

AMHERST COVENANTS

*Prepared by & held for:
Morse, Wyse & Wallace, P.A.*

BK 7332 PG 0077

PRESENTED
FOR
REGISTRATION

000436
NORTH CAROLINA
WAKE COUNTY

97 FEB 12 PM 3:24
LAURA M. RIDDICK
REGISTER OF DEEDS
WAKE COUNTY
DECLARATION DESIGNATING
LOTS AND COMMON AREAS
SUBJECT TO COVENANTS, CONDITIONS
AND RESTRICTIONS

This Declaration, executed on the 12th day of February, 1997, by MIDDLE CREEK DEVELOPERS, LTD., a corporation organized under the laws of North Carolina, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Middle Creek Developers, Ltd., as Declarant executed and caused to be recorded in Book 4062, Page 281, Wake County Registry, an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Amherst", which was subsequently amended by the instrument recorded in Book 4244, Page 795, Wake County Registry, hereinafter collectively referred to as the "Declaration"; and

WHEREAS, Phase II of the Amherst Subdivision has now been created by Declarant which Phase II is contained within the "Properties" as described in the Declaration, and reference to the Declaration has been made on that plat of Amherst Subdivision, Phase II, as recorded in the Book of Maps 1997, Pages 250 to 252, Wake County Registry; and

WHEREAS, Wake County has required that this Declaration be recorded for the purpose of designating the Lots, Open Space and Permanent Common Open Space as shown on that plat of Amherst Subdivision, Phase II recorded in Book of Maps 1997, Pages 250 to 252, Wake County Registry as being subject to the Declaration.

NOW THEREFORE, Declarant hereby declares that the hereinafter described Lots, Open Space and Permanent Common Open Space shall be held, sold and conveyed subject to the

easements, restrictions, covenants and conditions contained in the Declaration.

Being all of Lots 71 through 88 and Lot 96 of Amherst, Phase II, Middle Creek Township, Wake County, North Carolina as shown on Book of Maps 1997, Page 251, Wake County Registry together with Open Space Tract M and Permanent Common Open Space Tract J as shown on Book of Maps 1997, Page 250, Wake County Registry and Permanent Common Open Space Tracts C-1, C-2, D-1, D-2, H and S as shown on Book of Maps 1997, Page 251, Wake County Registry.

IN WITNESS WHEREOF, Middle Creek Developers, Ltd., has caused this instrument to be duly executed by its authorized officers on the day and year first above written.

MIDDLE CREEK DEVELOPERS, LTD.

By: Harriet Joan Ferraro
Harriet Joan Ferraro, President



ATTEST:

Glenn D. Ward
Glenn D. Ward, Secretary



(Corporate Seal)
NORTH CAROLINA
WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Glenn D. Ward, personally came before me this day and acknowledged that he is Secretary of Middle Creek Developers, Ltd. a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary. Witness my hand and official stamp or seal, this 12th day of February, 1997.

[Signature]
NOTARY PUBLIC

My Commission Expires: 10-3-98
(Notary Seal)

NORTH CAROLINA — WAKE COUNTY
The foregoing certificate of Christopher M. Wylie

Notary(ies) 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.
LAURA M. RIDDICK, Register of Deeds

By P. Anne Reed
Asst./Deputy Register of Deeds

Hold Co: Middle Creek Dev. & Lenn, P.A.

BOOK 4602 PAGE 231

NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
AMHERST

THIS DECLARATION, made on the 7th day of July, 1987 by Middle Creek Developers, Ltd., a corporation organized under the laws of North Carolina, hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property being located in Middle Creek Township, Wake County, North Carolina, and more particularly described as follows:

102.6 acres, more or less, described in that Deed recorded in Book 3439, Page 164, Wake County Registry, lying on the east side of State Road 1404, and as shown on survey of the property of Middle Creek Developers, Ltd., by Glenn D. Ward and Associates, dated February 28, 1985, save and except that 1 acre parcel described as follows: Beginning at a point located in the centerline of SR 1404, said point being N 28° 44' 34" E 57.06 feet and N 29° 39' 13" E 632.23 feet from the westernmost corner of that property described in Book 3439, Page 164, Wake County Registry (at the intersection of the centerline of SR 1404 and the centerline of Middle Creek and runs thence S 60° 20' 47" E 200.0 feet to a point; runs thence S 29° 39' 13" E 264.52 feet to a point; runs thence N 60° 20' 47" W 195.33 feet to the centerline of SR 1404; runs thence along the centerline of said road S 33° 39' 54" E 49.80 feet to a point, S 31° 01' 09" W 49.86 feet to a point, and S 29° 39' 13" W 165.00 feet to the point and place of beginning. Said property is hereinafter referred to as Amherst or Amherst Subdivision. By reference to this Declaration on subsequent recorded plats, the same will be made applicable to the lands shown thereon.

WHEREAS, Declarant desires to have the acreage described herein subdivided into phases or sections of a new subdivision entitled "Amherst Subdivision"; and

WHEREAS, Declarant desires to subject said lands to the covenants, restrictions and conditions set forth herein; and

WHEREAS, there is an outstanding deed of trust secured by the above described property as follows:

A deed of trust to James L. Powers, Trustee for Southern National Mortgage Company, dated January 27, 1986, and recorded in Book 3646, Page 674, Wake County Registry.

RECORDED FOR REGISTRATION
JUL 13 1 47 PM '87

WHEREAS, Declarant has requested said Trustees and Beneficiaries of the deeds of trust set out above to consent to the imposition of said Declaration of Covenants, Conditions and Restrictions on said property and they have agreed to join in this instrument for the purpose of indicating their consent to the same.

NOW, THEREFORE, Declarant hereby declares that the lands 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 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. "Association" shall mean and refer to Amherst Homeowners Association, Inc., its successors and assigns. Every person, partnership or corporation that owns a lot in Amherst Subdivision shall be a member of the Association.

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 or unit which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, including individual units or lots, and the common open spaces defined below.

Section 4. "Common Open Space" shall mean all real property dedicated to the common use and enjoyment of the owners, including, but not limited to, the real property conveyed to the Association and real property leased to the Association. Common open space shall be maintained for forestry, pasture, agriculture

or active and passive recreational uses. Common open space may be designated on all recorded plats of the subdivision for convenience as either N.P.C.O.S., (Non-permanent Common Open Space), or P.C.O.S. (Permanent Common Open Space).

As additional plats of the adjoining tracts, if any, are recorded, the Declarant will dedicate additional lands as part of the Common Open Space.

All Common Open Space shall be subject to easements for utilities, including sewer and water lines, easements for ingress and egress, and easements for any encroachments arising from the initial improvements.

Section 5. "Non-permanent Common Open Space" shall consist of those areas shown on recorded plats of Amherst Subdivision, the ownership of which shall be retained by the Declarant and on which no residential units shall be built so long as the property is subject to the provisions of Section 1-1-37(C)(9) of the Wake County Code. Non-permanent Common Open Space may include passive recreational lands, such as natural areas, lands used for agriculture, pasture or forestry, lands reserved for the operation of water and waste water systems, and all lands retained for future dedication either as permanent common open space or for water or sewer system usage. The Declarant reserves the right to control the use of all Non-permanent Common Open Space, including the right to lease or to convey them to the Association, and the right to convey them to other persons, partnerships, or corporations, subject to this Declaration.

Section 6. "Permanent Common Open Space" shall consist of those areas designated on recorded plats of Amherst Subdivision as "P.C.O.S." Such areas shall be dedicated in perpetuity to the common use and enjoyment of the owners and their guests. The Declarant will convey all permanent common open space shown on the various plats of the subdivision to the Association. The permanent common open space shall include all active recreational facilities including but not limited to athletic fields, related maintenance buildings and associated off-street parking, if any.

The Association shall be responsible for maintaining such facilities.

Section 7. "Lot" shall mean and refer to any numbered plot of land shown upon a recorded subdivision map of a portion of Amherst Subdivision on file with the Wake County Planning Department. A lot shall be intended for use as the site for one dwelling unit.

Section 8. "Declarant" shall mean and refer to Middle Creek Developers, Ltd., 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. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Utility Area" shall include those tracts or parcels of the properties set aside for the installation of utility systems to serve the remainder of the properties. Such utility systems may include, but not be limited to, water, sewer, telephone, cablevision, electricity and gas. The utility areas may be conveyed or leased to a municipality or to public utility companies that operate and maintain such systems. Utility areas shall be accessible by easements of ingress and egress if not located on a public or private road.

ARTICLE II

PLAN FOR PROPERTY DEVELOPMENT

Section 1. Each section or phase of the properties shall be developed in accordance with a plan that complies with the applicable zoning regulations. A maximum of 30% of the areas of the properties shall be included within lots and associated off-street parking for such lots.

Section 2. The remaining 70% of the area of the properties may include public and private roads; utility areas, recreational facilities; community buildings, and open space areas set aside for passive recreation or for forestry, pasture or agriculture. Off-street parking for persons using such facilities may also be included within the 70% area.

Section 3. Each recorded plat or phase of the properties shall show that for each 20 residential dwelling units, at least one acre has been reserved for the permanent common open space.

Section 4. The areas dedicated to such uses on each separate phase or section of the subdivision shall be added to the areas so dedicated on the prior plans in order that the entire subdivision may at all times remain in compliance with the governing percentages of land area dedicated to individual lots and to common open space.

Section 5. The ownership of utility easements and facilities, including wells, water towers, treatment and disposal plants and dispersion areas, are reserved at this time for possible conveyance to a public utility company or companies, to a municipality, or to the Association.

Section 6. The responsibility for maintaining the public streets and roadways within the properties shall remain with Declarant, until such time as said streets and roadways are dedicated to the State of North Carolina and the State of North Carolina accepts such dedication. Private streets and roadways, if any, shall be maintained by the Declarant until said streets and roadways are transferred to the Association.

Section 7. Notwithstanding any provision to the contrary contained herein, the Development Plan shall in all instances comply with the applicable Wake County zoning and subdivision ordinances and regulations or similar ordinances and regulations of any other governmental agency having planning authority over the Properties.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Permanent Common Open Space which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Association to charge its members and their guests reasonable admission and other fees for the use of any recreational facility situated upon the Permanent Common Open Space;

(b) the right of the Association to suspend the voting rights and right to use of the recreation facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Permanent Common Open Space owned and held by it to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded. Upon dedication of any such area, the Association shall give notice to the Wake County Zoning Administrator, or to the town or city having zoning jurisdiction over the Properties;

(d) the right of the Association to impose regulations upon the use and enjoyment of the Permanent Common Open Space and improvements thereon; and

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Permanent Common Open Space and facilities and in aid thereof to mortgage said property, however the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Permanent Common Open Space and facilities to the members of his family, his lawful tenants, guests or contract purchasers who reside on his property.

Section 3. Title to the Permanent Common Open Space. The Declarant hereby covenants for itself, its successors or assigns, that prior to the conveyance of the first lot in each separate plat of Amherst Subdivision, it will convey fee simple

title to the Association of the Permanent Common Open Space specifically described in said recorded plat. Such conveyance shall be free and clear of all encumbrances and liens, but shall be subject to these covenants and to all easements of record for utilities and for access.

Section 4. Parking Rights. The Association may regulate or prohibit the parking of boats, trailers, recreational vehicles and other such items on the Permanent Common Open Space. No boats, trailers, or recreational vehicles shall be parked within the right of way of any public or private street in or adjacent to the property of Middle Creek Developers, Ltd. by members or their assignees.

Section 5. TV Antennas and Piped-In Music. The Association may provide one or more central television antennas for the convenience of the members and may supply piped-in music and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas or satellite reception discs on individual lots.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

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

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

Class A: Class A members shall be all owners with the exception of the Declarant and shall be entitled to one 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 member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The

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

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership.
- (b) on January 1, 1992.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest charges for late payment, 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 assessment is made. Each such assessment, together with interest, late payment charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessments fell due. This 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 for the following purposes:

- (a) for the promotion of the recreation, health, safety, and welfare of the residents of the Properties;
- (b) for the payment of ad valorem taxes on the Permanent Common Open Space, and on any Non-permanent Common Open Space leased to the Association;

(c) for the maintenance and operation of water, sewer, and other utility systems, if the same are owned or being purchased by the Association;

(d) for the acquisition, improvement and maintenance of the properties, services and facilities devoted to allowed purposes;

(e) for the use and enjoyment of the Permanent Common Open Space, including but not limited to, the cost of repairs and replacements of community buildings and active recreational facilities, and the cost of labor, materials, equipment and utilities necessary for the proper use of Permanent Common Open Space and of any Non-permanent Common Open Space leased to the Association;

(f) for the procurement and maintenance of insurance in accordance with the By-Laws or this Declaration;

(g) for the employment of professionals, such as accountants and attorneys, to represent and advise the Association when necessary.

Section 3. Annual Assessment. There shall be no assessments levied upon any of the lots into which the property is subdivided until a minimum of 30 lots have been conveyed by the Declarant, and until a minimum of 25 certificates of occupancy have been issued for dwelling units constructed on said lots. The maximum annual assessment for the first year shall not exceed \$120.00 per year.

(a) from and after January 1 of the year following the commencement of the assessments, the maximum annual assessment may not be increased in any year more than ten (10%) percent above the maximum assessment for the previous year, or fifteen dollars (\$15.00) per year, whichever is greater, except as provided below;

(b) from and after January 1 of the year following the commencement of the assessments, the maximum annual assessment may be increased more than ten (10%) percent over the amount of the previous year's assessment, or fifteen dollars (\$15.00) per year, as the case may be, provided that at least two-thirds (2/3) of each class of members who are voting in person or by proxy

approve of such increase at a meeting duly called for this purpose;

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any purchase, construction, repair or replacement of any utilities serving Amherst, and of any capital improvement upon the Permanent Common Open Space, including 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.

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 Sections 3 or 4 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (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.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month after the minimum required number of lots have been sold and conveyed to individual

owners, and after 30-day notice thereof has been mailed to all owners. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, the Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid, and the amount of any delinquent assessment.

A properly executed certificate of the Association as to the status of assessments on a lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. In addition, the Board of Directors may direct that a reasonable late payment charge be added to any installment of an assessment that remains unpaid for as long as 30 days. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, including interest, late charges, costs and reasonable attorney's fee. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Permanent Common Open Space or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to first mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No

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

Section 10. Exempt Property. The following property of individuals, partnerships, or corporations, subject to this Declaration shall be exempted from the assessment charge and lien created herein;

(a) property conveyed to utility companies for wells, tanks, pipelines, treatment plants, and dispersion fields, lines, pumping stations and maintenance facilities, for the purpose of creating utility easements;

(b) all Permanent and Non-permanent Common Open Space.

(c) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such exemptions;

(d) all vacant lots owned by the Declarant so long as it owns more than one-fourth of the total of all lots on the recorded plats of Amherst Subdivision. The Declarant will, however, make contributions to the Association for the purpose of defraying maintenance and upkeep costs so long as it is exempt from assessments. After its lot ownership drops below one-fourth, its unsold lots will be subject to assessment on the same basis as vacant lots acquired by an individual;

(e) all vacant lots for a period of one year after their initial conveyance by the Declarant.

ARTICLE VI

INSURANCE

Section 1. Ownership of Policies. Contracts of insurance upon the Permanent Common Open Space shall be purchased by the Association for the benefit of the Association and its mortgagees, if any, as their interests may appear. The Association may re-evaluate its coverage from time to time and may provide, subject to Section 2 of this Article, for such insurance coverage as it deems appropriate.

Section 2. Coverage. All improvements and personal property included in the Permanent Common Open Space shall be insured in an amount equal to at least one hundred percent (100%)

of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto. In addition, the Association shall acquire and maintain in full force and effect a policy of insurance which insures against any public liability arising out of its ownership of the Permanent Common Open Space and the use and operation thereof with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Authority, Veterans Administration or Federal National Mortgage Association. Such policies shall contain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half the annual assessment plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by Association and charged ratably to the Owners as an assessment according to the provisions of Article V above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance

trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered;

(b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

Annexation of any property, other than that described above, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. In the event that a quorum is present and adopts an annexation resolution, but said resolution fails to receive the two-thirds vote required, then additional members not present may give their written assent to the action taken thereat. In such event, the two-thirds (2/3) requirement may consist of those who voted favorably at a meeting in person and by proxy and of those members who give written assent to the annexation resolution thereafter.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Review and Approval of Specifications for Additions, Alterations or Changes to Structures. No building, wall, fence, swimming pool, or other improvement shall be commenced, erected, or maintained upon any lot or upon the

Permanent Common Open Space, nor shall any landscaping be done, thereon nor shall any exterior addition to any such existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, that all decisions under this section shall be the sole responsibility of Declarant until such time as Declarant shall no longer vote as a Class B member of the Association. It is further provided that nothing contained herein shall be construed to permit interference with the development of the properties by the Declarant so long as said development follows the general plan for the development of the properties.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the uses and enjoyment of each lot and the Permanent Common Open Space.

Section 2. Use of Properties. Lots on any recorded plat shall be used only for single family residential purposes and for purposes incidental or accessory thereto, except that Declarant may maintain a temporary business office and model house for development purposes.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall

anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained 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 bred or maintained for commercial purposes.

Section 5. Dwelling Specifications on Lots. All single family dwellings constructed or permitted to remain on lots shall have an area of the main structure, exclusive of open porches and decks, of at least 1100 square feet of enclosed heated area for one-story dwellings or of at least 1350 square feet of enclosed heated area for dwellings having more than one story.

Section 6. Setback Requirements. All dwellings constructed on lots shall have a front setback of 30 feet from the street right of way. Dwellings constructed on all lots shall be set 10 feet from the side lines and 20 feet from the rear line. Dwellings constructed on corner lots shall be set 20 feet back from the side street. Open decks and porches shall not be considered as part of the dwelling for purposes of measuring setback requirements.

The Declarant retains the authority to waive minor violations of the square footage and setback requirements by a written statement signed by Declarant and recorded in the Wake County Registry. All violations not in excess of 20% of such requirements shall be deemed minor.

Section 7. Temporary Residence. No residence of a temporary character shall be erected or allowed to remain on said property; and no trailer, basement, tent, shack, garage, barn or other outbuilding erected on said property shall be used as a residence either permanently or temporarily.

Section 8. Driveways and Parking. All driveways shall be paved (concrete or asphalt) from street to each house including parking areas. Adequate off-street parking in compliance with county regulations shall be provided by the owner of each lot for

the parking of automobiles owned by such owner and no parking will be permitted on the streets.

Section 9. Street Lighting. The Declarant reserves the right to subject said property to a contract with Carolina Power & Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power & Light Company by the Owner of each lot.

Section 10. Underground Utilities. The Declarant reserves the right to subject the property to a contract with a North Carolina licensed utility company for the installation of underground water and sewer lines to the property which may require an initial payment and/or a continuing monthly payment to the licensed utility company by the owner of each lot. The rate of monthly payment by each property owner shall be regulated by the North Carolina State Utilities Commission.

ARTICLE X

EASEMENTS

All of the properties, including Lots and Permanent Common Open Spaces, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by Declarant on any recorded plats of Amherst Subdivision or as may have been established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Permanent Common Open Spaces conveyed to it, such further easements as are requisite for the convenient uses and enjoyment of the Properties.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date of recording of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by the owners of not less than sixty percent (60%) of the Lots. No amendment shall become effective without having been submitted to the Planning Board of Wake County and approved by said Board or submitted to and approved by the appropriate body or authority of the municipality having jurisdiction over the properties, if Amherst Subdivision has been included within any municipality's Subdivision approval jurisdiction. Any Amendment hereto shall be recorded in the Office of the Register of Deeds of Wake County.

The Declarant, for so long as it controls the Board, and thereafter, the Board of Directors, may amend this Declaration without the consent of the owners:

- (a) to correct any obvious error or inconsistency in drafting, typing or reproduction; and
- (b) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any lots therein for mortgage or improvement loans made or insured by a governmental agency or to comply with the requirements of law or regulations of any govern-

ment corporation or agency regarding purchase or mortgage interests in lots by such agency; and

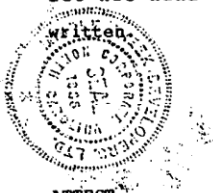
(c) to designate a new agent to receive service of process.

Section 4. The Association shall have the authority to restrict parking of motor vehicles within property affected by these covenants and shall also have authority to repair the streets within said property.

Section 5. Notwithstanding the foregoing provisions, the Declarant reserves for itself, its successors and assigns, the right to use one unit as a sales office and model unit for the purpose of selling other units within the subdivision, until all units are sold.

Section 6. FHA/VA/FNMA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association, if required by these agencies: Annexation of additional properties; Dedication of Permanent Common Open Space; Deeding in trust the Permanent Common Open Space; and mergers and consolidations and amendment of this Declaration.

IN TESTIMONY WHEREOF, the Declarant and Southern National Bank of North Carolina successor to Southern National Mortgage Company, Beneficiary, have caused this instrument to be executed in their corporate names by their President or Vice-President attested by their Secretary or Assistant Secretary and their corporate seals to be hereto affixed, all by order of their Board of Directors duly given, as of the day and year first above written and Richard L. Krewson, Substitute Trustee has hereunto set his hand and seal all as of the day and year first above



MIDDLE CREEK DEVELOPERS, LTD.

BY: Frederick A. Ferraro
FREDERICK A. FERRARO, President

ATTEST
(Corporate Seal)

Glenn D. Ward
GLENN D. WARD, Secretary

SOUTHERN NATIONAL BANK OF NORTH CAROLINA, BENEFICIARY

By: William M. Howard
Vice President

ATTEST
(Corporate Seal)
[Signature]
Assistant SECRETARY

[Signature] (SEAL)
RICHARD L. KREWSON, Substitute Trustee

NORTH CAROLINA
WAKE COUNTY

I, a Notary Public, hereby certify that GLENN D. WARD personally came before me this day and acknowledged that he is Secretary of Middle Creek Developers, Ltd., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and notarial seal, this the 10th day of July, 1987.



Margaret R. Alexander
NOTARY PUBLIC
My Commission Expires: 8-8-90

NORTH CAROLINA
MECKLENBURG COUNTY

I, a Notary Public, hereby certify that Preston L. Fowler, III, Assistant Secretary of Southern National Bank of North Carolina and that the seal affixed to the foregoing instrument in writing is the corporate seal of the Company, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority duly given and the said Preston L. Fowler, III, acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and notarial seal, this the 7th day of July, 1987.

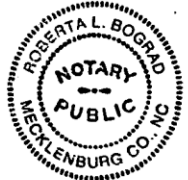


Robert L. Bogard
NOTARY PUBLIC
My Commission Expires: 11/19/1991

NORTH CAROLINA
MECKLENBURG COUNTY

I, a Notary Public, hereby certify that Richard L. Krewson, Substitute Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this the 7th day of July, 1987.



Robert L. Bogard
NOTARY PUBLIC
My Commission Expires: 11/19/1991

NORTH CAROLINA - WAKE COUNTY
The foregoing certificate of Margaret R. Alexander
Robert L. Bogard

Notary(ies) 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 Charles A. Kelly
Asst / Deputy Register of Deeds

Amherst Covenants

BK4244 PG0795

Prepared by - J. H. D. G.:
Marion W. G.:
Att. in W. L. G. P. A.

NORTH CAROLINA
WAKE COUNTY

AMENDMENT OF THE DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR AMHERST

THIS AMENDMENT, executed on this the 30th day of October, 1987, by MIDDLE CREEK DEVELOPERS, LTD., a corporation organized under the laws of North Carolina;

W I T N E S S E T H:

WHEREAS, Middle Creek Developers, Ltd., as Declarant, executed and caused to be recorded in Book 4062, Page 281, Wake County Registry, an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Amherst", hereinafter referred to as the "Declaration"; and

WHEREAS, the Veterans Administration and Wake County have requested certain amendments to be made to the Declaration and Declarant as owner of one hundred percent (100%) of the lots affected by said Declaration consents to such amendments; and

WHEREAS, Article XI, Section 3 of the Declaration provides that the Declaration may be amended by instrument signed by owners of not less than seventy five percent (75%) of the lots and approved by the Wake County Planning Board after submittal, which approval has been obtained; and

WHEREAS, the Declarant as owner of one hundred percent (100%) of the lots in Amherst desires to amend the Declaration.

NOW THEREFORE, Middle Creek Developers, Ltd., hereby amends the Declaration as follows:

1. By attaching to the Declaration an addendum, "Exhibit

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REGISTRATION

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REGISTRY
WAKE COUNTY

A", which is attached hereto as "Exhibit A", incorporated herein and therein by reference hereto and reads as setout therein.

2. Article 1, Section 5 of the Declaration is hereby amended by substituting a period for the first comma in the final sentence of such Section and deleting all of the remainder of that sentence.

3. Article V, Section 2, Subsection (b) of the Declaration is hereby amended by deleting the words "leased to" from the third line thereof and substituting in their place the words "owned by".

4. Article V, Section 2, Subsection (e) of the Declaration is hereby amended by deleting the words "leased to" found in the next to the last line thereof and substituting in their place the words "owned by".

5. Article V, Section 3 of the Declaration is hereby amended by deleting the first and second sentences thereof and substituting in their place the following sentence, "The maximum annual assessment for the calendar year 1987 shall be \$120.00 per lot."

6. Article V, Section 7 of the Declaration is hereby amended by deleting the first sentence beginning on the second line thereof in its entirety and substituting in its place the following sentence, "The annual assessments provided for herein shall commence on the first day of the month following the recording of this Declaration as to all affected lots."

7. Article V, Section 8 of the Declaration is hereby amended by deleting the words "twelve (12%)" and substituting the words "ten (10%)" in their place.

8. Article V, Section 10, Subsections (d) and (e) of the Declaration are hereby amended by deleting them in their entirety and substituting in their place the following Subsection (d),

(d) "That property owned by Declarant shall be exempt from assessment, provided lots as defined in Article I, Section 7 shall be subject to assessment by the Association to the same extent as all other lots with the exception that the maximum assessment for Declarant's lots owned shall be 25% of the assessment for other lots. Properties owned by builders, who acquire such lots for the purpose of engaging in the business of constructing residential buildings shall be subject to an assessment with the exception that the maximum assessment for said lots shall be 25% of the assessment for other lots."

9. Article XI, Section 3 of the Declaration is hereby amended by deleting the third sentence of the first paragraph, which begins as the ninth line of such paragraph, in its entirety and by deleting the entire second paragraph of said Section 3.

10. Article XI, Section 6 of the Declaration is hereby amended by deleting the word "if" located in the fourth line of said Section and substituting in its place the word "as".

NOW THEREFORE, except as amended herein, the Declaration shall remain in full force and effect and this amendment shall not be construed to in any way revoke or alter the Declaration

BK4244 PG0798

except as specifically provided herein.

IN WITNESS WHEREOF, Middle Creek Developers, Ltd. has caused this instrument to be duly executed, the day and year first above written.

MIDDLE CREEK DEVELOPERS, LTD.

By: Frederick A. Ferraro
Frederick A. Ferraro, President

ATTEST:

Glenn D. Ward
Glenn D. Ward, Secretary



[CORPORATE SEAL]

NORTH CAROLINA

WAKE COUNTY

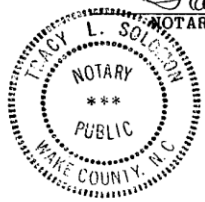
I, a Notary Public of the County and State aforesaid, certify that Glenn D. Ward, personally came before me this day and acknowledged that he is Secretary of Middle Creek Developers Ltd. a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary. Witness my hand and official stamp or seal, this 30th day of October, 1987.

Nancy L. Solomon
NOTARY PUBLIC

My Commission Expires:

3-18-89

[NOTARY SEAL]



NORTH CAROLINA - WAKE COUNTY

The foregoing certificate of Nancy L. Solomon

Notary(ies) 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: Joyce B. Johnson
Asst. / Deputy Register of Deeds

"EXHIBIT A"
To Declaration of Covenants, Conditions
and Restrictions for Amherst Subdivision

Middle Creek Developers, Ltd., Declarant, hereby declares that the hereinafter described property shall be held, sold, and conveyed subject to the easements, restrictions, covenants and conditions contained in the Declaration:

BEING all of Lots 26, 29 through 70, and 89 through 95 of Amherst, Phase 1, Middle Creek Township, Wake County, North Carolina as shown in Book of Maps 1987, Page 1243, Wake County Registry, together with the Permanent Common Open Space, Tract III, containing 2.64 acres, as shown on Book of Maps 1987, Page 1244, Wake County Registry.

Prepared by and return to: Lori P. Jones, P.O. Box 10669, Raleigh, NC 27605

STATE OF NORTH CAROLINA

AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR AMHERST
SUBDIVISION

COUNTY OF WAKE

THIS AMENDMENT to the Declaration of Covenants, Conditions and Restrictions for Amherst is made this 28 day of June, 2016, by the requisite number of Lot Owners within Amherst Subdivision.

WITNESSETH:

WHEREAS, on or about July 13, 1987, Middle Creek Developers, Ltd., a North Carolina corporation, caused to be recorded a Declaration of Covenants, Conditions and Restrictions for Amherst in Book 4062, Page 281 in the Wake County Registry ("Declaration"); and

WHEREAS, Article XI, Section 3 of the Declaration provides that such Declaration may be amended at this time by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots; and

WHEREAS, Article XI, Section 3 of the Declaration further requires any such amendment to be recorded in the Wake County Registry; and

WHEREAS, the owners of not less than seventy-five percent (75%) of the Lots desire that the Declaration be amended as set forth below;

NOW, THEREFORE, the undersigned does hereby declare that the Declaration of Covenants, Conditions and Restrictions for Amherst shall be amended as follows:

1. Article IX, Section 4 is deleted in its entirety and inserted in lieu thereof is the following:

No animals or livestock of any kind shall be kept or maintained 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 bred or maintained for commercial purposes.

No poultry of any kind shall be raised, bred or kept on any Lot, except that chickens shall be permitted only as follows:

(a) No roosters are allowed. Up to ten (10) hens per Lot may be kept in accordance with the requirements of this section. All hens shall be confined to the rear yard of the Lot with appropriate enclosures as described below.

(b) Hens must be provided a chicken coop, pen, or portable chicken coop (sometimes known as a chicken tractor) that includes an enclosed roosting/nesting area and an outdoor run area (collectively, "Housing"). To ensure proper ventilation, a minimum of three (3) square feet of floor space is required in the roosting/nesting area per hen, and a minimum of ten (10) square feet of ground or floor space is required in the run area per hen.

(c) All Housing shall be located only in the rear yard of the Lot behind the line formed by the back wall of the residence, and must be approved in writing by the Board of Directors or by an architectural committee (pursuant to Article VIII of the Declaration) prior to installation. Plans and specifications for the Housing, including the proposed location of the Housing and the number of hens to be housed shall be provided to the Board of Directors or by an architectural committee (pursuant to Article VIII of the Declaration) for review and approval pursuant to Article XI of the Declaration.

(d) Lot Owners are responsible for providing their hens adequate access to feed, clean water, and bedding. Feed shall be stored in a secured container.

(e) Lot Owners shall maintain the Housing and all surrounding areas in a neat, clean and sanitary condition, and shall keep the Housing and surrounding areas cleaned of manure, uneaten feed, feathers, and other waste at all times to preclude odors and aesthetic nuisances.

(f) Chicken manure shall be promptly bagged and disposed of with household waste, stored securely in a waterproof container, or composted in an enclosed backyard composter.

2. Except as amended hereinabove, the remaining portions of the Declaration shall remain unchanged and in full effect. This Amendment to the Declaration of Covenants, Conditions and Restrictions for Amherst shall be effective from the date of its recording in the Wake County Registry.

WHEREFORE, the President of the Association has hereunto affixed the corporate certification for the purpose of enacting the foregoing amendment.

CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR AMHERST

By authority of its Board of Directors, the Amherst Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly approved not less than seventy-five percent (75%) of the Lot Owners within Amherst Subdivision and is, therefore, a valid amendment to the existing Declaration of Covenants, Conditions and Restrictions for Amherst Subdivision.

AMHERST HOMEOWNERS ASSOCIATION,
INC.

By: *Kathleen Olson*
President

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF WAKE

I, MADELINE M. JOYCE, a Notary Public of the County and State aforesaid, certify that KATHLEEN OLSON, personally came before me this day and acknowledged that he/she is President of the Amherst Homeowners Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, he/she executed the foregoing instrument in his/her capacity as President of the Amherst Homeowners Association, Inc.

Witness my hand and official stamp or seal, this 28 day of JUNE, 2016.

Madeline M. Joyce
Notary Public

MADELINE M. JOYCE
Printed Name

My commission expires: 1/30/2018

