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GUILFORD CO, NC FEE \$62.00  
PRESENTED & RECORDED:

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JEFF L. THIGPEN  
REGISTER OF DEEDS  
BY: KATHY AGUIRRE  
DEPUTY-GB

**BK: R 7058**

**PG: 891-907**

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF JORDAN CREEK**

*M. Barber p/u*

**THIS DECLARATION**, made on the date hereinafter set forth by Mackay Road Partners Four, LLC, a North Carolina Limited Liability Company, referred to as "Declarant";

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property in Jamestown Township, County of Guilford, State of North Carolina, which is more particularly described as:

*17 KA*

All of that certain parcel of land shown on the plat entitled "Jordan Creek Townhomes" which appears of record in the Office of the Register of Deeds of Guilford County, North Carolina, in Plat Book 177 at Page 112, which is a portion of the property described in the attached Exhibit "A", which is herein incorporated by reference.

**NOW, THEREFORE**, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, 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 Jordan Creek Townhomes Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is 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 hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Elements" shall mean all real property together with all improvements thereon, owned by the Association for the common use and enjoyment of

the Owners. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

All that land designated "Common Elements" as shown and described on the Plat entitled "Jordan Creek Townhomes", which appears of record in the Office of the Register of Deeds of Guilford County, North Carolina, in Plat Book 177, at Page 112. The numbered lots are not part of the Common Elements.

There shall be a patio located immediately to the rear of each dwelling. Such patio is a part of the respective dwelling to which it is attached.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Elements and dedicated streets.

Section 6. "Declarant" shall mean and refer to Mackay Road Partners Four, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Elements, 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 permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facility by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument is signed by at least two-thirds (2/3) of each class of Members, agreeing to such dedication or transfer, has been recorded;
- (d) the right of the Association to impose regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements.

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

Section 3. Parking Rights. Ownership of each Lot in Jordan Creek shall entitle the Owner of Owners thereof to the use of those parking spaces provided by the Association.

### **ARTICLE III 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.

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. Class A Members 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 or votes 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 of either of the following events whichever occurs earlier.

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) 75% of the units are deeded to homeowners; or
- (c) until December 31, 2019.

### **ARTICLE IV COVENANT FOR MAINTENANCE 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, other than Declarant or principals of Declarant that utilizes any Lot as a sales model for purposes of selling other new construction on Lots, 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, costs

and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for 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 exterior maintenance of the dwellings situated upon the Lots or for the use and enjoyment of the Common Elements, including, but not limited to the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Elements, the procurement and maintenance of insurance in accordance with the By-Laws, the payment of charges for common television antenna service to the Lots the employment of attorneys to represent the Association when necessary, and such other needs as may arise. The assessments shall also be used to pay the pro-rata share of maintenance of a certain retention pond, and the pro-rata share of the private road maintenance of the Planned Unit Development

Section 3. Authority to Purchase Insurance. Insurance policies upon the Planned Unit Development (other than title insurance) shall be purchased by the Association in the name of the managing agent or Executive Board of the Association, as trustees for the Owner(s) and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates of memoranda of insurance to the Association, and upon written request, to any Owner(s) or mortgagee endorsements or to the holders of the first mortgages on the Unit, or any of them.

Insurance policies upon the Planned Unit Development purchased by the Association must provide that:

- (a) Each Unit Owner(s) is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association.
- (b) The insurer waives its right to subrogation under the policy against any Unit Owner(s), members of his household, the Association and their respective servants, agents and guests;
- (c) No act or omission by any Unit Owner(s), unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;

(d) If, at any time of a loss under the policy, there is other insurance in the name of a Unit Owner(s) covering the same risk covered by the policy described in this Article, the Association's policy provides primary insurance;

(e) The insurer issuing the Policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, to each Unit Owner(s) and to each mortgagee or beneficiary under a Deed of Trust to whom certificates of memoranda of insurance have been issued at their respective last known addresses.

(f) Each Unit Owner(s) may obtain insurance, at his own personal expense, affording coverage upon his Unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

(g) Commencing not later than the time of the first conveyance of a Unit to a person other than the Declarant, the following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Townhome.

(h) Casualty insurance covering the Common Elements and Units, except such personal property as may be owned by the Unit Owner(s), shall be procured in an amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage. Such policy shall contain an Agreed Amount Endorsement or an Inflation Guard Endorsement, if available. By way of illustration and not of limitation, such casualty insurance shall cover fixtures, installations or additions, or equal replacements thereof, comprising a part of the building within each individual Unit (as that term is defined in Article 3 hereof) in accordance with the original Townhome plans and specifications. In determining the amount of coverage for such fixtures, installations or additions, the Executive Board of the Association shall annually set the standard allowance for such items as carpeting, bathroom and kitchen cabinets, wall covering, vinyl floor covering, ceramic tile, kitchen appliances, bookshelves, etc., which were included in the original Townhome plans and specifications. By way of illustration and not of limitation, such casualty insurance shall not cover furniture, furnishings or other household or personal property owned by, used by or in the care, custody or control of a Unit Owner(s) (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Unit by a Unit Owner(s) thereof at his expense. Such coverage shall afford protection against: (a) loss or damage by fire or other hazards covered by the standard extended coverage endorsement; and (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use including, but not limited to, vandalism and malicious mischief. The maximum deductible amount under any policy shall be the lesser of (i) Ten Thousand Dollars (\$10,000.00) or (ii) one percent (1%) of the face amount of the policy; provided, however, that in no event shall the total amount of insurance after application of any deductibles be less than eighty percent (80%) of the replacement cost

of the insured property at the time the insurance is purchased and at each renewal date. Funds to cover deductible amounts shall be included in the operating reserve account maintained by the Association.

(i) A comprehensive policy of public liability insurance insuring the Association in the amount not less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage.

(j) The Executive Board may maintain fidelity coverage against dishonest acts by the Association's officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of this paragraph. If the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or directors of the Association can and do directly receive or disburse the monies of the Association), then the Executive Board shall provide the coverage set forth in this paragraph.

Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association and to any Institutional Lender who has given the notice required under Article 31 of this Declaration.

(k) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Townhome Unit Owner(s) as a group to a Townhome Unit Owner(s).

(l) Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Unit Owner(s) in proportion to each Unit's share of the Allocated Interests, unless otherwise specifically allocated by the Executive Board, in its sole discretion.

(m) If the insurance described in this Article is not reasonably available, in the sole determination of the Executive Board of the Association, the Executive Board shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owner(s).

(n) All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owner(s) and their mortgagees, as their respective interests

may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of the Association, the Unit Owner(s) and their respective mortgagees, to be utilized and distributed as set out in Article 23 of this Declaration.

(o) In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner(s) shall be held for the mortgagee and the Unit Owner(s) as their interest may appear.

**Section 4. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Thousand Eight Hundred Twenty Dollars (\$2,820.00) per Lot, and may be collected in monthly installments in the amount of Two Hundred Thirty Five Dollars (\$235.00) per Lot.

Upon closing of the sale of a Lot by Declarant to the Townhome Unit Owner, the homeowners monthly assessment pro-ration of dues shall be assessed on the day of closing, until the end of the month, with no pro-ration due from Declarant. Pro-ration of monthly dues from the new Townhome Unit Owner from closing date to the end of the month, plus one (1) full month of homeowners assessment dues shall be collected at closing.

(a) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner 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 five percent (5%) of the maximum annual assessment of the previous year.

(b) The maximum annual assessment for the calendar year immediately following the conveyance of the first Lot to an Owner and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) 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 5. 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 Elements, 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. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 6. 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 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.

**Section 7. Rate of Annual Assessment.** Both annual and special assessments must be fixed at a uniform rate for all lots; provided, however, that in the event annual and special assessments collected from Class A Members shall be insufficient to defer the costs of those items specified in Section 2 above, then in such event Declarant shall loan monies interest-free to the Association for payment of all such costs and be repaid at a date in the future upon request from Declarant.

**Section 8. Date and Commencement of Annual Assessments: Due Dates:** The annual assessments provided for herein shall be collected on a monthly basis and shall commence as to each Lot on the first day of the month following conveyance of such Lot by the Declarant to an Owner/Occupant. 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 fix the amount of the annual assessment against each Lot. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates, and the Board shall have the authority to require the assessments to be paid in pro rata monthly installments. 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 9. 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 against the property, and interest, costs and reasonable attorney's fees of 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 non-use of the Common Elements or abandonment of his Lot.

**Section 10. Subordination of the Lien to Mortgage.** The liens provided for herein shall be subordinate to the lien of any first mortgage of first deeds of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding action. However, the sale or transfer of any Lot, which is subject to any mortgage, or deed of trust, pursuant to a foreclosure thereof, shall extinguish the lien of



such assessments as to the payment thereof, which becomes 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 of first deed of trust.

Section 11. The Association shall be responsible for the maintenance, repair and replacement of all the Common Elements, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Elements for the furnishing of utility and other services to the Units and said Common Elements, and should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage. The Association shall be deemed to have such easements on, across and over the Common Elements as shall be reasonably necessary in the exercise and discharge of its maintenance rights and obligations reserved and imposed by this Declaration or under the Planned Community Act. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any act of a Unit Owner(s), his immediate family, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement and the Unit Owner(s) who is responsible for the act causing the damage (whether done by himself or by his family, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or by any other reason, exceed the amount of insurance proceeds applicable to such maintenance, repair and replacement.

The Association shall be responsible for maintaining the completed permanent wet stormwater BMP as directed by the governmental office having jurisdiction for watershed protection. If the Association should be dissolved or cease to exist, then in that event all the owners of record at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

## ARTICLE V ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, 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 structure and topography by the Board of Directors of the Association, or by an architectural

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 that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by the FHA.

Declarant shall continue to maintain complete control of the Architectural Control with regard to new construction until completion of the last Townhome, at which time, the Townhome Unit Owners are given control.

## ARTICLE VI PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for the property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of the Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribute from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## **ARTICLE VII EXTERIOR MAINTENANCE AND PEST TREATMENT**

In addition to maintenance upon the Common Elements, the Association shall provide exterior maintenance upon each Lot which is subject to assessments hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, or window and door screens. 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 that the need for maintenance, repair and replacement is caused through the willful or negligent act of the Owner, his family, guests, or invitees, 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.

Townhome Unit Owners shall be responsible for any pest or termite protection to their Townhome Unit and Lot.

## **ARTICLE VIII USE RESTRICTIONS**

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family townhouse dwelling not to exceed three stories in height. A patio shall be located immediately to the rear of each single-family townhouse dwelling. Such patios are a part of the respective dwelling to which it is attached. Any building erected, altered, placed or permitted to remain on any Lot shall be subject to the provisions of Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. 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.

Section 3. 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 kept or maintained for commercial purposes and they shall not become an annoyance or nuisance to the neighborhood.

Section 4. Outside Antennas and Satellite Dishes. No outside radio or television antennas or satellite dishes shall be erected on any Lot or dwelling unit within the

**Section 4. Outside Antennas and Satellite Dishes.** No outside radio or television antennas or satellite dishes shall be erected on any Lot or dwelling unit within the Properties unless and until written permission for the same had been granted by the Board of Directors of the Association or its architectural control committee.

**Section 5. Boats and Trailers.** No boat, trailer, motor home, camper, house trailer, boat trailer or similar type recreational vehicle, or any commercial truck, shall be parked or kept in any driveway of any lot or upon the Common Elements, including parking areas, without the prior written consent of the Board of Directors.

## **ARTICLE IX EASEMENTS**

**Section 1. Platted Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, 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 easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

**Section 2. Unintentional Encroachments/Easements Appurtenant.** In the event that any structure intended for use as a dwelling erected upon any lot shall encroach upon any Common Elements or upon any other lot for any reason not caused by the purposeful or negligent act of the owner of such lot or the agents of such owner, then an easement appurtenant to such lot shall exist for the continuation of such encroachment upon the Common Elements or other lot for so long as such encroachment shall naturally exist; and, in such event that any portion of the Common Elements shall encroach upon any lot, then an easement shall exist for the continuation of such encroachment by the Common Elements on to any lot for so long as such encroachment shall naturally exist.

**Section 3. Reservation of Easements.** Declarant reserves for itself, and its successors and/or assigns, the right and easement of ingress, egress and regress over and through the Common Elements for the purpose of constructing additional dwelling units on the land contiguous with the Common Elements. Upon completion of construction of such units and recordation of a new plat, Declarant, or its successors and/or assigns may convey the Common Elements depicted on such new plat to the Association, and the owners of the dwelling units constructed on such new plat shall become members of the Association, with all rights appurtenant thereto. Further, Declarant reserves for itself, and its successors and/or assigns, the right of access of and through the Common Elements herein described for private street right of way and purposes of access to all public utilities, including, but not limited to, electric power, natural gas, water sanitary sewer and cablevision for the use and benefit if the dwelling units to be constructed upon real property contiguous to the Common Elements.

Further, access will be granted to governmental offices having jurisdiction, and all public utilities, including electric power, natural gas, water sanitary sewer and cablevision, for the right and easement of ingress, egress, and regress over and through the Common Elements for the purpose of providing services for the benefit of the Declarant, dwelling unit owners, and their successors and/or assigns.

## **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, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration and shall have all remedies available under the terms of Chapter 47F of the North Carolina General Statutes (the "Planned Community Act.") 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 the covenants or restrictions by judgment or court order shall in no way affect any other provision, 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 twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

**Section 4. Annexation.** Any portion of the property described in the attached Exhibit A may be made subject to this Declaration by the recordation of an amendment executed by the Declarant, and specifying that portion of the property described in Exhibit A to be brought hereunder. Annexation of additional property not described in Exhibit A shall require the consent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, 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. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth above and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A

membership or two-thirds (2/3) of the Class B members are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

Section 5 Applicability of Chapter 47F: Chapter 47F of the North Carolina General Statutes (the "Planned Community Act") is applicable in all respects to Jordan Creek, and in the vent of any conflict between the Planned Community Act, the Declaration or By-Laws, the Planned Community Act will control. It is specifically intended that the Board of Directors, in carrying out their duties described hereunder, shall have the benefit of any means of enforcement available under the Planned Community Act to insure the compliance by any owner with the terms of this Declaration including, without limitation, the power and authority to levy daily fines for violations hereof.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions require approval of Federal Housing Administration of Veterans Administration: Annexation of additional properties not listed in this Declaration, dedication of Common Elements, and amendment to this Declaration of Covenants, Conditions and Restrictions.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2009.

**MACKAY ROAD PARTNERS FOUR, LLC**

By: Betty A Smith  
BETTY A. SMITH, Member/Manager

By: Dwight D Stone  
DWIGHT D STONE, Member/Manager

By: Brian D Smith  
BRIAN D. SMITH, Member/Manager

By: Gary E Burkhardt  
GARY E BURKHART, Member/Manager

NORTH CAROLINA

~~ROCKINGHAM~~  
GUILFORD COUNTY

I, TERESA W. JARRETT, a Notary Public, do hereby certify that BETTY A. SMITH personally appeared before me this day and acknowledged that (he, she, they) is/are Member/Manager(s) of Mackay Road Partners Four, LLC, a North Carolina Limited Liability Company,

WITNESS my hand and official seal this the 10<sup>th</sup> day of September, 2009.

Teresa W. Jarrett  
Notary Public

My Commission Expires:

5/24/2010



NORTH CAROLINA  
~~ROCKINGHAM~~  
GUILFORD COUNTY

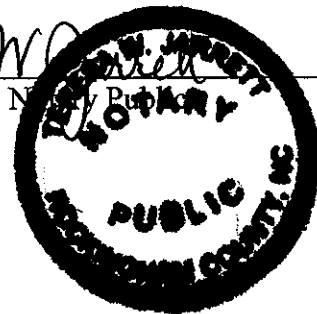
I, TERESA W. JARRETT, a Notary Public, do hereby certify that DWIGHT B. STONE personally appeared before me this day and acknowledged that (he, she, they) is/are Member/Manager(s) of Mackay Road Partners Four, LLC, a North Carolina Limited Liability Company,

WITNESS my hand and official seal this the 10<sup>th</sup> day of September, 2009.

Teresa W. Jarrett  
Notary Public

My Commission Expires:

5/24/2010



ROCKINGHAM COUNTY

I, TERESA W. JARRETT, a Notary Public, do hereby certify that BRIAN D. SMITH personally appeared before me this day and acknowledged that (he, she, they) is/are Member/Manager(s) of Mackay Road Partners Four, LLC, a North Carolina Limited Liability Company,

WITNESS my hand and official seal this the 10<sup>th</sup> day of September, 2009.

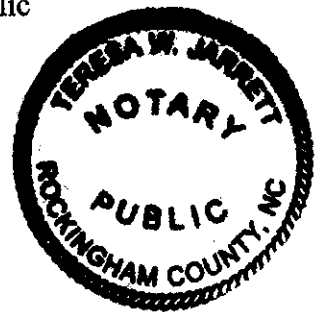
Teresa W. Jarrett  
Notary Public

My Commission Expires:

5/24/2010

NORTH CAROLINA

~~GUILFORD COUNTY~~  
Rockingham



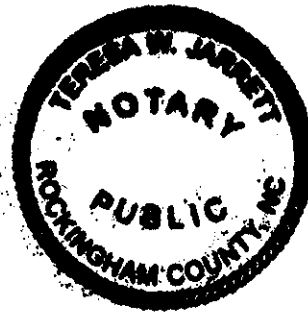
I, TERESA W. JARRETT, a Notary Public, do hereby certify that GARY E. BUCKHART personally appeared before me this day and acknowledged that (he, she, they) is/are Member/Manager(s) of Mackay Road Partners Four, LLC, a North Carolina Limited Liability Company,

WITNESS my hand and official seal this the 10<sup>th</sup> day of September, 2009.

Teresa W. Jarrett  
Notary Public

My Commission Expires:

5/24/2010





## Exhibit A

All deeds and plats referenced in the following description are as found recorded in the Office of the Register of Deeds of Guilford County, North Carolina.

See Plat Book 169, Page 144 (Final Plat for Newco Land, Inc)

Lying in Jamestown Township, Guilford County, North Carolina, and being more particularly described as follows:

**Beginning** at an existing iron pipe on the northern margin of the 60 foot Right-of-way of Mackay Road, said iron pipe being the southeast corner of the Edward A. Johnson, (and others), property (Deed Book 4157, page 1474), and the southwest corner of the property herein described; thence from said **Point of Beginning**, with the eastern line of Johnson, (and others), North 05° 48' 04" East 438.74 feet to an existing stone, said stone being the northeast corner of Johnson, (and others), and on the southern line of the Lea Family Trust (Deed Book 5727, page 105); thence continuing along the same bearing, a new line with said Lea Family Trust, North 05° 48' 04" East 200.09 feet, a total of 638.83 feet, to a new iron pipe set on the southern line of Lot 8, Hickory Hollow Subdivision (Plat Book 51, page 17), said iron pipe being the northwest corner of the property herein described and a new corner with said Lea Family Trust; thence with said southern line of Lot 8, South 84° 32' 00" East 119.04 feet to an existing iron pipe, the southwest corner of Lot 7; thence continuing along the same bearing, with the southern line of Lot 7, crossing the terminus of Hickory Hollow Road, and with the southern line of Lot 6, South 84° 32' 00" East 563.36 feet, a total of 682.40 feet, to a new iron pipe set on said southern line of Lot 6, said iron pipe being the northeast corner of the property herein described, a new corner with said Lea Family Trust, and being located North 84° 32' 00" West 212.79 from the southeast corner of said Lot 6 and the northeast corner of said Lea Family Trust; thence with a new line with said Lea Family Trust, South 05° 08' 17" West 201.10 feet to an existing iron pipe on the southern line of said Lea Family Trust, said iron pipe also being the northwest corner of the Lea Family Limited Partnership, Tract 3, (Deed Book 4624, page 475); thence continuing along the same bearing, and with the western line of said Lea Family Limited Partnership, South 05° 08' 17" West 783.72 feet (passing over an existing iron pipe at 589.20 feet), a total of 984.82 feet, to a new iron pipe set on the northern margin of the 60 foot Right-of-way of Mackay Road, said iron pipe being the southeast corner of the property herein described; thence with said northern margin of Mackay Road the following nine (9) courses: 1) along a curve to the right having a radius of 900 feet, and a chord bearing and distance of North 56° 28' 07" West 223.42 feet to a point; 2) thence North 49° 20' 19" West 20.16 feet to a point; 3) thence North 49° 20' 53" West 161.96 feet to a point; 4) thence North 51° 44' 46" West 77.54 feet to a point; 5) thence North 57° 45' 14" West 80.48 feet to a new iron pipe; 6) thence North 57° 45' 14" West 24.63 feet to a point; 7) thence North 66° 18' 51" West 47.54 feet to a point; 8) thence North 66° 18' 51" West 54.61 feet to a point; 9) thence North 75° 15' 42" West 90.92 feet to an existing iron pipe, the **Point and Place of Beginning**, containing 12.45 Acres more or less, and being all of Lot 1 of the "Final Plat for Newco Land, Inc" as recorded in Plat Book 169, page 144 in the Guilford County Register of Deeds Office.