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DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
BUCK CROSSING

WILLIE L. COVINGTON  
REGISTER OF DEEDS  
DURHAM COUNTY, N.C.

THIS DECLARATION, made and entered into this the 9 day of October, 1998 by J & D REALTY OF DURHAM, INC., a North Carolina corporation whose address is 3906 Chippenham Road, Durham, North Carolina 27707, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the City of Durham, County of Durham, State of North Carolina, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant is developing a certain residential subdivision to be known as "Buck Crossing" (hereinafter "Properties") which will comprise of single-family residential lots (hereinafter "Lots") when fully developed; that the real property upon which Buck Crossing is to be located is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Declarant now desires to develop the Properties in accordance with the Declaration of Covenants, Conditions and Restrictions hereinafter set forth; and

WHEREAS, Declarant intends to construct single family residential homes on each Lot and to convey each Lot subject to the Covenants, Conditions and Restrictions contained in this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the property in the development known as BUCK CROSSING shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions.

PREAMBLE

The purpose of this instrument is to protect the value, desirability and attractiveness of the aforesaid real property; to insure the best use and the most appropriate development and improvements of each Lot located therein; to protect the owner of each Lot against such improper use of surrounding Lots as will depreciate the value of said owner's property; to preserve as far as practicable, the natural beauty of said property; to guard

against the erection of poorly designed or proportioned structures and/or structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; and to enhance, as far as is practical, the value of investments made by owners of Lots herein. To that end, Declarant herein creates a Homeowners' Association and vests it with certain powers and authority consistent with the intentions expressed in this Preamble. Lastly, said restrictions, covenants and conditions shall be appurtenant to and run with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to Buck Crossing Homeowners' Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any of the Lots which is a part of the "Properties", including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property to be known as Buck Crossing as more particularly described on attached Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Open Space" and "Stormwater Easements" shall mean and refer to all real property (including the improvements now or hereafter constructed, excluding Lots) owned in fee simple by the Association or for which the Association shall have been granted by Declarant easement rights of the common use and enjoyment of all the Owners of Lots in Buck Crossing.

Section 5. "Wet Detention Pond" shall mean and refer to the permanent detention basin (hereinafter referred to as "Wet Detention Pond") constructed on Declarant's property described in Exhibit "A". That on the 29th day of May, 1998, Declarant and Barringer Enterprises, Inc., entered into a Stormwater Facility Operation and Maintenance Agreement City Version 2-1195 with the City of Durham, which said Agreement contains the terms, provisions, ordinances, and regulations governing the operation and management of the Wet Detention Pond constructed on Declarant's property. That a complete copy of the Stormwater Facility Operation and Maintenance Agreement City Version 2-1195 shall be made a permanent part of the Association's records.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the "Properties" excluding the aforesaid Open Space and Stormwater Easement lands.

Section 7. "Declarant" shall mean and refer to J & D Realty of Durham, Inc., its successors and assigns. In the event J & D Realty of Durham, Inc., for any reason, should cease to exist, then Declarant shall mean any entity which purchases or otherwise acquires J & D Realty, Inc.'s remaining interests in and to the development known as Buck Crossing.

Section 8. "Member" shall mean and refer to any person or entity entitled to Membership in the Association as provided for herein. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to an assessment by the Association. The owner of a Lot shall become a member of the Association merely by virtue of being an Owner of a Lot. In the event of multiple ownership of any given Lot, each Owner shall be a member of the Association but only one (1) vote total shall be accorded to each Lot.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Each Owner of a Lot in Buck Crossing shall have a right and easement of enjoyment in common with every other Lot Owner in Buck Crossing in and to the Open Space Areas and Stormwater Easements lands, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right of access to and through the Open Spaces for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) The right of the Association to dedicate or transfer all or any part of the aforesaid Open Space areas, or the Stormwater Easements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members in the Association has been recorded.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Open Space areas, and/or any or

all of the Stormwater Easements in aid thereof to mortgage said property, and the rights of such mortgagees in such properties shall be subordinate to the rights of the homeowners hereunder. This right shall be deemed a "material change" within the context of Article Eleven, Section 3(b) hereof.

Section 2. Delegation of Use. Subject to this Declaration and Bylaws, a Lot Owner may delegate his right of enjoyment to the Open Space areas and facilities, and/or the Stormwater Easement area to his heirs and assigns, members of his family, invitees, agents, licensees, guests, tenants, or contract purchasers who reside on the property.

Section 3. Conveyance of Open Space, and Stormwater Easements. Declarant shall prior to the conveyance of the first lot in Buck Crossing, convey fee simple title to the Open Space Areas and the Stormwater Easements to the Homeowners' Association, subject to Declarant's reserved easement rights during construction as set forth herein but free and clear of all encumbrances except for street and road rights of way, sidewalks, parking areas and utility easements. The Homeowners' Association shall be bound by the terms and conditions of that certain Stormwater Facility Operation and Maintenance Permit Agreement City Version 2-1195 set forth in Exhibit "B" attached hereto. Subject to Declarant's reserved easement rights, the Association, from and after the sale and conveyance of three-quarters of the Lots in Buck Crossing, shall be solely responsible for maintaining and insuring those areas. So long as Declarant remains the record owner of an Lot within the Properties, Declarant expressly reserves the right to alter and restructure existing Lot lines provided Declarant shall not increase or decrease the number of existing buildable lots.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and 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 determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. 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:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On March 31, 2008; or

(c) Upon the surrender of all Class B membership by the holder thereof or cancellation of the Association.

#### ARTICLE IV

#### COVENANT FOR ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) an Annual Assessment, and (2) a Special Assessment for capital improvements, such assessments to be established and collected as hereinafter provided. The Annual Assessment, and as applicable, the Special Assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. For each Lot owned by Declarant, whether vacant or in any stage of construction, but not yet conveyed, Declarant shall pay to the Association one-third (1/3) of the Annual Assessment on a monthly basis. Declarant shall not be liable for any Special Assessment.

(a) Any builder(s) who purchase lots from Declarant for construction of speculative or custom built dwellings shall pay and be obligated for monthly assessments in the same amount as Declarant until such time the residential lots with improvements are conveyed by builder(s) to buyer(s).

**Section 2. Purpose of Assessments.**

(a) The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the Properties.

(b) In addition, the assessments as collected shall be spent for general maintenance, which shall include, but not necessarily be limited to, general lawn mowing and maintenance of the Open Space areas and as applicable, the Stormwater Easement areas and the Wet Detention Pond.

(c) By way of further example and again not by way of limitation, the Board of Directors of the Association, being responsible for procuring adequate fire and extended casualty insurance on any buildings or recreation equipment constructed on the Open Space, if any, and for procuring general liability insurance on all the Open Space and easement areas shall defray the cost of the same from the Annual Assessment.

(d) The Annual Assessment shall also be used to pay for any Open Space electricity lighting, and, if applicable, to the streets serving Buck Crossing.

(e) Declarant intends, during construction, to do all plantings for the subdivision and to construct an entry designation sign solely at Declarant's cost; subject, however, to the provision, that once the plantings have been done and the sign constructed, then maintenance and replacement costs shall become the financial responsibility of the Association to be paid from this Assessment.

(f) The Annual Assessment shall also be used to pay for thirty-seven percent (37%) of the total costs of reconstruction, repair, routine maintenance and bond premium of the Wet Detention Pond which allows run off from Buck Crossing to a permanent detention basin. The term "bond premium" as used herein shall also include a letter of credit or other security acceptable to the City of Durham, North Carolina.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Seventy-Two and No/100 Dollars (\$72.00) per Lot; provided, however, the Declarant, and builder(s) pursuant to Article IV, Section 1(a) hereinabove, may pay a reduced assessment on Lots owned by it of not less than thirty-three and one-third percent (33-1/3%) of the maximum annual assessment as established hereinabove.

(a) For the first year from and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased not more than thirty-three and one-third percent (33-1/3%) above the maximum assessment initially established hereinabove.

(b) From and after the first year as described in Paragraph (a) above, the maximum annual assessment may be increased not more than fifteen percent (15%) above the maximum assessment established in said Paragraph (a).

(c) From and after the first year as described in Paragraph (a) above, the maximum annual assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

(e) The Board of Directors shall have the authority to increase the Annual Assessment as needed only as it pertains to the reconstruction, repair, maintenance and bond premium of the Wet Detention Pond. Other increases in the Annual Assessment must be made in accordance with the above Subparagraphs (a), (b) and (c) of this Section 3.

**Section 4. Special Assessments for Capital Improvements.**

In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon Open Space, including fixtures and personal property related thereto; provided, however, any Special Assessment must have the assent of two-thirds (2/3) of the votes of all the Lot Owners who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all Lot Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Lot Owners or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent

meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or annual basis as determined by the Board of Directors of the Association.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The Annual Assessments provided for herein shall commence as to any given Lot on the day of closing and conveyance of said Lot to a third party purchaser for residential occupancy pursuant to a duly issued Certificate of Occupancy; provided, however, the Annual Assessment provided for herein for all Lots owned by Declarant, and/or builder prior to the issuance of a Certificate of Occupancy, shall commence on the first day of the month following the conveyance of the Open Space to the Buck Crossing Homeowners' Association, Inc. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of Annual Assessment against each Lot at least thirty (30) days in advance of the Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

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 the rate of ten percent (10%) per annum, plus a one-time late payment penalty of Twenty-Five and No/100 Dollars (\$25.00). The Association may bring an action at law against the Owner personally obligated to pay the same or foreclosure the lien against the Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Space and Recreation Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer except that such an extinguished lien may be reallocated and assessed to all of the Lots as a common expense. No sale or

transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

FIRE INSURANCE AND ASSESSMENTS

Section 1. The premiums for all insurance policies on the Open Space and Recreation Areas shall be deemed a common expense and shall be paid as part of the Annual Assessment, collected monthly, for each Lot in Buck Crossing.

Section 2. The Board of Directors shall have authority to and shall obtain insurance for all buildings owned by the Association against loss or damage by fire of other hazards in an amount equal to the maximum insurable replacement value (100% of current replacement costs) as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage such that the coverage will be sufficient to cover the costs of all repair or reconstruction work necessitated by damage or destruction from any insurable hazard.

Section 3. The Board of Directors shall have the authority to and shall also obtain a broad form public liability policy covering all Open Space and Stormwater Easement areas and all damage or injury to persons or property caused by the negligence of the Association or any of its agents.

ARTICLE VI

ARCHITECTURAL CONTROL

Declarant intends to create in Buck Crossing a community which is both functional and aesthetically pleasing. To facilitate achieving this goal, Declarant will review all plans, specifications and site location drawings for all improvements to be constructed on any Lot in Buck Crossing prior to any construction commencing thereon. Further, after initial construction is completed, Declarant will review any and all plans designed to alter, modify, add to or subtract from what was initially constructed. To that end, no building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot in Buck Crossing or on the Open Space, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant, or in the absence of Declarant owning at least one (1) Lot in Buck Crossing, the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said

Declarant, or, as the case may be, the Board of Directors, or, as the case may be, a committee designated by the Board of Directors, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All such requests shall be sent by certified mail to the Declarant, or to the Board of Directors, or to the Architectural Control Committee, as the case may be, at the last known address of the party to whom the request is being sent.

As to all construction within Buck Crossing, the approval process will remain the sole responsibility of Declarant so long as Declarant owns one (1) or more Lots in Buck Crossing, or until such time as Declarant, in writing, transfers this responsibility to the Board of Directors of the Association or any Architectural Control Committee established by the Board.

#### ARTICLE VII

##### EXTERIOR MAINTENANCE

Section 1. As set forth in the Preamble, Declarant, and when Declarant has turned over the control of the Homeowners' Association to its Board of Directors as herein set forth, the Board of Directors of the Association shall be solely responsible for the maintenance and upkeep of the Open Space areas and Recreation Area of Buck Crossing.

Section 2. Declarant, and when Declarant has turned over the control of the Homeowners' Association to its Board of Directors as herein set forth, the Board of Directors of the Association shall be solely responsible for maintenance of the Stormwater Easements serving the Lots, solely responsible for the maintenance and upkeep of the sidewalks serving Buck Crossing until such time the sidewalks in Buck Crossing are accepted and maintained by the City of Durham, and shall be and solely responsible for the reconstruction, repair, maintenance and bond premium of the Wet Detention Pond. In the event either or both entities fail to do so, Declarant, for itself, its successors and assigns, including the Buck Crossing Homeowners' Association, herein give and grants to the City and/or County of Durham the right and authority to promulgate necessary rules and regulations and/or to enter onto the sidewalks, Stormwater Easements or Wet Detention Pond of Buck Crossing in order to enforce the maintenance of same if any of these areas are not adequately maintained to City and County standards by either Declarant or the Association, including the authority to assess the costs for such maintenance against each Lot in Buck Crossing and to collect any unpaid assessments through procedures provided by North Carolina General Statutes Chapter 160A, Article 10, or other methods allowed by law; provided however, that this provision shall not obligate the City

and/or County of Durham to assume any responsibility for the Recreation Area, sidewalks, Stormwater Easements and/or Wet Detention Pond as aforesaid.

Section 3. In the event that the need for any such maintenance or repair as set out herein is caused through the willful or negligent act of the Owner, his family, guests or invitees or is caused by fire, lightning, windstorms, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

#### ARTICLE VIII

#### USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Open Space and Recreation Area.

Section 2. Use of Property. No portion of the Property (except for temporary office of the Declarant and/or a model home used by Declarant for sales purposes) shall be used except for residential purposes and related incidental purposes. "Single-family residential" purposes may include "light-housekeeping" apartments containing no more than one bedroom. No portion of the Property may be utilized for a licensed or unlicensed day care operation nor related facility. Specifically, no Lot may be stripped of its topsoil and trees or permitted to go to waste by being excavated, neglected or having trash or refuse thrown, dropped or dumped on it.

Section 3. Setback Lines. Consistent with the City and County of Durham zoning regulations at the time this Declaration is recorded in Durham County, no building or other improvement permanent in nature shall be constructed outside or beyond the various lot lines for each Lot as shown on the recorded plat of Buck Crossing. Minor violations of these requirements not to exceed ten percent (10%) of the stated distance may be waived in writing by Declarant, or its assigns, or by the Architectural Control Committee and any encroachment into the setback areas done by Declarant during initial construction on any Lot shall be waived so long as said violation does not exceed twenty percent (20%) of the stated setback distance and so long as said violation does not conflict with or violate any applicable governmental regulation or ordinance.

Section 4. Quiet Enjoyment. No obnoxious or offensive activity shall be carried out upon the Property, nor shall anything be done thereon which may be or may become a nuisance or annoyance to the neighborhood. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that this shall not be construed to prohibit temporary deposits of trash, rubbish, and other such items for pickup by governmental or other similar garbage/trash removal services.

Section 5. Signs. No signs of any kind except those advertising an individual lot "For Sale" or "For Rent" and except for those signs used by the Declarant in the advertising of the Property or erected by Declarant identifying portions of the Property such as "sight easement" or "common area" shall be displayed for public view in and about the premises.

Section 6. Items to be Approved by Association. Without the prior approval of the Board of Directors as to location, style, type, size and composition, no antennae, aerials, pole towers, solar collectors or similar structures, no fuel tanks or any similar type of storage receptacle, no temporary structures such as sheds, mobile homes, trailers or tents may be placed on any Lot or the Open Space. Declarant, its successors or assigns, may place one or more construction trailers upon any Lot or the Open Space during construction provided the same are removed within a reasonable period of time after construction in that area has been completed. No travel trailers or recreational vehicles shall be at any time used as a residence either temporarily or permanently.

Section 7. No structure less than twelve hundred (1,200) square feet of heated living space shall be permitted to be built upon any Lot in Buck Crossing.

Section 8. Violation of any of these provisions shall subject the violating Lot owner to legal action, in law or in equity, filed against him by either the Board of Directors of the Association or any Lot owner in Buck Crossing. Such legal action, if successful, shall provide for the payment of reasonable attorney's fees in addition to remedies in law or in equity.

#### ARTICLE IX

#### EASEMENTS

Section 1. All of the Properties, including Lots and Open Spaces, shall be subject to such easements for water lines, sanitary sewer lines, storm drainage facilities, gas lines, cable TV, telephone and electric power lines and other public utilities as shall be or shall have been granted by the Declarant or by its predecessors in title. Satellite dishes not to exceed eighteen (18) inches in diameter shall be permitted in Buck Crossing,

provided that the location of such a satellite dish shall be in the rear of or behind the house. Declarant, while it retains fee simple title to at least one (1) Lot in Buck Crossing, or the Association's Board of Directors shall have the power and authority to grant and establish upon, over, under and across the Open Space as conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property as well as its proper maintenance or operation.

Section 2. All Lots shall be subject to easements for encroachment of initial improvements constructed on adjacent Lots or on the Open Space to the extent that such initial improvements actually encroach, including, but not limited to, such items as overhanging eaves, gutters and downspouts, steps, porches and walls.

#### ARTICLE X

##### EASEMENTS FOR CONSTRUCTION PURPOSES

The Declarant, or its duly authorized agents, shall have full rights of ingress and egress to and through, over and about the Open Space and Stormwater Easements during such period of time as the Declarant is engaged in any construction or improvement work on or within the Property described herein or any additional property which may, subject to the provisions of this Declaration, be annexed to the Property. Declarant shall further have an easement for the purposes of storage of materials, vehicles, tools, equipment and so forth which are being utilized in such development or construction. No Lot Owner, his guest, licensees, clients, or invitees shall in any way interfere or hamper Declarant, its employees, successors, agents or assigns in its construction work.

#### ARTICLE XI

##### GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect. In the event of any contradiction, real or apparent, between the Articles of Incorporation and the Bylaws, the Bylaws shall control and in the event of any contradiction real or

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apparent, between the Bylaws and this Declaration, then the terms and conditions of this Declaration shall control.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

(a) Any "material" change to the Declaration or Bylaws will require the written consent of at least fifty-one percent (51%) of the mortgages who hold a first mortgage lien on a Lot.

(b) Consistent with Federal National Mortgage Association guidelines, any amendment dealing with any of the following is herein identified as constituting "material" changes: voting rights, assessments, assessment liens, or subordination of assessment liens; reserve for maintenance, repair and replacement; responsibility for maintenance and repairs; reallocation of interests in the general common areas, if any, or rights to their use; boundaries of any Lot; convertibility of any Lot into common areas or the reverse thereof; expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project unless the right to annex property to the project by way of phasing has been specifically reserved in the Declaration; insurance or fidelity bonds; leasing of bonds; leasing of Lots; imposition of any restriction on a Lot Owner's right to sell or transfer his or her Lot; a decision by the Association to establish self-management when professional management had been required adopted previously; restoration or repair of properties after a hazard damage or partial condemnation in a manner other than as specified in the documents; any action to terminate the legal status of the project after substantial destruction or condemnation occurs; and any provision that expressly benefits mortgage holders, insurers or guarantors.

(c) In the event the Lot Owners vote to terminate the project or properties for any reason other than substantial destruction or condemnation of the properties, then such an amendment shall require the written agreement of at least sixty-seven percent (67%) of the first mortgagees.

(d) In the event an amendment is not deemed, as herein defined, a "material" change, then notice of the change must nevertheless be given to all first mortgage holders which holders shall have thirty (30) days in which to protest or otherwise object to the amendment. If no response has been given by a mortgage holder within the aforesaid thirty (30) days, then the amendment shall be deemed accepted by the mortgagee.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Department of Veterans Affairs or the Federal National Mortgage Association; annexation of additional properties dedication and/or mortgaging of Open Spaces, Recreation Area and Stormwater Easements, and amendment of this Declaration.

Section 5. Mortgagee's Rights. A first mortgagee, or the insurer or guarantor of a first mortgage shall be entitled, upon written request, to receive copies of this Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation of Buck Crossing; entitled to inspect the books and records of the Association during normal business hours or under other reasonable circumstances; entitled to receive at no additional cost the annual audited financial statement within ninety (90) days following the end of the fiscal year; entitled to receive written notices of meetings of the Association and to designate a representative to attend all such meetings; entitled to receive timely notice of any substantial damage to or destruction of any part of the Open Space, and Stormwater Easements and facilities; entitled to receive notice if any part of the Open Space and Stormwater Easements and facilities are subjected to a condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority; entitled to receive notice of any sixty (60) days delinquency in the payment of assessments or charges of any Owner of any Lot upon which that mortgagee, insurer or guarantor holds a mortgage; entitled to receive notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and entitled to receive notice of any proposed action which requires the consent of a specified percentage of mortgage holders.

Section 6. Additional Rights and Duties of the Association. The Association shall maintain in effect at all times casualty and liability insurance and fidelity bond coverage as is consistent with Federal National Mortgage Association guidelines, including, if required, One Million and No/100 Dollars (\$1,000,000.00) liability policy covering all the Open Space, Recreation Area and Stormwater Easement lands.

Section 7. Working Capital or Additional Reserve Account. Upon the sale and conveyance of a Lot by and from Declarant, and/or Builder the third party purchaser thereof shall transfer to the Association a sum of money equal to two (2) monthly assessments to create or be added to the Association's working capital or reserve account. Such funds shall not be deemed an advanced payment of the regular Annual Assessment.

Section 8. Reserved Rights of Lot Owners. No Lot Owner shall be subject to a restraint imposed by the Association upon his right to sell, transfer or otherwise convey his Lot. No Lot Owner shall be subject to any restraint imposed by the Association upon his right to mortgage his Lot with whomever or whatever institution and upon those terms and conditions the Lot Owner is willing to accept. Each Lot Owner is entitled, as set forth in Article XI, Section 5, above, to likewise inspect the books and records and other related documents of the Association during normal business hours or under other reasonable circumstances.

Section 9. Contracts. Any contract, lease or agreement entered into by the Association on its own behalf or by Declarant on behalf of the Association must be terminable by either party without cause upon not more than ninety (90) days notice to the other party and with cause upon not more than thirty (30) days notice to the other party. If so terminated, no termination fee shall be required to be paid to the party so terminated. This provision shall include, but not be limited to, contracts for professional management of the project.

Section 10. Annexation.

Additional residential property, Open Space and Recreation Areas may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Branch Banking & Trust Company joins in the execution of this instrument for the sole purpose of subordinating the lien of its Deed of Trust recorded in Book \_\_\_\_\_ a Page \_\_\_\_\_ of the Durham County Registry, to this Declaration to the same extent as if this Declaration had been executed and recorded prior to the recording of the aforesaid Deed of Trust.


IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be signed in its name, its corporate seal to be affixed hereto and attested by its Secretary,

all by authority of its Board of Directors duly given this the 1  
day of September, 1998.

*October*

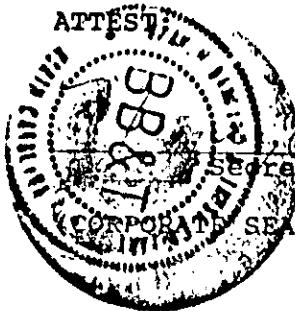
J & D REALTY OF DURHAM, INC.

By *Dana A. Kelly*  
Dana A. Kelly, President

ATTEST  
  
*K. Chu*  
Cecilia K. Chu, Secretary  
(CORPORATE SEAL)

BRANCH BANKING & TRUST COMPANY

By *W. Bell*  
W. Bell, President

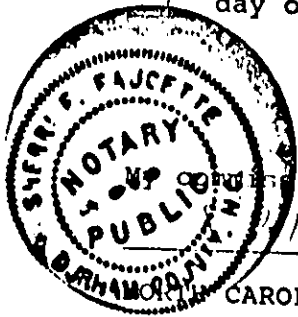
ATTEST  
  
*W. Bell*  
Secretary  
(CORPORATE SEAL)

NORTH CAROLINA

DURHAM COUNTY

I, a Notary Public of the County and State aforesaid, certify that Cecilia K. Chu, personally came before me this day and acknowledged that she is the Secretary of J & D REALTY, INC., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal, this, the 9 day of ~~September~~, 1998. OCTOBER



Sharon F. Lawrence  
Notary Public

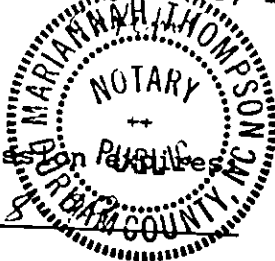
My commission expires: 1-2001

CAROLINA

DURHAM COUNTY

I, a Notary Public of the County and State aforesaid, certify that Nancy G. Frost, personally came before me this day and acknowledged that she is the Secretary of BRANCH BANKING & TRUST COMPANY, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by her as its ASST Secretary.

Witness my hand and official stamp or seal, this, the 9th day of ~~September~~, 1998.



Marianna H. Thompson  
Notary Public

My commission expires 5-8

State of North Carolina - Durham County  
The foregoing or annexed certificate(s) of Marianna H. Thompson

A Notary (Notaries) Public for the Designated Governmental units is(are) certified to be correct.

This the 13 day of Oct, A.D. 19 98

WILLIE L. COVINGTON  
Register of Deeds

Shirna Davis  
By: Assistant/Deputy  
Register of Deeds

## EXHIBIT "A"

Beginning at an iron stake found in the eastern right of way of North Carolina Highway 751, said stake being 710 feet in a northerly direction with the intersection of Massey Chapel Road and being the northwest corner of Neals Ranch Subdivision as shown in Plat Book 45 at Page 63 of the Durham County Registry, also being a control corner North Carolina Grid Coordinates North 780,762.0732 East 2,012,212.504; thence along and with the eastern right of way of North Carolina Highway 751, North 8° 31' 35" West 488.91 feet to a control corner being the southwest corner of Cynia B. Shimm property, Plat Book 135 at Page 65 of the Durham County Registry; thence along and with the southern property line of Shimm, North 79° 03' 08" East 1,872.55 feet to an iron stake in the western property line of U.S. Government Property, Jordan Lake Project; thence South 26° 12' 54" West 343.81 feet to a concrete monument; thence South 36° 41' 54" West 165.97 feet; thence North 89° 55' 52" West 233.30 feet; thence South 1° 26' 51" West 168.37 feet to an iron stake, being the northeast corner of Neals Ranch Subdivision; thence along and with the northern property line of Neals Ranch Subdivision, South 79° 45' 04" West 399.69 feet to an iron stake; thence South 79° 41' 13" West 300.33 feet to an iron stake; thence South 79° 54' 49" West 597.83 feet to a control corner being the point and place of beginning and BEING all of Lot 1, containing 16.5624 acres and Lot 2 containing 1.9894 acres as shown on the map entitled "Map of Boundary Survey for J & D Realty of Durham, Inc." by Southeastern Surveys, Inc., dated July 8, 1996 and being recorded in Plat Book 136 at Page 1 of the Durham County Registry to which reference is hereby made for a more particular description of same.