Autumn Hall. By accepting a deed to a Parcel, each Owner agrees that the Founder shall retain all such rights. Such rights shall include an easement over the Non-Residential Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water and runoff.

### **9.7. Stormwater Management Permit.**

In accordance with the North Carolina Division of Water Quality the following restrictions apply to all Units

(a) The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 040333, as issued by the Division of Water Quality under NCAC 2H.1000

(b) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the Stormwater Management Permit

(c) These covenants are to run with the land and be binding on all persons and parties claiming under them

(d) The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality

(e) Alteration of the drainage as shown on the approved plans may not take place without the concurrence of the Division of Water Quality

(f) Pursuant to State Stormwater Management Permit Number SW8 040333, as modified, the maximum built-upon area per lot is 85% of the lot area in square feet, or as otherwise set forth in the Permit, as modified from time to time. 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. Notwithstanding any provision herein to the contrary, pursuant to State Stormwater Management Permit Number SW8 110806, as modified from time to time, the built upon area allocated to the Land Initially Submitted (as described in the attached Exhibit "A") is 384,100 square feet

(g) All runoff from a Unit must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into the pond or street. Lots that will naturally drain into the system are not required to provide these measures

(h) Built-upon area in excess of the permitted amount will require a permit modification

#### **Article X Party Walls and Other Shared Structures.**

Except as may otherwise be provided by law, a written agreement between Owners of adjacent Parcels, a Supplement, or other recorded documents applicable to adjacent Parcels, the following shall control issues related to party walls and other shared structures:

(a) Each wall, fence, driveway, or similar structure built as a part of the original construction on the Parcel that serves and/or separates any two adjoining Parcels shall be considered a party structure

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who shares the structure may restore it. If other Owners thereafter share in the use of the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(d) To the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to party structures. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XI.

## **PART FIVE: RELATIONSHIPS WITHIN AND OUTSIDE AUTUMN HALL**

*The growth and success of Autumn Hall as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within Autumn Hall and with our neighbors, and protection of the rights of others who have an interest in Autumn Hall.*

### **Article XI Dispute Resolution and Limitation on Litigation**

#### **11.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

(a) The Founder, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agree to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving the Non-Residential Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 11.1(b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 11.2 in a good faith effort to resolve the claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of this Declaration,

(ii) the rights, obligations, and duties of any Bound Party under this Declaration, or

(iii) the design or construction of improvements within the Non-Residential Properties, other than matters of aesthetic judgment under Article IV, which shall not be subject to review and shall not be subject to this Article, provided, the following shall not be considered Claims unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 11 2

(A) any action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards),

(B) any suit that does not include the Founder as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Declaration, and

(C) any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 11 2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article

#### **11.2. Dispute Resolution Procedures.**

(a) Notice The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and the Founder stating plainly and concisely

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim,

(ii) the legal basis of the Claim (*i e*, the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy, and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim

(b) Negotiation The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Mediation If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Founder (if the Founder is not a party to the Claim) or to an independent agency providing

dispute resolution services in New Hanover County, North Carolina Each Bound Party shall present the mediator with a written summary of the Claim

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim

If the parties do not settle the Claim within 30 days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate

Each Bound Party shall bear its own costs hereunder, including attorneys' fees, and each Party shall pay an equal share of the representative's and/or mediator's fees

(d) Settlement Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this section In such event, the party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys fees and court costs

## **Article XII Private Amenities**

### **12.1. General.**

Neither ownership nor use or occupancy of a Parcel shall confer any ownership interest in or right to use any Private Amenity. Rights to use any Private Amenity will be granted only to such persons, and on such terms and conditions, as the owners of the Private Amenities may determine Private Amenity owners shall have the right, from time to time in their discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenity, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members

### **12.2. Conveyance of Private Amenities.**

All Persons, including Owners, are hereby advised that no representations or warranties have been or are made by the Founder or by any Person acting on the Founder's behalf, or by the Residential Association, with regard to the continuing ownership or operation of any Private Amenity No purported representation or warranty in such regard, either written or oral, shall be

effective unless specifically set forth in a written instrument executed by the record owner of any Private Amenity. Ownership or operation of any Private Amenity (or any portion of a Private Amenity) may change at any time. The consent of any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

### **Article XIII Disclosures and Waivers.**

#### **13.1. Safety and Security.**

**Owners, Parcel occupants, and their respective guests and invitees are responsible for their own personal safety and for their property in Autumn Hall, including the Non-Residential Properties. The Founder or the Residential Association may, but are not obligated to, maintain or support certain activities which promote or enhance the level of safety or security that each person provides for himself or herself or his or her property within Autumn Hall, including the Parcels. However, the Founder, its Affiliates, and the Residential Association shall not in any way be considered insurers or guarantors of safety or security within Autumn Hall or the Non-Residential Properties, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.**

**No representation or warranty is made that any system or measure, including any security monitoring system or any mechanism or system for limiting access to any portion of Autumn Hall, cannot be compromised or circumvented or that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Parcel that the Founder, its Affiliates, the Residential Association and their respective boards and committees, are not insurers or guarantors of security or safety and that each Person within Autumn Hall assumes all risks of personal injury and loss or damage to property, including the Parcel and the contents of the Parcel, resulting from acts of third parties.**

#### **13.2. View Impairment.**

**The Founder neither guarantees nor represents that any view over and across any property within or outside of Autumn Hall, including any Private Amenity, will be preserved without impairment. The Founder, the Founder's Affiliates, and the Residential Association shall not be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement. There shall be no express or implied easements for view purposes or for the passage of light and air.**

#### **13.3. Notices and Disclaimers as to Community Systems.**

**Any Community System and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not**

limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Founder's control.

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Founder, the Founder's Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

The Community Systems and all information and materials accessible to users of the Community Systems are made available "as is" without warranties of any kind, either express or implied, including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.

There is no guarantee, and the Founder does not make any representation, that any particular Community System will be made available.

## **PART SIX: CHANGES IN AUTUMN HALL**

*Communities such as Autumn Hall are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Autumn Hall and its governing documents must be able to adapt to these changes while protecting the things that make Autumn Hall unique.*

### **Article XIV Transfer of Title**

Any Owner desiring to sell or otherwise transfer title to his or her Parcel shall give the Founder at least 30 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Founder may reasonably require. The Person transferring shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Parcel Owner, including maintenance fee obligations, until the date upon which the Founder receives such notice, notwithstanding the transfer of title.

### **Article XV Amendment of Declaration**

#### **15.1. By the Founder.**

The Founder may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination, (b) to enable any reputable title insurance company to issue title insurance coverage on the Parcels, (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National

Mortgage Association or the Federal Home Loan Mortgage Corporation to make, purchase, insure, or guarantee mortgage loans on the Parcels, (d) to satisfy the requirements of any local, state, or federal governmental agency, or (e) to clarify or correct technical, typographical, or scrivener's errors. However, any amendment under this paragraph shall not adversely affect the title to any Parcel unless the Owner consents in writing

In addition, for so long as the Founder or any Affiliate of the Founder owns any real property within or adjacent to Autumn Hall, the Founder may unilaterally amend this Declaration for any purpose, provided the amendment shall not materially adversely affect the title to any Parcel unless the affected Owner consents in writing.

Notwithstanding the above, no amendment may remove, revoke, increase, decrease, or otherwise modify any right, privilege, or obligation of the Master Organization without the Master Organization's board of directors' written consent

**15.2. Validity and Effective Date.**

If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that the Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration

**15.3. Assignment of the Founder's Rights.**

Unless otherwise specifically provided, the Founder's rights under this shall Declaration continue for as long as the Founder or any Affiliate of the Founder owns property within or adjacent to Autumn Hall. In addition, the Founder may assign any and all of its rights, powers, obligations, and privileges under this Declaration, including the right to amend, to the Master Organization or to any other Person Rights, powers, obligations, and privileges assigned to the Master Organization or any other Person having a continuing interest in Autumn Hall shall be continued for the duration of this Declaration

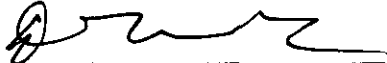
**15.4. Exhibits.**

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference, and this chapter shall govern amendment of such exhibits

[Signatures set forth on the following pages]

IN WITNESS WHEREOF, the undersigned the Founder has executed this Declaration the date and year first written above

**FOUNDER: AUTUMN HALL, INC., a North Carolina corporation**


By   
[SEAL]  
Its PRESIDENT

~~By \_\_\_\_\_  
[SEAL]  
Its \_\_\_\_\_~~

**STATE OF NORTH CAROLINA**

**COUNTY OF NEW HANOVER**

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated. D. WEBSTER TASK, PRESIDENT OF AUTUMN HALL, INC.

Today's Date NOVEMBER 29, 2011.   
[Notary's signature as name appears on seal]

**DAVID G MARTIN**  
NOTARY PUBLIC  
NEW HANOVER COUNTY, NC  
My Commission Expires 2-17-2015

DAVID G. MARTIN  
[Notary's printed name as name appears on seal]

My commission expires. FEBRUARY 17, 2015

[Affix Notary Seal in Space Above]

## EXHIBIT "A"

### Land Initially Submitted

Commence at a point located in the southeastern line of Autumn Hall, Tract 3B-3 as recorded at Map Book 53, Page 19, New Hanover County Registry at its intersection with the southwestern R/W line of Eastwood Road/US Highway 74 (150' Public R/W), said point also being the southeast corner of Autumn Hall, Tract 3B-3 as recorded at Map Book 53 Page 19, New Hanover County Registry, thence from said commence point along and with the southwestern R/W line of Eastwood Road/US Highway 74 South 57 degrees 20 minutes 48 seconds East a distance of 60 00 feet to a point, thence South 32 degrees 39 minutes 12 seconds West a distance of 421.93 feet to a point, thence following a curve to the right (R=280 00', Arc=103 74') have a chord which bears South 43 degrees 16 minutes 02 seconds West a distance of 103 15 feet to a point, thence South 53 degrees 52 minutes 52 seconds West a distance of 10 15 feet to the Point of Beginning, thence from said Point of Beginning South 57 degrees 21 minutes 18 seconds East a distance of 869 22 feet to a point, thence South 32 degrees 39 minutes 47 seconds West a distance of 336 04 feet to a point, thence following a curve to the left (R=625 00', Arc=174 37') having a chord which bears South 24 degrees 39 minutes 24 seconds West a distance of 174 10 feet to a point, thence South 16 degrees 39 minutes 01 seconds West a distance of 193.02 feet to a point, thence following a curve to the left (R=275.00', Arc=110 67') having a chord which bears South 05 degrees 07 minutes 19 seconds West a distance of 109.92 feet to a point, thence following a curve to the right (R=225.00', Arc=130.00') having a chord which bears South 10 degrees 08 minutes 42 seconds West a distance of 128.20 feet to a point, thence North 57 degrees 12 minutes 58 seconds West a distance of 187.74 feet to a point; thence following a curve to the right (R=250 00', Arc=222 25') having a chord which bears North 31 degrees 44 minutes 53 seconds West a distance of 215 00 feet to a point, thence following a curve to the left (R=250 00', Arc=182 79') having a chord which bears North 27 degrees 13 minutes 34 seconds West a distance of 178.74 feet to a point, thence following a curve to the right (R=400 00', Arc=198 01') having a chord which bears North 33 degrees 59 minutes 27 seconds West a distance of 195.99 feet to a point, thence following a curve to the right (R=175 00', Arc=62 33') having a chord which bears North 09 degrees 36 minutes 24 seconds West a distance of 62.00 feet to a point, thence North 00 degrees 35 minutes 46 seconds East a distance of 253.95 feet to a point, thence following a curve to the left (R=1367 61', Arc=172 92') having a chord which bears North 06 degrees 13 minutes 47 seconds West a distance of 172 81 feet to a point, thence North 33 degrees 38 minutes 54 seconds West a distance of 103 54 feet to a point, thence North 38 degrees 18 minutes 34 seconds West a distance of 30 62 feet to a point; thence North 53 degrees 52 minutes 52 seconds East a distance of 216 52 feet to the Point of Beginning, containing 14 00 Acres, more or less

Being that same property described as "Autumn Hall Apartment Tract 14 00 Acre +/-" on that certain plat titled "Autumn Hall Apartment Tract 14 00 Acre +/-" and recorded in Book 56, Page 154 of the New Hanover County Registry

**EXHIBIT "B"**

**Land Subject to Annexation**

Any and all property lying and being in New Hanover County, North Carolina, that is within 10 miles of any boundary of the property comprising Autumn Hall at any time.



JENNIFER H MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

\*\*\*\*\*

**Filed For Registration**      12/05/2011 04:37:42 PM  
**Book**                      RE 5602 Page. 2897-2932  
**Document No :**            2011033425  
                                    36 PGS    \$106.00  
  
**Recorder:**                CARTER, CAROLYN

*State of North Carolina, County of New Hanover*

**PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.**

**\*2011033425\***

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