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REGISTERED
REGISTERED
WAKE COUNTY

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ASHLEY DOWNS

THIS DECLARATION is made on the date hereinafter set forth by Olive Chapel Associates, LLC, a North Carolina limited liability company having an office in Wake County, North Carolina, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Wake, State of North Carolina, which is more particularly described as follows:

ALL of the land shown on the maps entitled "Ashley Downs, Phase One" recorded in Book of Maps 1995, Pages 1597 and 1598, in the Office of the Register of Deeds of Wake County, North Carolina.

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property 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, and which shall run with, such 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. "Association" shall mean and refer to Ashley Downs Homeowners Association, Inc., its successors and assigns.

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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 Lot which is a part of the Properties, as hereinafter defined, 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 hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Sign Easements for the purposes hereinafter set forth on, over and upon all of that land designated "20' THOROUGHFARE BUFFER" and shown on the maps entitled "Ashley Downs, Phase One" recorded in Book of Maps 1995, Pages 1597 and 1598, in the Office of the Register of Deeds of Wake County, North Carolina and Thoroughfare Buffer Maintenance Easements for the purposes hereinafter set forth on, over and upon all of that land designated "20' THOROUGHFARE BUFFER," "50' THOROUGHFARE BUFFER," and "50' BUFFER" and shown on above-described recorded maps.

Declarant reserves the right, in its sole discretion, to convey from time to time additional property to the Association, which property may include all or any portion of the Properties, including any additional land annexed by Declarant pursuant to Article X, Section 4 hereof and the Association shall accept any such conveyance of additional property and thereafter such additional property shall be held and maintained by the Association as Common Area. Improvements, which may include, but shall not be limited to, roadways, retention or detention ponds or erosion control devices, may be located on such additional Common Area.

The Association shall maintain any retention or detention ponds and any erosion control devices located on the Common Area described above or on any other Common Area hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such pond or erosion control device, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for 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 a pro rata share of the cost of the maintenance of such pond or erosion control device.

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Declarant does not contemplate the construction of any recreational improvements or amenities within the Common Area (e.g. swimming pool, tennis courts, clubhouse, etc.).

SECTION 5. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

SECTION 6. "Declarant" shall mean and refer to Olive Chapel Associates, LLC, as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign, all of which rights, including Declarant's voting and architectural review rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 7. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision map of the Properties with the exception of Common Area. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Area; provided, however, in no event shall Ashley Downs contain a greater number of Lots than the number from time to time permitted by, nor shall any Lot within the Properties contain fewer square feet than the minimum number of square feet from time to time required by, the Town of Apex or other appropriate governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised map of the affected Lot or Lots. Upon the recording by Declarant of such a revised map, each lot shown on the previously recorded map or maps, the boundaries of which are revised by the revised map, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised map shall be a "Lot" as defined in this Declaration.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. OWNERS EASEMENTS OF 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 easements herein reserved by Declarant or created in favor of the Association, including, without limitation the easements set forth in Article VIII hereof;

(b) the right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed

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sixty (60) days, for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer to any public agency, authority or utility non-exclusive easements on, over and upon all or any part of the Common Area for purposes of providing service to the Common Area or the Lots subject to such conditions as may be agreed to by the Association's Board of Directors; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(d) the right of the Association, with the consent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members, to dedicate or transfer to any public agency, authority or utility, and to transfer to any party, all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer (any such transfer or dedication shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(e) the right of the Association to impose 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;

(f) the right of the Association to borrow money for the purpose of improving the Common Area and facilities thereon and, with the assent of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances; and

(g) the right of the Association to exchange portions of Common Area with the Declarant for substantially equal areas of the Properties for the purpose of eliminating unintentional conveyances of Common Areas or unintentional encroachments of

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dwellings or other improvements onto portions of the Common Areas or for the purpose of enhancing the utility of the Common Areas to be retained by the Association.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 3. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. The voting Members of the Association shall be the Class A Members and the Class B Members defined below.

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

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

Class B The Class B Members shall be the Declarant and its successors and assigns, if Declarant makes an express conveyance of its developer rights under this Declaration to such successor or assign, and each Class B Member shall be entitled to three (3) votes for each lot owned by it and shown on the Plan for "Ashley Downs" approved by the Town of Apex or other appropriate governmental authority, as that Plan is from time to time amended and approved. The Class B

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membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, the Plan for "Ashley Downs" is amended to add additional lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to three (3) votes for each lot owned) to exceed those of the Class A membership and the amended Plans are approved by the Town of Apex or other appropriate governmental authority; or,

(ii) seven (7) years from the date this Declaration is recorded in the Office of the Register of Deeds, Wake County, North Carolina.

ARTICLE IV

COVENANT FOR MAINTENANCE AND 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 for 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: (a) to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months. The annual and special assessments, 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 Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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 of the Properties and in particular for the acquisition, improvement and maintenance of properties, services

and facilities devoted to this purpose and related to the use and enjoyment of the Common Area or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes assessed against the Common Area; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way within the Properties), drives and parking areas within the Common Area; the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Area; the maintenance of entranceways, landscaping and lighting of Common Area, road medians and islands and entranceways; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefor within the Properties; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When any Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the

Association which may be used in the operation and management of the properties.

SECTION 3. MAXIMUM ANNUAL ASSESSMENT. Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Forty and No/100 Dollars (\$240.00) per Lot, and may be collected in monthly installments of TWENTY DOLLARS (\$20.00) per Lot.

The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.

The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least 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.

The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least 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. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

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 4 of this Article shall be sent to all Members not less than fifteen (15) 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 sixty percent (60%) of all the 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.

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SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the issuance of a certificate of occupancy for the dwelling initially constructed on such Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. In the event the Board of Directors shall fail to fix the amount of annual assessments described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. Upon adoption by the Board of the budget and annual assessments amount, the Board shall deliver copies of same to every Owner subject thereto; provided, however, that failure to deliver a copy of the budget and annual assessments amount shall not affect the liability of Owners for assessments. 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.

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. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots

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in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 10. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

SECTION 11. EXEMPT PROPERTY. All property dedicated to, and accepted by, a public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

ARCHITECTURAL CONTROL

SECTION 1. IMPROVEMENTS. No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner other than Declarant shall be commenced, erected or maintained upon any Lot and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, 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, for so long as Declarant owns any Lot or has the right to annex any Additional Property pursuant to Section 4, Article X hereof, and thereafter by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board (the "Architectural Control Committee"). Notwithstanding the foregoing, landscaping improvements consisting of plant materials native to the area and commonly used in residential landscaping

which do not interfere with the sight lines of motorists at intersections of the streets and/or driveways located within the Properties shall not require approval by the Board of Directors or the Architectural Control Committee. In addition, notwithstanding the foregoing, Declarant may at any time hereafter elect to assign to the Association all or any of its architectural review rights or obligations hereunder, all of which rights and obligations are assignable and may be apportioned on a lot-by-lot basis. Any such assignment by Declarant shall be in writing and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. From and after the effective date of such assignment, the Association shall assume all such assigned architectural review rights and obligations.

SECTION 2. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to Declarant, the Board of Directors of the Association or the Architectural Control Committee, as the case may be, which shall evaluate such plans and specification in light of the purposes of this Article.

(b) Upon approval by the Declarant, the Board of Directors of the Association or the Architectural Control Committee, as the case may be, of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specification, as approved, shall be deposited for permanent record with the Association and a copy of such plans and specification bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specification shall not be deemed a waiver of the right of Declarant, the Board of Directors of the Association or the Architectural Control Committee, as the case may be, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of any such plans and specification relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any conditions attached to any such approval.

(c) Neither Declarant, nor any other member of the Association's Board of Directors or Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specification approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Association's Board of Directors or Architectural Control Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or

disapproval or failure to approve or disapprove any such plans or specification or the exercise of any other power or right provided for in this Declaration. Every Person who submits plans or specifications for approval agrees, by submission of such plans and specifications, and every owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Association's Board of Directors or Architectural Control Committee, to recover any such damage.

ARTICLE VI

EXTERIOR MAINTENANCE

The Association shall maintain the Common Area. Each Owner shall be responsible for the exterior maintenance of his or her dwelling and Lot, as follows: painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, driveways, walks and other exterior improvements. In the event that the Owner neglects or fails to maintain his or her improved Lot and/or the exterior of his or her dwelling in a manner consistent with other improved Lots and dwellings in Ashley Downs or fails to maintain his or her improved Lot in a safe condition and free of debris, the Association may provide such exterior maintenance. Provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or dwelling in a manner consistent with other Lots and dwellings in Ashley Downs shall be made by the Board of Directors of the Association, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in the Article.

In the event the Association performs such exterior maintenance, repair or replacement, 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 VII

RESTRICTIONS

SECTION 1. LAND USE AND BUILDING TYPE. No Lot shall be used except for single-family residential, street or park purposes; provided, however, Declarant may use any Lot owned or leased by Declarant as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of property in Ashley Downs. No building

shall be erected, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed 2 1/2 stories in height (exclusive of basement), an optional attached or detached private garage for not more than three cars, and one (1) permanent accessory building incidental to the residential use of the Lot. By way of illustration and not of limitation, any such accessory building must be erected on a permanent foundation and must be constructed on the Lot (as opposed to a pre-fabricated building).

SECTION 2. DWELLING SPECIFICATIONS. No dwelling shall be erected or allowed to remain on a Lot if the main structure, exclusive of open porches, decks and garages, contains less than Fourteen Hundred (1400) square feet of heated floor area.

SECTION 3. NUISANCE. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot or other area within Ashley Downs shall be used as a dumping ground for rubbish or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment and discarded appliances and furniture. If a clothesline is placed on any Lot, it shall be an umbrella type clothesline and it shall be so screened that it is not visible from any adjacent Lot or street.

SECTION 4. MOTOR VEHICLES. No boat, marine craft, hovercraft, aircraft, trailer, camper, truck greater than one ton in size or motorized van used for commercial purposes (as distinguished from a van used as a passenger car) shall be parked within the right of way of any public or private street adjacent to any Lot or on any Lot, except that any of the above may be parked completely inside a garage, or in the sole discretion of the Architectural Control Committee, on a Lot in a location otherwise sufficiently screened from any adjacent Lot or street. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity of the parking area. No vehicles or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, and pick-up trucks that are in operable condition and have current license plates and inspection stickers. No inoperative motor vehicle may be parked or stored on any Lot or any public or private street or other area within Ashley Downs for a period in excess of 48 hours.

SECTION 5. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on the Common Area or on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with (i) all laws and ordinances of the State of North Carolina, the County of Wake and the Town of Apex relating thereto; and (ii) such rules and

regulations pertaining thereto as the Board of Directors may adopt from time to time.

SECTION 6. OUTSIDE ANTENNAS. No outside radio or television antennas or discs and no free standing transmission or receiving towers or satellite dishes or disks shall be erected on the Common Area or on any Lot or dwelling within the Properties except with the prior written permission of Declarant, for so long as Declarant owns any Lot or has the right to annex any Additional Property pursuant to Section 4, Article X hereof, and thereafter only with the prior written permission of the Board of Directors of the Association or the Architectural Control Committee.

SECTION 7. SUBDIVISION OF LOTS; STREETS. Except as permitted under Article I, Section 7, no Lot shall be subdivided and no street shall be laid out or open across or through any Lot, without the prior written consent of Declarant, for so long as Declarant shall own any Lot in Ashley Downs or Declarant shall have the right to annex any Additional Property pursuant to the provisions of Section 4, Article X hereof, and thereafter except with the prior written consent of the Association. The Owners of adjoining Lots, however, may vary the boundary lines between their Lots, provided such subdivision is accomplished in compliance with all applicable subdivision and other ordinances and the size of each Lot is not reduced to less than 10,000 square feet.

SECTION 8. SIGNS. No sign shall be placed or allowed to remain on any Lot except for ONE (1) "For Sale" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall not be permitted to remain on any Lot for more than SEVENTY TWO (72) consecutive hours. No sign deemed by the Association, the Architectural Control Committee or Declarant to be a nuisance or a detriment to Ashley Downs shall be permitted to be erected or to remain on any Lot. Notwithstanding the foregoing, for so long as Declarant shall own any Lot in Ashley Downs or Declarant shall have the right to annex any Additional Property pursuant to the provisions of Section 4, Article X hereof, Declarant shall have the right to erect and maintain signs within the Common Area or on any Lot owned or leased by Declarant for the purpose of advertising and promoting the sale of such lots.

SECTION 9. MOBILE HOMES, MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the foregoing, Declarant and builders or contractors authorized by Declarant may maintain temporary

improvements (such as a sales office and/or construction trailer) on any Lot during the construction and development period.

SECTION 10. FENCES OR WALLS. No fence, wall or other enclosure shall be constructed on any Lot without first obtaining the approval of Declarant, the Board of Directors of the Association or the Architectural Control Committee as provided in Article V of this Declaration. No portion of any fence erected on any Lot may exceed six (6) feet in height and chain link fences are not permitted. Notwithstanding the foregoing, Declarant, its successors and assigns, and the Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Area to enclose retention ponds and for other purposes without the approval of the Architectural Control Committee, such fences and other enclosures to become a part of the Common Area to be maintained by the Association.

ARTICLE VIII

EASEMENTS

SECTION 1. UTILITY AND DRAINAGE EASEMENTS. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded maps. In addition, Declarant reserves, for itself and the Association, additional easements and rights-of-way for the installation and maintenance of utilities (including cable television service) and drainage facilities over the rear TEN (10) feet of all Lots and over each side FIVE (5) feet of all Lots. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

SECTION 2. SIGN EASEMENTS. Declarant hereby grants, gives and conveys to the Association perpetual, non-exclusive easements over and upon those portions of Lot 43 and Lot 44 designated "20' THOROUGHFARE BUFFER" and shown on the map entitled "Ashley Downs, Phase One" and recorded in Book of Maps 1995, Page 1597, in the Office of the Register of Deeds, Wake County, North Carolina and perpetual, non-exclusive easements over and upon those portions of

any Lot designated "sign easement" and shown on any map of all or any portion of the Properties, now or hereafter recorded in the Wake County Registry, to erect, maintain, replace and repair subdivision signs and landscaping and/or lighting surrounding the same and all such easements shall be part of the Common Area. Declarant, for so long as Declarant owns any lot shown on the Plan for "Ashley Downs" approved by the Town of Apex or other appropriate governmental authority, as that Plan is from time to time amended and approved, and the Association shall have the right to erect within the Common Area subdivision signs and landscaping and lighting surrounding same. The costs of all maintenance, repair and replacement of such signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out Article IV hereof. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

SECTION 3. EASEMENT RESERVED BY DECLARANT. Declarant hereby reserves such easements on, across and over the Common Area as shall be reasonably necessary for (i) the exercise by Declarant of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined and (ii) the development by Declarant, its successors or assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing water, light, power, telephone, sewage and sanitary service to the Additional Properties.

SECTION 4. THOROUGHFARE BUFFER MAINTENANCE EASEMENTS. For so long as required by the Town of Apex or other appropriate governmental authority all portions of the Properties designated "THOROUGHFARE BUFFER" or "BUFFER" and shown on any map of all or any portion of the Properties, whether now or hereafter recorded (the "Thoroughfare Areas"), including, without limitation, those portions of the Properties designated "20' THOROUGHFARE BUFFER," "50' THOROUGHFARE BUFFER," and "50' BUFFER" and shown on the maps entitled "Ashley Downs, Phase One" and recorded in Book of Maps 1995, Pages 1597 and 1598, in the Office of the Register of Deeds, Wake County, North Carolina, are reserved for maintenance of trees and shrubs pursuant to Section 19-86 of the Apex Code of Ordinance, as amended, which provides, in part, as follows:

No development (any manmade change including but not limited to buildings or other structures, grading, paving or storage of equipment or materials) shall be allowed within a required buffer. . . . The owner of the property shall be responsible for protecting and maintaining the required vegetation in a healthy growing condition, for replacing plant material when

necessary, and for keeping the area free of manmade refuse and debris.

Declarant hereby grants, gives and conveys to the Association perpetual, non-exclusive easements over and upon all Thoroughfare Areas to place, maintain, preserve and replace landscaping and to maintain, preserve and replace natural vegetation and all such easements shall be part of the Common Area. The placement, maintenance, preservation and replacement of any landscaping within such Thoroughfare Areas by the Association shall be at the sole discretion of the Association's Board of Directors, and as set forth in the Apex Code of Ordinance, the owners of the Lots on which any portion of a Thoroughfare Areas is located are responsible for protecting and maintaining the area in accordance with the Ordinance. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

ARTICLE IX

RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS.

"Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof.

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article II hereof.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

ARTICLE X

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 the Declaration, the Articles of Incorporation or By-Laws of the Association. 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. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 2. SEVERABILITY. Invalidity of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3. AMENDMENT. The covenants and restrictions of this Declaration shall run 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 unless terminated or amended as hereinafter

provided. This Declaration may be terminated or amended during the first twenty year period with the consent of the Owners entitled to cast at least ninety percent (90%) of the votes of the Association and thereafter with the consent of the Owners entitled to cast at least seventy-five percent (75%) of the votes of the Association; provided, however, this Declaration may not be terminated without Declarant's consent for so long as Declarant owns any Lot or may annex Additional Property pursuant to the provisions hereinafter set forth, no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant, and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner approval has been obtained and is evidenced by written acknowledgement(s) signed by the Owners approving the amendment and made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Wake County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment."

SECTION 4. ANNEXATION.

(a) Except as provided in Subsection (b) of this Section 4, Article X, additional residential property and Common Area may be annexed to the Properties only with the consent of the Members entitled to cast two-thirds (2/3) of the votes of each class.

(b) Additional land within the area described in the metes and bounds description attached hereto as Schedule "A" and incorporated herein by reference, together with any other property located adjacent to the Properties (collectively, the "Additional Property") may be annexed by the Declarant without the consent of Members within seven (7) years of the date of this instrument. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property. Declarant shall have no obligation of any kind to annex any or all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right, with regard to all or any part of the Additional Property annexed by Declarant, to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration (including, without limitation, those contained in Section 2 of Article VII hereof) as

may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or hereafter erected on such property.

SECTION 5. AMPLIFICATION. The Provisions of this Declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its corporate seal hereto affixed as of the 2nd day of November, 1995.

Olive Chapel Associates, LLC, a
North Carolina limited liability
company (SEAL)

By: Olive Chapel Development
Company, a North Carolina
corporation, its Manager

(Corporate Seal)

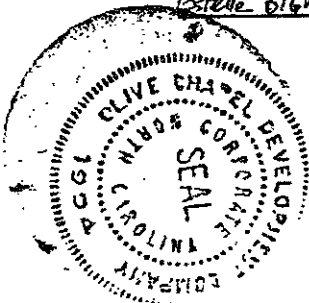
Attest:

Estelle Bigman
Estelle Bigman Secretary

By:

Irwin H. Bigman
President

Irwin H. Bigman



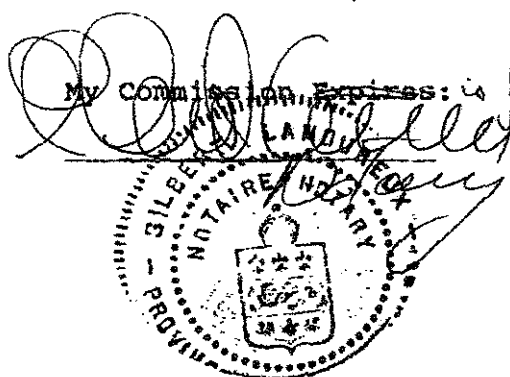
DISTRICT OF MONTREAL

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PROVINCE OF QUEBEC, CANADA

I, the undersigned Commissioner of Oaths, do hereby certify that ESTELLE RIGMAN personally appeared before me this day and acknowledged that SHE is the _____ Secretary of Olive Chapel Development Company, a North Carolina limited liability company and manager of Olive Chapel Associates, LLC, a North Carolina limited liability company, and that by authority duly given, and as the act of the corporation on behalf of the company, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal, and attested by II as its _____ Secretary.

WITNESS my hand and official seal this 2nd day of NOVEMBER 1995.



[Signature]
Commissioner of Oaths and Notary Public

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Gilbert Ramonela

Notary Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By

[Signature]
Asst. Deputy Register of Deeds

SHMM: 46144_2

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SCHEDULE A

LEGAL DESCRIPTION

BEGINNING at a control corner which is located at the intersection of the centerline of Beaver Creek and the centerline of the right of way of N.C.S.R. 1160 (Olive Chapel Road) said point having North Carolina Grid Coordinates of N=723,325.09 and E=2,034,283.44, thence along the centerline of Beaver Creek the following courses and distances: South 08 degrees 03 minutes 59 seconds East 30 feet to a point; thence South 28 degrees 43 minutes 24 seconds East 60.63 feet to a point; thence South 19 degrees 28 minutes 31 seconds East 129.60 feet to a point; thence South 02 degrees 17 minutes 07 seconds West 101.61 feet to a point; thence South 03 degrees 30 minutes 36 seconds West 210.01 feet to a point; thence South 32 degrees 40 minutes 37 seconds West 100.08 feet to a point; thence South 36 degrees 36 minutes 56 seconds West 299.58 feet to a point; thence South 44 degrees 46 minutes 43 seconds East 48.56 feet to a point; thence South 48 degrees 20 minutes 56 seconds West 103.44 feet to a point; thence South 63 degrees 46 minutes 00 seconds West 38.93 feet to a point; thence South 20 degrees 05 minutes 51 seconds West 23.56 feet to a point; thence South 07 degrees 20 minutes 33 seconds East 57.11 feet to a point; thence South 64 degrees 11 minutes 36 seconds West 69.87 feet to a point; thence South 22 degrees 42 minutes 42 seconds West 26.91 feet to a point; thence South 65 degrees 23 minutes 27 seconds West 23.08 feet to a point; thence North 69 degrees 07 minutes 26 seconds West 43.77 feet to a point; thence South 87 degrees 06 minutes 48 seconds West 32.06 feet to a point; thence North 56 degrees 48 minutes 34 seconds West 26.67 feet to a point; thence South 75 degrees 31 minutes 07 seconds West 62.81 feet to a point; thence South 58 degrees 34 minutes 22 seconds West 42.24 feet to a point; thence North 71 degrees 57 minutes 10 seconds West 31.20 feet to a point; thence South 84 degrees 14 minutes 29 seconds West 73.34 feet to a point; thence South 61 degrees 44 minutes 26 seconds West 32.18 feet to a point; thence North 83 degrees 38 minutes 10 seconds West 51.54 feet to a point; thence North 43 degrees 32 minutes 08 seconds West 20.05 feet to a point; thence North 10 degrees 27 minutes 49 seconds West 65.24 feet to a point; thence South 84 degrees 41 minutes 19 seconds West 37.36 feet to a point; thence South 15 degrees 23 minutes 09 seconds West 38.41 feet to a point; thence South 47 degrees 33 minutes 27 seconds West 196.28 feet to a point; thence South 52 degrees 46 minutes 38 seconds West 46.28 feet to a point; thence South 45 degrees 20 minutes 09 seconds West 67.68 feet to a point; thence South 20 degrees 35 minutes 01 seconds West 31.97 feet to a point; thence South 45 degrees 54 minutes 17 seconds West 33.07 feet to a point; thence South 32 degrees 00 minutes 41 seconds West 241.12 feet to a point; thence South 35 degrees 29 minutes 40 seconds West 101.23 feet to a point; thence South 30 degrees 51 minutes 32 seconds West 61.77 feet to a point; thence South 80 degrees 23 minutes 49 seconds West 34.47 feet to a point; thence South 22 degrees 02 minutes 53 seconds West 59.85 feet to a point; thence South 29 degrees 17 minutes 30 seconds East 29.79 feet to a point; thence

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South 01 degrees 56 minutes 24 seconds West 24.72 feet to a point; thence South 65 degrees 20 minutes 23 seconds West 28.59 feet to a point; thence South 29 degrees 47 minutes 19 seconds West 13.74 feet to a point; thence South 03 degrees 53 minutes 33 seconds East 77.89 feet to a point; thence South 20 degrees 46 minutes 40 seconds East 10.44 feet to a point; thence South 19 degrees 56 minutes 40 seconds West 14.03 feet to a point; thence South 83 degrees 41 minutes 23 seconds West 28.63 feet to a point; thence South 41 degrees 31 minutes 23 seconds West 16.55 feet to a point; thence South 29 degrees 21 minutes 16 seconds East 31.14 feet to a point; thence South 14 degrees 14 minutes 16 seconds West 44.75 feet to a point; thence South 52 degrees 35 minutes 16 seconds West 42.90 feet to a point; thence South 20 degrees 21 minutes 52 seconds West 19.49 feet to a point; thence South 44 degrees 39 minutes 07 seconds West 24.23 feet to a point; thence South 79 degrees 14 minutes 16 seconds West 41.31 feet to a point; thence North 87 degrees 29 minutes 26 seconds West 63.69 feet to a point; thence North 29 degrees 47 minutes 01 seconds West 18.71 feet to a point; thence North 56 degrees 12 minutes 51 seconds East 49.65 feet to a point; thence North 08 degrees 30 minutes 29 seconds West 20.96 feet to a point; thence North 61 degrees 32 minutes 24 seconds West 46.41 feet to a point; thence South 74 degrees 37 minutes 31 seconds West 50.61 feet to a point; thence North 86 degrees 19 minutes 27 seconds West 39.52 feet to a point; thence South 45 degrees 27 minutes 28 seconds West 27.62 feet to a point; thence South 09 degrees 32 minutes 39 seconds West 39.06 feet to a point; thence South 28 degrees 17 minutes 50 seconds West 47.46 feet to a point; thence South 81 degrees 09 minutes 55 seconds West 23.21 feet to a point; thence North 52 degrees 29 minutes 34 seconds West 48.02 feet to a point; thence North 09 degrees 07 minutes 56 seconds East 19.89 feet to a point; thence North 49 degrees 20 minutes 59 seconds East 44.29 feet to a point; thence North 18 degrees 07 minutes 37 seconds West 18.06 feet to a point; thence South 63 degrees 35 minutes 58 seconds West 58.03 feet to a point; thence South 45 degrees 38 minutes 05 seconds West 141.25 feet to a point; thence South 25 degrees 54 minutes 14 seconds West 15.77 feet to a point; thence South 36 degrees 09 minutes 30 seconds East 43.12 feet to a point; thence South 30 degrees 38 minutes 03 seconds West 25.97 feet to a point; thence South 77 degrees 35 minutes 03 seconds West 30.99 feet to a point; thence North 66 degrees 08 minutes 21 seconds West 59.54 feet to a point; thence North 88 degrees 30 minutes 21 seconds West 25.39 feet to a point; thence South 63 degrees 23 minutes 59 seconds West 29.01 feet to a point; thence South 34 degrees 09 minutes 54 seconds West 45.52 feet to a point; thence South 06 degrees 11 minutes 44 seconds West 23.07 feet to a point; thence South 46 degrees 25 minutes 00 seconds East 15.08 feet to a point; thence South 82 degrees 14 minutes 55 seconds East 16.96 feet to a point; thence South 45 degrees 55 minutes 23 seconds East 23.06 feet to a point; and thence South 45 degrees 36 minutes 16 seconds West 20.36 feet to an existing iron pin; thence leaving Beaver Creek and running South 89 degrees 26 minutes 05 seconds West 402.02 feet to an existing iron pin at a fence; thence North 00 degrees 57 minutes 05 seconds East 1,916.43 feet to an existing railroad

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spike located in the centerline of the right of way of N.C.S.R. 1160; thence along the centerline of said right of way the following courses and distances: North 74 degrees 46 minutes 18 seconds East 195.89 feet to a point; thence North 75 degrees 54 minutes 01 seconds East 110.82 feet to a point; thence North 76 degrees 37 minutes 04 seconds East 58.30 feet to a point; thence North 77 degrees 20 minutes 26 seconds East 105.67 feet to a point; thence North 78 degrees 37 minutes 10 seconds East 46.17 feet to a point; thence North 80 degrees 04 minutes 23 seconds East 50.32 feet to a point; thence North 81 degrees 21 minutes 34 seconds East 51.08 feet to a point; and thence North 82 degrees 42 minutes 54 seconds East 51.65 feet to a point; thence leaving said right of way and running South 01 degree 53 minutes 26 seconds East 513.35 feet to a point; thence North 82 degrees 04 minutes 32 seconds East 250.24 feet to a point; thence North 01 degree 55 minutes 05 seconds West 169.44 feet to a point; thence North 82 degrees 03 minutes 42 seconds East 560.19 feet to an existing iron pin; thence North 07 degrees 53 minutes 26 seconds West 330.55 feet to a point located in the centerline of the right of way of N.C.S.R. 1160; thence along said centerline of N.C.S.R. 1160 the following courses and distances: North 81 degrees 40 minutes 32 seconds East 273.02 feet to a point; thence North 81 degrees 17 minutes 25 seconds East 219.84 feet to a point; thence North 80 degrees 52 minutes 12 seconds East 225.93 feet to a point; and thence North 81 degrees 31 minutes 30 seconds East 246.81 feet to the point and place of BEGINNING, and being that tract of land containing a total area of 71.485 acres as shown on that map entitled, "Survey for Osby S. Clark and wife Sue G. Clark" as prepared by Smith and Smith Surveyors on July 5, 1994.