

INSTRUMENT # 2003028194



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

RETURNED TO *BLOCK CROUCH KEETER  
& HUFFMAN LLP*

DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
THE RESERVE AT MASONBORO,  
SECTION 1

THESE COVENANTS, CONDITIONS AND RESTRICTIONS (the "Protective Covenants") made this the 7<sup>th</sup> day of May, 2003, by THE RESERVE AT MASONBORO, LLC, a North Carolina limited liability company, its successors and assigns, whether one or more, hereinafter referred to as "DECLARANT".

**WITNESSETH:**

WHEREAS, DECLARANT is the owner of certain real property in New Hanover County, North Carolina, which is more particularly described as THE RESERVE AT MASONBORO, SECTION 1 in that map recorded in map Book 44, Page 43 of the New Hanover County Registry, reference to which is hereby made for a more particular description.

NOW, THEREFORE, DECLARANT hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the real estate, and which touch and concern the land and shall run with the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof

**ARTICLE I**  
**Definitions**

Section 1 Act shall mean the Planned Community Act, codified in Chapter 47F of the North Carolina General Statutes

Section 2 Articles shall mean the Articles of Incorporation of THE RESERVE AT MASONBORO HOMEOWNERS ASSOCIATION, INC

Section 3. Association shall be used to mean and refer to THE RESERVE AT MASONBORO HOMEOWNERS ASSOCIATION, INC., a private non-profit corporation formed or to be formed by the DECLARANT primarily as a Homeowners Association for the Lot Owners in THE RESERVE AT MASONBORO, all of whom shall be members of the Association

Section 4. Board of Directors or Board shall be the elected board governing the Association and managing the affairs of the Association. As used herein, the terms shall also mean the Executive Board as that term is defined in the Act

Section 5. Bylaws means the Bylaws of THE RESERVE AT MASONBORO HOMEOWNERS ASSOCIATION, INC., as the same may be amended from time to time.

Section 6 Common Area/Common Elements shall mean and refer to all real property owned or leased by the Association for the common use and enjoyment of the Owners, DECLARANT, and DECLARANT'S guests, invitees, licensees, and/or assigns, including improvements thereto Common area/Common Elements shall also include any easement areas and improvements thereto or thereon, and any fencing or walls, whether located within easement areas or upon other Common Areas.

Section 7 Common Expense means and includes actual and estimated expenses of maintaining and operating the Common Areas/Common Elements, Conservation and Buffer Areas and Landscaped areas within road right of ways and operating the Association for general purposes, including any reasonable reserve, as may be found necessary and appropriate by the Board of Directors pursuant to these Protective Covenants, the Bylaws and the Articles of Incorporation of the Association, including the following:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses of administration, maintenance, repair or replacement of the Common Areas and the stormwater system,
- (c) Expenses declared to be Common Expenses by the provisions of these Protective Covenants or the Bylaws, including, but not limited to any insurance premiums or costs for policies of insurance required hereunder or in the Bylaws;
- (d) Expenses agreed by the Members to be Common Expenses of the Association;
- (e) Any ad valorem taxes and public assessments levied against the Common Area

Section 8. DECLARANT shall be and refer to THE RESERVE AT MASONBORO, LLC, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the DECLARANT for the purpose of development

Section 9. Lot shall mean and refer to any of the Lots numbered 6 through 15, 26, and 39 through 45, as shown on the plat of THE RESERVE AT MASONBORO, recorded as aforesaid, in the New Hanover County Registry together with the single family structure or dwelling (if any), and any other numbered lots which may be shown on maps which may be recorded in the future showing additional sections of THE RESERVE AT MASONBORO.

Section 10. Member shall mean and refer to the Owner or Owners of a Lot in THE RESERVE AT MASONBORO

Section 11 Owner shall mean and refer to the record owner; whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties including contract sellers, but excluding those having such interest merely as security for the performance of an obligation

Section 12. Person shall mean and refer to an individual, corporation, limited liability company or limited liability partnership, partnership or limited partnership, association, trustee, or other legal entity.

Section 13 Properties shall mean and refer to that certain real property which is described as THE RESERVE AT MASONBORO, in that map recorded in Map Book 44, Page 43 of the New Hanover County Registry, reference to which is hereby made for a more particular description, and such additions thereto as may hereafter be brought within the jurisdiction of the Association

Section 14. Protective Covenants shall mean this instrument as it may be from time to time amended or supplemented

Section 15. Subdivision means all of that real property known collectively as THE RESERVE AT MASONBORO, Section 1, as shown on that map recorded in Map Book 44, Page 43 of the New Hanover County Registry and all maps which may be recorded in the future showing additional sections of THE RESERVE AT MASONBORO.

## **ARTICLE 2**

### **Property Rights**

Section 1 Owners' Easements/Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions.

- (a) The right to the Association to limit the number of guest of Members.
- (b) Pursuant to the provisions of the Act, the right of the Association to suspend the voting rights and right to use the Common Areas and the recreational

facilities by an Owner for any period during which any assessment against his Lot remains unpaid or, as the case may be, until the infraction is cured

(c) The right of the Association to dedicate or transfer all or part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. Except for the authority of the Association and the DECLARANT to grant or convey standard utility easements for the benefit of the Subdivision and, in order to obtain utility services to the Common Areas, no such dedication or transfer shall be effective unless approved in writing by Members of the Association entitled to cast at least eighty percent (80%) of the votes in the Association

(d) The right of the Association to formulate, publish and enforce rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area and the right of the Association to establish penalties for any infractions thereof.

(e) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and carrying out its maintenance responsibilities and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the Lot Owners hereunder

(f) Easements as provided in Article 4 hereof.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, but subject to the provisions of these Protective Covenants, his rights of enjoyment to the Common Area to the Members of his family, his tenants, or contract purchasers who reside on the property.

### **ARTICLE 3** **DECLARANT'S Rights**

Section 1 The DECLARANT hereby reserves the right to annex and subject to these restrictions real property which is located within a 1 mile radius of, is adjacent to or is contiguous with that property described in Map Book 44, Page 43 of the New Hanover County Registry, in order to extend the scheme of these Protective Covenants to other property to be developed and thereby bring such additional Properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon, which is subject to these Protective Covenants shall be designated consecutively as "Section 2", "Section 3", and such other similar designations for any additional phases added.

Section 2. The rights reserved by DECLARANT in Section 1 of THE RESERVE AT MASONBORO and all annexed Sections include the right to change, alter or designate Lot(s), roads, utility and drainage facilities and easements, and to change, alter or redesignate such other

present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable. The rights reserved in this Section specifically include the right of DECLARANT to redesignate, change, or alter any platted Lot(s) into road(s), notwithstanding the foregoing, DECLARANT may not change or alter any platted lots which have been conveyed.

Section 3 In addition to the foregoing, and not in limitation thereof, the DECLARANT shall have all of those rights defined as “Special Declarant Rights” in the Act

#### **ARTICLE 4** **General Easements**

Section 1. Easements are reserved unto the DECLARANT, any successor DECLARANT and to the Association in the Common Areas for installation and maintenance of underground utilities and drainage facilities

Section 2. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Common Areas within the Subdivision for each and every purpose or use to which such Common Areas were intended as determined by their type, or for which such Common Areas generally are used, including, but not limited to, easement of access, maintenance, repair, replacement or improvement of or to the Common Areas Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto.

Section 3. The Association hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and through the Common Areas. Provided however that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

Section 4. Easements and rights of way over and upon the rear, front and side five (5) feet of each Lot for drainage and the installation and maintenance of utilities and services are reserved to DECLARANT and its successors and assigns for such purposes as DECLARANT may deem incident and appropriate to its overall development plan. The easements and right of way areas reserved by DECLARANT on each Lot pursuant hereto shall be maintained continuously by the Owner, but no structures or plantings or other material shall be placed or permitted or remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems Improvements within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary in the opinion of the DECLARANT to provide an economical and safe installation. The DECLARANT shall have no maintenance responsibilities for such easement areas.

Section 5 Every Owner shall have a right and easement of enjoyment in and to any and all other Common Areas which are owned or leased by the Association for the enjoyment of the Owners; this right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot

Section 6 The rights reserved by DELARANT in Article 3 and all annexed Sections include the right to change, alter or designate Lots, roads, utility and drainage facilities and easements, and to change alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment of the DECLARANT, be necessary or desirable Except as allowed in Article 3, the DECLARANT shall have no right to change, alter or redesignate the character of the use of the Lots within the development

Section 7. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the Lots and Common Area in the performance of their duties.

Section 8 The real property in this Subdivision may be subjected to a contract with Carolina Power and Light Company for the installation of underground electrical utilities, which may require an initial contribution and/or the installation of street lighting, which will subject each Owner to a continuing monthly payment to Carolina Power and Light Company.

Section 9. An easement is hereby established over all Lots and Common Area for the benefit of applicable governmental agencies for the setting, removing and reading of water meters maintaining and replacing water, drainage and drainage facilities, fire fighting, law enforcement, garbage collection and the delivering of mail

Section 10. An exclusive easement is hereby established in favor of DECLARANT over all Common areas for access to adjacent properties for the purposes of future development and the installation of streets and public utilities.

Section 11 An easement is hereby established and reserved in favor of DECLARANT, and those to whom DECLARANT may delegate such rights, for the use and enjoyment of Common Areas and Common Elements. The use of such easement reserved unto said DECLARANT, shall not unreasonably interfere with the rights of the Owners and the Association to the use and enjoyment of said Common Areas and Common Elements Specifically, but not in limitation of the foregoing reservation of easement, DECLARANT hereby conveys to Claud L Efird, Jr., T Edmond Efird, Alex M. Efird, Alex M Efird, Jr., Hazel Claire McEachern Efird Russo, Carol Lee Efird Smith, George Hudson Efird, Katherine Shephard Efird, McArver Efird Sullivan, John Stewart Efird and Sarah Edmond Efird the right to use the Common Areas and improvements, without charge, fee or assessment until the named individuals shall die, or no longer own any interest in any property adjoining The Reserve at Masonboro, either as individuals or as members of Efird Family Properties, LLC. Such right is non-transferable.

Section 12. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on all undersigned, its

successors an assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, Mortgagee and other person having an interest in said lad, or any part or portion thereof, regardless of whether or not reference to said easements is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in these Protective Covenants.

## **ARTICLE 5**

### **Homeowner Association, Membership and Voting Rights**

Section 1. Purpose. An Association named THE RESERVE AT MASONBORO HOMEOWNERS ASSOCIATION, INC has been formed pursuant to the requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina. Its purposes are to own, manage, maintain and operate the Common Areas and Common Elements, the Conservation and Buffer Areas, utility lines serving the Subdivision, and which are not maintained by the service provider, fences and walls, common elements, and landscaped areas within road rights-of-way; to enforce the Protective Covenants contained herein; to make the enforce rules and regulations governing the Owners' use and occupation of Lots; and, to do such other things or take such further actions is furtherance of the foregoing or as set forth in the Articles and Bylaws. Unless restricted by the Act, or otherwise set forth in the Articles, the Bylaws or these Protective Covenants, any act or action to be taken or right which may be exercised by the Association shall be carried out, performed or exercised by the Board of Directors.

Section 2. Membership Every person who is record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Association. Ownership of such interest shall be the sole qualification for such membership but there shall be only one vote per Lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot The Board of Directors may make reasonable rules regarding proof of ownership. Each Owner has the duty to comply with and obey these Protective Covenants, the Articles, the Bylaws, and any rules and regulations adopted by the Association.

Section 3. Voting Rights The Association shall have two classes of voting memberships.

(a) Class "A". Class A Members shall be all owners with the exception of the DECLARANT and shall be entitled to one vote for each Lot owned When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be case with respect to any Lot.

(b) Class "B". Class B Member(s) shall be the DECLARANT or any successor to any DECLARANT rights reserved herein or in the Act and shall be entitled to four (4) 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

- i. When the Class "A" votes exceed the Class "B" votes;
- ii. On December 31, 2018, or
- iii. Upon the voluntary surrender of all Class "B" memberships by the holder thereof.

Section 4. Common Area. Except the initial conveyance of the Common Area by the DECLARANT to the Association, the Common Area cannot be mortgaged or conveyed without the consent of four-fifths (4/5) of the Lot Owners.

Section 5. Management and Administration. The management and administration of the Common Areas of the Subdivision and the Association shall be the sole right and responsibility of the board of Directors. The management shall be carried out in accordance with the terms and conditions of these Protective Covenants, the Articles of Incorporation and bylaws of the Association, but may be delegated or contracted to manager(s) or a management service.

Section 6. Assignment to Association. All water, sewer, land use, stormwater system, and utility permits, agreements and easements between DECLARANT and any municipal or governmental agency or department or public or private utility company shall be assumed by the Association upon the assignment of all such permits, agreements and easements to the Association by DECLARANT. The Association shall thereafter be responsible for and assume all duties, obligations, and rights and privileges of DECLARANT under such permits, agreements and easements, including all maintenance responsibilities.

## **ARTICLE 6**

### **Covenants 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 therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. General assessments or charges for Common Expenses as budgeted and approved by the Association, and
- b. Special assessments for capital improvements, and other extraordinary or unexpected expenses not budgeted as a general assessment, in any given year as may be established by the Board of Directors, and
- c. Individual assessments against specific Lot(s) or property, in the event an Owner fails to comply with the provisions of these Protective Covenants,

the Articles, Bylaws or rules and regulations of the Association. The Association, through its Board of Directors, may perform such required task or remedy such matter, or assess a fine for such failure to comply and may levy the cost of such fine, performance, or remedy against the Owner(s) and the Owner's Lot or property as an individual assessment; and

The general, special and individual assessments, together with interest (at 18% per annum), late fees, costs and all attorney's fees and expenses, shall be a charge on the Lot and shall be continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, late fees and attorney's fees and expenses, 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 any successor in title unless specifically assumed by them; provided, however, such assessment shall always be a lien upon the Lot until paid, and no sale shall extinguish such assessment or assessment Lien.

PROVIDED, HOWEVER, the DECLARANT shall not be required to pay any assessments for any Lot which is platted of record in the Office of the Register of Deeds of New Hanover County as Lots in THE RESERVE AT MASONBORO and which are owned and held for sale by the DECLARANT. DECLARANT shall, however, pay the difference between the total yearly budgeted annual assessment and the amount due from each NON-DECLARANT Lot Owner for such annual assessment until such time that the Association is turned over to the Owners under the provisions of Article II, Section 3 hereinabove.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the maintenance, repair, replacement and improvements and maintenance of the Common Area and Common Elements and to pay the taxes and other municipal charges or fees charged to or levied against the Common Area and Common Elements.

Section 3. Initial General Assessment. The initial general assessment, due and payable to the Association, shall be prorated and paid at the time of closing of the purchase of a Lot by an owner, so that all payments thereafter shall be due on January 1 of each year or the due date(s) which may be set by the Board of Directors as is more fully set forth in Section 6 of this Article. All general assessments shall be fixed to a uniform rate for all Lots.

Section 4. Special Assessments for Capital Improvements. In addition to the general assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the 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 the Common Area, including easement areas, fixtures, and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Special assessments for the maintenance of sewer lines and other elements of the sewer system, the drainage and stormwater runoff systems, and other utility systems, as required by government permits or regulations, may be assessed by the Board of Directors without a vote of

the members All special assessments for capital improvements shall be fixed to a uniform rate for all Lots.

Section 5 Working Capital Assessment. At the time title is conveyed to an Owner by DECLARANT, each Owner shall contribute to the Association as working capital an amount equal to two months of budgeted assessments. Such funds shall be used for initial operating and capital expenses of the Association including, but not limited to, prepaid insurance, supplies, maintenance of or improvement to the Common Areas and facilities, furnishings, and equipment. All amounts paid into the working capital fund are not to be considered as advance payment of regular assessments, and are not the property of nor refundable to any Owner. All working capital funds shall become part of the general operating funds of the Association.

Section 6 Notice and Quorum for any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of membership shall constitute a quorum. The required quorum at any 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 7 Date of Commencement of General Assessments and Due Dates. The general assessments provided for herein shall commence on the date of conveyance of each Lot to an Owner other than DECLARANT. The first general assessment shall be adjusted according to the number of months remaining in the calendar year. After the first year's general assessment, the Board of Directors shall, prior to the end of the calendar year, adopt a proposed budget for the planned community for the upcoming calendar year. The Board shall provide all of the Lot Owners a summary of the budget, together with a notice of a meeting to consider ratification of the budget. This notice shall contain a statement that the budget may be ratified without a quorum, and that the budget will be ratified, as presented unless, at the meeting a majority of the votes in the Association rejects the budget. The Board of Directors shall require the general assessments to be paid at least annually, but may require the general assessments to be paid more often. 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 specified Lot have been paid.

Section 8 Effect of Nonpayment of Assessments and Remedies of the Association. Any assessments, if not paid within thirty (30) days after the date such assessment is due, together with interest at the maximum rate allowed by law, costs of collection, court costs, late fees and reasonable attorney's fees, shall constitute a lien against the Lot upon which such assessments are levied. The Association may record notice of the same in the office of the Clerk of Superior Court of New Hanover County, or file a suit to collect such delinquent assessments and charges. The Association may file a Notice of Lis Pendens and bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. Any foreclosure proceeding shall be a "power of sale" foreclosure as set forth in the Act. No Owner may waive or otherwise escape liability for the assessments

provided herein by non-use of the Common Area or abandonment of his Lot for any other reason.

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 become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for an assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments

## **ARTICLE 7**

### **Architectural Control**

Section 1. No structures, buildings, or improvements shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition or change or alteration be made, including change of color, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by DECLARANT, or by an architectural committee composed of three (3) or more representatives appointed by the DECLARANT. Structures, buildings and improvements shall include, but not be limited to any dwelling, garage, fence, wall, sidewalk, hedge, landscaping materials, change in grade or slope, drainage pipe, drainage canal, ditch, swale, catch basin, treehouse, playhouse, sign, flag pole, exterior illumination, monument or marker, outdoor statuary, exterior lights, security lights, storm door, well utility facility, mailbox, patio, deck, screening for outdoor trash cans or other purposes, sprinkler system, driveway, outdoor decorative objects, shrubbery or landscaping. In the event said DECLARANT, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after complete plans and specifications have been received by it, and notification of receipt of plans and specifications has been sent to the submitting Owner(s), approval will not be required and this Article will be deemed to have been fully complied with. DECLARANT shall notify Owner if complete plans and specifications have not been received. DECLARANT, subject to the provisions of Section 2 hereinafter, may assign these duties to the Board of Directors of the Association or to an architectural committee composed of three (3) or more representatives appointed by the Board. No application for approval of a plan for initial construction of a dwelling on any Lot shall be approved for any reason unless Logan Developers, Inc d/b/a Logan Construction Company, its successors or assigns is the Builder or Contractor named for the construction of the improvement.

Section 2 All duties and responsibilities conferred upon the Board of the Architectural Control Committee by these Protective Covenants or the Bylaws of the Association may be exercised and performed by the DECLARANT or its Designee at its discretion, so long as DECLARANT shall own any Lot in the Subdivision or any additions annexed thereto by Supplemental Protective Covenants or Amendment to these Protective Covenants.

Section 3. In addition to its duties of review and approval of external harmony and design, the Committee shall monitor the compliance with all use restrictions, design and architectural control provisions and conditions and other restrictions. The Committee shall report such violations as may come to its attention to the DECLARANT or the Association for appropriate actions of enforcement.

Section 4. The Committee shall be composed of a minimum of three (3) members of the Association. Until such time as the committee has been established, the DECLARANT shall perform the functions as outlined above and elsewhere herein. Where the term "Declarant" or "The Committee" have been used, this term shall construed to mean that only one of the two entities will perform the duties and function, and when the Committee is established, that Committee will perform the duties and functions as outlined above. Upon the appointment and organization of the Committee, the Committee shall adopt such administrative procedures and guidelines as will insure the submission and review, and the approval, or rejection, of any and all buildings and/or improvements constructed.

Section 5. No construction, which term shall include within its definition clearing, excavation, grading and other site work, shall take place except in strict compliance with this Article, and until the approval of the Committee or DECLARANT has been obtained. No trees shall be removed from any Lot until and unless specifically approved by the Committee. A tree survey shall be submitted which shows the location and species of each tree located on the Lot of 3" diameter measured at 3" above grade, and shall clearly identify those trees depicted which the Owner requests approval to remove.

Section 6 Since the establishment of standard inflexible building setback lines in location of homes on Lots tends to force construction of homes directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related concerns, no specific setback lines are established by these Protective Covenants. In order to assure, however, that the foregoing considerations are given maximum effect, the DECLARANT reserves the right to select the precise site location of each house or other structure on each lot in its sole discretion and to arrange the same in such manner and for such reasons as the DECLARANT deems sufficient, provided however, the DECLARANT shall make such determination so as to insure that the development of the Lots subject to these Protective Covenants is consistent with the provisions set forth herein. The placement of homes is meant to create a sense of spaciousness and to avoid monotony. For such purposes it is the DECLARANT'S intent that setback lines may be staggered where appropriate. In any event, no house shall be erected closer to the front Lot line or nearer to any side Lot line than the minimum distances established by applicable governmental ordinances.

Section 7. All improvements, driveway connections, and plantings, including, but not limited to, landscape materials, irrigations systems, walls, and fences located within the road right of way must meet North Carolina Department of Transportation (“DOT”) specifications and must be approved by DECLARANT or Committee. Lot Owner shall be responsible for all roadway repairs required because of damage caused by Lot Owners for failure to comply with this paragraph, whether such damage occurs before or after the road has been accepted and approved by DOT as a public road. DECLARANT shall not be responsible for any such roadway repairs.

Section 8. The Committee or DECLARANT shall have jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved, including any exterior change or alteration and change of color.

Section 9. The Committee or DECLARANT shall have the right to disapprove any plans, specifications and details submitted to it in the event the same are not in accordance with any of the provisions of these Protective Covenants and any architectural guidelines which may be in effect at the time.

Section 10. The Committee, or its agent, or the DECLARANT shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details.

Section 11. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any residence or permitted appurtenant structures, or to paint the interior of the same any color desired.

Section 12. Neither the DECLARANT nor the Committee nor the Board of Directors or any architectural agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

Section 13. Owner(s) shall be responsible for compliance with all applicable governmental statutes, ordinances and regulations, including, but not limited to, land use, zoning, and building regulations.

## **ARTICLE 8** **Maintenance**

Section 1. If the Association or the DECLARANT determines that any Owner has failed to maintain any Lot owned by him in a manner which is reasonably clean, neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, all in the sole opinion of the Association or the DECLARANT, the Association in its discretion, by the affirmative vote of a majority of the members of the Board of Directors, or the

DECLARANT, in its discretion, and following ten (10) days written notice to Owner, may enter upon and make or cause to be made repairs to such improvements and perform such maintenance on the Lot as the removal of trash, cutting of grass, pruning of shrubbery, weeding and items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. The reasonable cost incurred by the DECLARANT or the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become an individual assessment to which such Lot is subject as provided in Article 6 herein

Section 2. The Association shall cause a landscaping or other lawncare service to provide lawncare services to each Lot, including mowing the yards and trimming of shrubs or bushes which are not enclosed in approved Courtyard areas. However, it shall be the continuing responsibility of the Owner of each Lot to assure that the Lot is mowed regularly, including the area between the lot line and the edge of the paved street, and to maintain in a neat condition all landscaping and plant materials contained within their respective enclosed Courtyard areas, if any. Additionally, each Owner shall keep the Lot clear of any unsightly objects, and in the event that the Owner of any Lot within the said Subdivision breaches this restriction, the DECLARANT and the Association reserve the right, and an easement, to enter upon the Lot to take such action as is necessary to clean up the Lot and remove unsightly structures and objects at the Owner's expense as provided in Section 1 above. Where Lots border on or contain ditches, drainage canals or swales, ponds or detention/retention ponds, the Owner of each Lot shall maintain that area, including the slopes, down to the edge of the water in a neat well kempt condition. Washouts or erosions on the Lots adjoining ditch banks, channels, ponds, and swales shall be properly tended to by the respective Lot Owner. Notwithstanding the foregoing, no Lot Owner may do anything, or as the case may be, neglect to take any action, which may cause any modification of the storm water management system constructed in the Subdivision. This obligation and right may be enforced by the Association or any Owner as provided in Article 11 herein.

Section 3. The Association shall maintain all landscaping within the islands and similar areas within the streets and cut-de-sacs. DECLARANT reserves the right to modify or remove these landscaping areas.

Section 4. The Owners of Lots 6 and 26, and all future lots abutting Efir Road and upon which a landscaped berm is located, shall not be allowed to modify, in any way, any landscaping which is located upon or adjoining any berm which runs parallel to Efir Road. The Association shall maintain all such landscaping as a Common Expense.

## **ARTICLE 9**

### **Restrictions on Use and Occupancy**

Section 1. No Lot shall be used except for single-family residential purposes. No commercial use shall be permitted on any Lot. No structure shall be erected, placed or permitted to remain on any Lot other than one (1) detached, single family residence dwelling not to exceed

two and one-half stories in height above floor or piling level and such out buildings as are usually accessory to a single family residence dwelling, including a private enclosed garage.

Section 2 Any dwelling constructed on a Lot subject to these Protective Covenants shall contain not less than 1500 square feet for a one-story dwelling and 1800 square feet for a two story dwelling of fully enclosed and heated floor space all devoted to living purposes (exclusive of roofed or unroofed porches, breezeways, terraces, porches, steps, walks, garages and any outbuildings). In computing the number of square feet allowed as provided herein, no square footage in any part of the dwelling that is constructed over a garage will be counted, unless it is an integral part of the living space and approved by DECLARANT

Section 3. All Lots and Common Areas are subject to the State of North Carolina rules and regulations concerning stormwater runoff as these rules and regulations are amended from time-to-time. The following covenants are intended to insure ongoing compliance with those rules and regulations, and specifically with State Stormwater Management Permit Number SW8020307, as issued by the Division of Water Quality under NCAC 2H.1000. These regulations currently provide that the maximum allowable built-upon area per Lot is restricted to 3800 square feet. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front Lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools. All runoff from the built-upon areas on the Lot 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 to collect lot runoff and directing them into the stormwater system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures. Alteration of the drainage as shown upon the approved plan, may not take place without the concurrence of the State of North Carolina, Division of Water Quality and the approval of the DECLARANT, its designee, and the Association. In addition and specifically, the recessed Park area shown on the Map of THE RESERVE AT MASONBORO referred to above, is a component of the Stormwater Management System of the Subdivision and is regulated and governed by the Stormwater Management Permit applicable to the Property. That recessed Park area is expected to be flooded up to ten (10) inches on a regular basis. The State of North Carolina is hereby made a beneficiary of these Protective Covenants to the extent necessary to enforce its stormwater runoff regulations as the same may be amended from time to time. These covenants are to run with the land and be binding on all persons or parties claiming under them. Further, 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. It shall be the ongoing responsibility of the Association to maintain, repair and replace any and all stormwater systems within The Reserve. All such maintenance, repair and replacement by the Association shall be in compliance with any and all then applicable laws and regulations.

Section 4 No swimming pool shall be permitted on any Lot.

Section 5 No Lot or Lots shall be subdivided except to enlarge an adjoining Lot, but any Lot so enlarged cannot be improved with more than one single family dwelling. An Owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may construct a dwelling