

Prepared By and Hold For: Aaron D. Garrett, Attorney (Box 67)

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
BLOOMFIELD HOMEOWNERS ASSOCIATION, INC.  
AND FOR  
BLOOMFIELD SUBDIVISION

Wake County, NC 503  
Laura M Riddick, Register Of Deeds  
Presented & Recorded 12/05/2001 14:39:41  
Book : 009194 Page : 01936 - 01970

CONTENTS

	<u>Page</u>
PREAMBLE .....	1
ARTICLE I - DEFINITIONS .....	2
ARTICLE II - SUBJECTING ADDITIONAL PROPERTY TO THIS DECLARATION .....	4
ARTICLE III - ARCHITECTURAL CONTROL .....	5
ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION .....	7
ARTICLE V - ADMINISTRATION AND MANAGEMENT .....	9
ARTICLE VI - PROPERTY RIGHTS IN THE COMMON AREA { "PERMANENT OPEN SPACE" } .....	11
ARTICLE VII - COVENANT FOR MAINTENANCE ASSESSMENT ..	12
ARTICLE VIII - RESTRICTIONS ON USE AND MAINTENANCE OF PROPERTY .....	18
ARTICLE IX - RESTRICTIONS ON USE OF PROPERTY BY DECLARANT .....	25
ARTICLE X - EASEMENTS AND RIGHTS .....	27
ARTICLE XI - PROTECTION OF MORTGAGEES .....	27
ARTICLE XII - GENERAL PROVISIONS .....	28
CONSENT - FIDELITY BANK .....	31
EXHIBIT A - DESCRIPTION OF THE PROPERTIES .....	32

This instrument is being re-recorded pursuant to N.C.G.S. §47-36.1 to correct clerical errors, to wit: (a) to insert the date of the instrument on page 1; (b) to correct the name of the Declarant to read Montclair, LLC on pages 1, 3, 29 and 30; and (c) to correct the words "Lot 125" at the top of page 15 to read "Lot 1"; and (d) to correct the name of the Homeowners Association on page 2.

This the 19<sup>th</sup> day of February, 2002.

  
AARON D. GARRETT, ATTORNEY AT LAW  
Original Drafter

- i - Wake County, NC 440  
Laura M Riddick, Register Of Deeds  
Presented & Recorded 02/20/2002 14:57:59  
Book : 009298 Page : 02271 - 02306

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
BLOOMFIELD HOMEOWNERS ASSOCIATION, INC.  
AND FOR  
BLOOMFIELD SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BLOOMFIELD HOMEOWNERS ASSOCIATION, INC. AND FOR BLOOMFIELD SUBDIVISION (hereinafter referred to as the "Declaration"), made this 27th day of November, 2001, by MONTCLAIR DEVELOPMENT, LLC, a North Carolina limited liability company (hereinafter referred to as the "Declarant").



W I T N E S S E T H :

WHEREAS, the Declarant is the owner of those certain lots and parcels and tracts of real property (hereinafter referred to as the "Property" or "Properties") near the Town of Holly Springs, Township of Panther Branch, County of Wake, State of North Carolina, more particularly described in Exhibit A which said Exhibit A is attached hereto, made a part hereof and incorporated herein by reference; and

WHEREAS, Declarant desires to create on such Property a residential community of single-family residential dwellings to be known as "BLOOMFIELD SUBDIVISION" (hereinafter sometimes referred to as "BLOOMFIELD" or the "Subdivision"); and

WHEREAS, to the extent thereof, Declarant shall designate on the various Plats of the Subdivision and will convey to the "Association" (as hereinafter defined) all of the common areas designated and described in Tract 4 of Exhibit "A" attached hereto, including the easements and rights-of-way, which said common areas are hereby designated for the common use and enjoyment of all the residents of the Subdivision (as hereinafter defined), although Declarant makes no representations that any such common areas shall now or may hereafter exist; and

WHEREAS, Declarant desires to provide for the upkeep and maintenance of the PERMANENT OPEN SPACE and other common areas and to provide a vehicle for ensuring that any storm water drainage systems and facilities for the Subdivision are properly maintained, and, to that end, desires to sub-

ject all of the Property within the Subdivision to the covenants, conditions, restrictions, easements, charges, assessments and liens hereinafter set forth, each and all of which is and are for the benefit of said Property, its present and subsequent owners, and the Association as hereinafter specified; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the PERMANENT OPEN SPACE and other common areas in the Subdivision, to administer and enforce covenants and restrictions and protective covenants exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has caused or will cause to be incorporated under North Carolina law as a nonprofit corporation, the "BLOOMFIELD HOMEOWNERS ASSOCIATION, INC." (hereinafter referred to as the "Association"), for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in the attached Exhibit A (together with any property which may be added pursuant to the terms hereof) shall be owned, held, transferred, sold, conveyed and occupied subject to the following easements, covenants, conditions, restrictions, charges, assessments and liens set forth in this Declaration (hereinafter referred to collectively as the "Restrictions"), which said Restrictions shall run with the title to the Property and be binding on all parties owning any right, title or interest in said Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of the Property, each owner thereof (both present and future), and to the Association.

#### ARTICLE I

#### DEFINITIONS

The following words or terms when used in this Declaration, or any Supplemental Declaration, unless the context shall prohibit, shall have the following meanings:

A. "Association" shall mean and refer to ~~THE MOUNT~~ BLOOMFIELD HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns. 6.F.  
Jan

B. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

C. "By-Laws" shall mean and refer to the By-Laws of the Association.

D. "Class A Member(s)" shall mean and refer all those Owners other than the Declarant (See Article IV herof).

E. "Class B Member" shall mean and refer to the Declarant, its successors and/or assigns (See Article IV hereof)

F. "Committee" shall mean and refer to the Architectural Review Committee of the Association.

G. "PERMANENT OPEN SPACE" (hereinafter referred to as the "PERMANENT OPEN SPACE" or as the "common areas") shall mean and refer to the real property, together with any improvements thereon, if any, owned by the Association, whether in fee, by easement or otherwise, for the common use and enjoyment by the Owners of Lots within the Subdivision. The PERMANENT OPEN SPACE shall be maintained by the Association, or its successors in interest, unless dedicated to public use as set forth herein. The Association shall comply with all Wake County and North Carolina ordinances with regard to said PERMANENT OPEN SPACE.

H. "Contract Seller" or "Builder" shall mean and refer to an Owner who purchases a Lot for resale and is not an occupant of any improvements thereon.



I. "Declarant" shall mean and refer to MONTCLAIR DEVELOPMENT, LLC, a North Carolina limited liability company, its successors and/or assigns.

J. "Declarant's Property" shall mean and refer to the property described in Article V, Paragraph B of the Declaration as "Declarant's Property".

K. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map or plat of the Properties, with the exception of any PERMANENT OPEN SPACE, owned in fee or by easement or otherwise by the Association, and with the exception of any street rights-of-way shown on any such recorded subdivision map or plat of the Properties.

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

M. "Membership" shall mean and refer to all of the Members of the Association.

N. "Owner" shall mean and refer to a person or entity who is a record owner of a fee interest in any Lot which is a part of the Properties, including Contract Sellers or Builders who own the Lot (and do not merely have it under contract).

O. "Property" or "Properties" shall mean and refer to the "Existing Property" described in Exhibit A to the Declaration and any additional property annexed into the Association pursuant to the terms and provisions of the Declaration.

P. "Street" shall mean and refer to any street, road, drive, highway or other thoroughfare as shown on any recorded map or plat of the Properties.

Q. "Subdivision" shall mean and refer to BLOOMFIELD SUBDIVISION located off North Carolina State Road 2748 near the Town of Holly Springs, in the Township of Panther Branch, County of Wake, State of North Carolina, together with any additions thereunto annexed by the Declarant pursuant to the terms and provisions of the Declaration.

## ARTICLE II

### SUBJECTING ADDITIONAL PROPERTY TO THE DECLARATION

A. Additions to the Properties by Declarant. The Declarant shall have the right to annex into and bring within the scheme of the Declaration additional properties which are located within any phase of BLOOMFIELD SUBDIVISION, or any other property which is contiguous at any point with the Property or any additions to the Property. A public road, railroad, utility right-of-way, or buffer dividing two properties shall not be deemed to deprive them of contiguity.

B. Method of Making Additions (Annexation). Additions to the Property shall be made by filing for record in the Office of the Register of Deeds of Wake County, North Carolina a Supplemental Declaration of Covenants, Conditions and Restrictions (the "Supplemental Declaration") with respect to the additional property, which said Supplemental Declaration shall describe the property being annexed. Such Supplemental Declaration(s) may contain such additions and modifications of Article VIII of the Declaration as may, in the sole discretion of Declarant, be necessary to reflect the different character of the added properties. In no event, however, shall such Supplemental Declaration(s) revoke, modify or add to the Restrictions established by

the Declaration with respect to the Properties already subject to the Declaration, except to grant the Owners of Lots then subject to the Declaration limited rights with respect to such additional properties (changes to assessments brought about by such addition shall be deemed not to be a revocation, modification or addition of the Restrictions).

C. Future Additions of PERMANENT OPEN SPACE. Future PERMANENT OPEN SPACE may be added to the scheme of the Declaration and included within the Properties subject to the jurisdiction of the Association, although there is no obligation to do so, and no representations are made with respect to any such additions. Such PERMANENT OPEN SPACE will be deeded to the Association by Declarant.

D. Additions by Others. So long as Declarant is a Class B Member, additions may be made by any other Owner who, with the approval of the Declarant and the Board of Directors, which approval may be withheld in their sole discretion, desires to add such property located within the boundaries of the Subdivision to the scheme of the Declaration and to subject it to the jurisdiction of the Association. When Declarant ceases to be a Class B Member, such additions may be made upon approval by two-thirds (2/3) majority vote of the Members who are entitled to vote. Such approval by the Declarant, Board of Directors and, if required, the Membership shall be evidenced by a certified copy of a resolution of approval recorded in the Office of the Register of Deeds of Wake County, North Carolina.

### ARTICLE III

#### ARCHITECTURAL CONTROL

##### A. Architectural Control.

1. Until such time as Declarant shall no longer be a Class B Member of the Association, no dwelling or other structure or other improvements (the "Improvements") shall be erected, placed or altered on any Lot in the Properties, or in any addition thereto, until the Improvements' plans and specifications and the Lot plan (showing the location of such Improvements on the Lot) (collectively, the "Plans") have been approved in writing by the Declarant as to conformity with the Restrictions, quality, materials and as to conformity and harmony of external design with existing (and approved or proposed) Improvements in the Properties, and as to location of the Improvements with respect to topography and finished ground elevation. Such written approval from

the Declarant must be obtained prior to commencing clearing, grading or construction of any kind on a Lot. All Improvements shall comply with the plans as presented unless changes are approved in writing by the Declarant. The written approval of Declarant shall also be required prior to erecting, placing or altering mail boxes, signs and newspaper boxes upon any Lot. All roof pitches for a dwelling and/or garage on any Lot must be approved by Declarant.

Anything herein to the contrary notwithstanding, during the initial development of the Properties, Declarant may limit its review to a review of a typical set of Plans and Specification and Materials for the proposed residence type proposed by a Contract Seller or a Builder to be built within the Subdivision, and, upon Declarant's written approval of such typical Plans, Specifications, and Materials, residences may be constructed in the Subdivision consistent with such approved Plans, Specifications, and Materials without the requirement of further review by the Declarant.

2. Upon or prior to the date upon which Declarant shall cease to be a Class B Member of the Association, the Declarant shall form an "Architectural Review Committee" for the Properties (herein referred to as the "Committee"), which said Committee shall be composed of three (3) members appointed by the Declarant. The initial three (3) members of the Committee shall serve until the annual meeting of the Association next immediately following the date of such appointment by the Declarant. Thereafter the members of the Committee shall be appointed by the Board of Directors of the Association, each such member to serve for a term of one (1) year, said term to expire upon the date of the annual meeting of the Association. Each member of the Committee shall have one (1) vote and a majority vote of the Committee shall be required to constitute Committee action on any issue brought before the Committee. Upon the date upon which Declarant shall no longer be a Class B Member of the Association, the Committee shall assume and be responsible for all of the approvals and responsibilities set forth in subparagraph 1 of paragraph A of this Article with regard to Architectural Control within the Properties. Upon approval by the Committee of the Plans as herein provided, the Committee shall evidence its approval in writing by memorandum or directly upon such Plans and the applicant Owner may then commence construction in accordance with such Plans. The Committee shall approve or reject in writing any Plans within thirty (30) business days after the receipt of the submitted Plans or such approval will be deemed to have been given.

B. Limitation of Liability. No approval of Plans by Declarant or by the Committee shall be construed as a representation, warranty or implication that the Improvements, if built in accordance therewith, will be free from defects, shall meet applicable codes and laws, or will be built in a good and workmanlike manner. Any approvals of Declarant or of the Committee shall be concerned solely with matters of aesthetics and the satisfaction of the requirements set forth in the Declaration. None of the Declarant, the Association, the Committee, the Board of Directors, or the officers or Members of the Association, shall be liable or responsible to anyone submitting Plans for approval for any loss or damage arising out of or related to the approval, disapproval or failure to approve any such Plans, the non-compliance of such Plans with applicable codes and laws, or the construction undertaken pursuant to such Plans. Approval of the Plans by Declarant or by the Committee shall not be construed as approval of any Plans, or as an indication of approval of any Plans, by the Wake County, North Carolina authorities.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

###### A. Membership.

1. Every person or entity who is a record Owner of a fee interest in any Lot which is a part of the Properties, including Contract Sellers or Builders who own the Lot (and do not merely have it under contract), shall be a Member of the Association (herein referred to as "Member" or collectively as "Members"). The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security, unless such persons or entities acquire title to a Lot through judicial or non-judicial foreclosure, deed in lieu of foreclosure or other action.
2. Membership in the Association shall be appurtenant to and shall not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for Membership. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, but the vote for such Members shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot owned by Class A Members, and in no event shall more than One Hun-

dred Twenty-Five (125) votes be cast with respect to any one such Lot owned by the Class B Member. See Paragraph C of this Article IV entitled "Voting Rights".

E. Classes. There shall be two (2) classes of voting Members:

1. The Class A Members shall be all those Owners other than the Declarant.
2. The Class B Member shall be the Declarant, its successors and/or assigns. Class B Membership may cease and be converted to Class A Membership at the option of the Class B Member, by its written notice to the Secretary of the Association. Subject to the provisions of Subsection 3 of this Paragraph B of this Article IV, Class B Membership shall cease and be converted to Class A Membership, without further act or deed, upon the date ten (10) years from the date upon which the Declaration shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina.
3. Notwithstanding a conversion of the Declarant, its successors and/or assigns to a Class A Member or the cessation of the Class B Membership due to the expiration of the ten (10) year period hereinabove described, in the event Declarant, its successors and/or assigns thereafter acquires or adds additional Lots to the Properties such that Declarant, its successors and/or assigns, would, according to Subsection 2 of this Paragraph B of this Article IV, be entitled to Class B Membership, Declarant, its successors and/or assigns, shall thereupon be reestablished as and converted to a Class B Member of the Association, with the benefits and burdens pertaining thereto.

C. Voting Rights.

1. Class A Members shall be entitled to one (1) vote for each Lot owned.
2. Class B Member shall be entitled to One Hundred Twenty-Five (125) votes for each Lot owned (whether or not it is under contract to a Contract Seller or Builder).

3. No cumulative voting shall be permitted.
4. Only those Members who are in good standing with the Association may vote.

## ARTICLE V

### ADMINISTRATION AND MANAGEMENT

A. Governing Documents. The administration of the Properties shall be governed by the provisions of the Declaration, the Articles of Incorporation (the "Articles"), the By-Laws of the Association (the "By-Laws"), and the published rules and regulations of the Association (the "Rules"), if any. In the event of a conflict between the provisions of the Declaration and the Articles and the By-Laws and the Rules, the provisions of the Declaration shall control. In the event of a conflict between the provisions of the Articles and the By-Laws and the Rules, the Articles shall control. In the event of a conflict between the By-Laws and the Rules, the By-Laws shall control.

B. Management of the Association/Board of Directors. The affairs of the Association shall be managed by an Initial Board of two (2) Directors who need not be Members of the Association and who shall be elected by the Declarant. The persons who are to act in the capacity as the Initial Directors of the Association until the selection of their successors are: Thomas C. Hankins and Glenn Futrell.

1. The number of Directors of the Association shall be two (2) and shall be elected by the Declarant (Class B Member) for so long as the Declarant shall own any Lot which is subject by the provisions of this Declaration, or as this Declaration may be amended, to assessment by the Association or owns any real property which is adjacent to and adjoins any Lot which is subject by the provisions of this Declaration, or as this Declaration may be amended, to assessment by the Association and which the Declarant shall annex into the Association pursuant to the terms and provisions of this Declaration, as may be amended (hereinafter referred to as the "Declarant's Property"). Thereafter the number of Directors of the Association shall be increased to five (5), said five (5) Directors to be elected by the

Members at a special meeting of the Members of the Association called by the Declarant within one hundred twenty (120) days next immediately following the date upon which Declarant shall own no "Declarant's Property". At such special meeting of the Members of the Association the Members shall elect one (1) Director to serve a term of one (1) year, two (2) Directors to serve a term of two (2) years, and two (2) Directors to serve a term of three (3) years. The annual meeting of the Members of the Association shall be held each year thereafter on the anniversary of the aforescribed special meeting, unless such date shall fall on a legal holiday, and in such case, on the next business day immediately following such legal holiday.

2. At each annual meeting of the Association after the first annual meeting the Members shall elect the number of Directors needed to fill the vacancy or vacancies created by the Director or Directors whose term (s) is/are expiring, to serve for a term of three (3) years (except in the case of the initial election of a Director, in which case the term of that Director may be shortened to provide for the staggering set forth in this Article, or in the case of the filling of a vacancy, in which case the Director elected to fill the vacancy shall be elected for the unexpired term of the Director whose vacancy is being filled). The term of office of the Directors shall be staggered so that, except for an election to fill a vacancy or to fill a newly created directorship, the terms of not less than one nor more than two Directors shall expire at each annual meeting of the Members of the Association. Each Director shall hold office until his/her death, resignation, retirement, removal or disqualification, or until his/her successor is elected and qualified, whichever event shall first occur. Directors need not be Members of the Association.
3. After the date upon which the Declarant shall no longer own any "Declarant's Property" as heretofore described in this Article, the Members of the Association may, by a majority of the votes cast at any duly called annual or special meeting of the Members at which a quorum is present, increase or decrease the

