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JEFF L. THIGPEN

REGISTER OF DEEDS

BY: DEBORAH LIGHT

DEPUTY-GB

**BK: R 7119**

**PG: 1018-1046**

Prepared By and Return to:

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Charlotte, NC 28202

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**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR AUTUMN CREEK**

**(FORMERLY KNOWN AS AUSTIN MILL)**

THIS DECLARATION is made this 14 day of April, 2010, by the undersigned owners of Lots within the Development (the "Owners").

WITNESSETH:

WHEREAS, Austin Mill, LLC ("Developer") executed a Declaration of Covenants, Conditions and Restrictions for Austin Mill recorded February 26, 2007 in Book 6681, Page 1233 (the "Declaration") in the Guilford County Public Registry (the "Registry") subjecting the real property described therein (the "Property") to the terms of the Declaration; and,

WHEREAS, Atlas NC I SPE, LLC ("Atlas") acquired fee simple title and other rights in and to the Property (excluding certain portions of the Property previously conveyed and released) by virtue of a Substitute Trustee's Deed recorded June 8, 2009 in Book 7022, Page 1174 of the Registry; and

WHEREAS, Article XIII, Section 2 of the Declaration provides that this Declaration may be amended by not less than 67% of the Lot Owners; and

WHEREAS, the undersigned Owners own 67% or more of the Lots within the Development; and,

WHEREAS, Owners desire to amend and restate the Declaration as set forth below which includes the changing of the name of the Development to "Autumn Creek".

NOW, THEREFORE, Owners, by this Amended and Restated Declaration of Covenants, Conditions and Restrictions, do declare that portions of the properties shown on the map of Autumn Creek, more particularly described in Section 1 of Article II below, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of the properties, and which shall run with the title to the real property, shall be binding on all parties having right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

Section 1. "Association" shall mean and refer to Autumn Creek Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and/or 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 a part of the Properties, including contract buyers, but excluding those having an interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the "Existing Property" described in Article II, Section 1, hereof, and such additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Association under the provisions of Article II hereof.

Section 4. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Properties (with the exception of the Common Area), and shall include all improvements thereon.

Section 5. "Declarant" shall mean and refer to Atlas NC I SPE, LLC, a North Carolina limited liability company, its successors and assigns.

Section 6. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plat or plats of Autumn Creek, recorded or to be recorded in the Guilford County Public Registry and designated thereon as "Common Area", "Common Elements", "Open Space", or other similar designations, but shall exclude all Lots as hereinabove defined which are shown thereon. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is shown as such on the plat of the Properties identified in Section 1 of Article II.

Section 7. "Member" shall mean and refer every person or entity that holds membership in the Association.

Section 8. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

Section 9. "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising Autumn Creek; to use easements through the Common Area for the purpose of making improvements within Autumn Creek or within real estate which may be added to Autumn Creek; and to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

Section 10. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Association.

Section 11. "Bylaws" shall mean the bylaws of the Association as they now or hereafter exist.

Section 12. "Dwelling Unit" shall mean a residence containing sleeping facilities for one or more persons and a kitchen.

## **ARTICLE II**

### **PROPERTIES SUBJECT TO THIS DECLARATION**

Section 1. Existing Property. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is located in Guilford County, North Carolina, and is described as follows:

BEING ALL OF THAT PROPERTY shown on the Plat of Autumn Creek, Phase 1, which is recorded with the Register of Deeds for Guilford County, North Carolina in Plat Book 178 at Pages 46 & 47.

Section 2. Additions to Existing Property. Additional property may be brought within the scheme of this Declaration and the jurisdiction of the Association as provided in this Section.

(a) Additional residential property (and common area) may be annexed to the Properties and brought within the scheme of this Declaration and the jurisdiction of the Association with the consent of the members entitled to at least two-thirds (2/3) of the votes appurtenant to all Class A lots and at least two-thirds (2/3) of the votes appurtenant to all Class B lots, if any, as hereinafter defined in Article III, Section 2. The Association may participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes as the Association, thereby adding to the Association, or to a surviving homeowners association, the properties, rights and obligations of the non-profit corporation with which it merges or consolidates. Any such merger or consolidation shall have the assent of, the members as provided above in this subsection (b), and no such merger or consolidation shall revoke, change or add to any of the provisions of this Declaration except as herein provided.

(b) The additions authorized under Subsections (a) shall be made by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties, which Supplementary Declarations of Covenants, Conditions and

Restrictions shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessment for their just share of the Association's expenses. A Supplementary Declaration may contain such complementary additions and modification of the covenants, conditions and restrictions contained in this Declaration as may be deemed by Declarant to be necessary or desirable with respect to the Properties which will be subject to the proposed Supplementary Declaration may not amend or modify the provisions of this Declaration (as previously amended, if amended) insofar as it applies to Lots which are shown on maps recorded prior to recordation of the newly proposed Supplementary Declaration.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership Interest. Every Owner of a Lot which is subject to assessment 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. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have two (2) classes of voting membership.

(a) Class A. Except as provided below, Class A Members shall be all Lot Owners except the Declarant; and Class A Members shall be entitled to one (1) vote for each Lot (Class A Lot) owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the vote appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. Class B Member shall be the Declarant (as defined in this Declaration); and such Member shall be entitled to three (3) votes for each Lot (Class B Lot) owned.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided that the Class B Lots shall be reinstated with all rights, privileges and responsibilities of such Class, if, after conversion of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the Existing Property pursuant to Article II above, thus making Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and re-conversion shall occur automatically as often as the foregoing facts shall occur).

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots.

Provided, further that nothing herein shall be construed to prohibit Declarant from converting all or part of the Class B membership to Class A membership, with the results set forth above at any time earlier than the alternative events referred to above, by written statement executed by the Declarant and delivered to the Association.

Section 3. Control by Declarant During Development Phase. Notwithstanding anything to the contrary in this Declaration, during the Development Phase (as defined herein), the Declarant shall have the right to designate and select the Board of Directors of the Association. For purposes of this section the "Development Phase" shall mean the period beginning on the date of incorporation of the Association and continuing until the earlier of (a) the date when the Declarant has conveyed each and every Lot within the Properties, and (b) the date when the Declarant notifies the Association in writing that the Declarant has waived its right to designate and select the Board of Directors. Whenever the Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation under/or Bylaws of the Association. The Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Declarant need not be the Owner of a Lot. Any representative of Declarant serving on the Board of Directors of Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have pecuniary or other interest. Similarly, Declarant, as a Member of the Association, shall not be required to disqualify itself upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest.

Section 4. Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall, as permitted by the Act, be suspended throughout the term for any default by an Owner of a Lot under the Bylaws or of this Declaration of Covenants, Conditions and Restrictions or of rules and regulations adopted and published by the Association.

#### **ARTICLE IV** **PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Area, which rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions, in addition to other restrictions in this Declaration:

(a) The right of the Association to charge reasonable admission and other fees for use of any recreational facilities situated upon the Common Area, to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in Guilford County, North Carolina, and to their families, tenants, contract purchasers and guests as provided in Section 2 of the Article IV; and to adopt and publish rules and regulations governing the use of the Common Area, including such recreational facilities;

(b) The right of the Association, as permitted by the Act, to suspend the voting rights and right of use of any recreational facilities by an Owner and the Owner's family, tenants, contract purchasers and guests for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Bylaws, this Declaration and published rules and regulations, if any;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area 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 the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots (Class A and Class B) (and, in the case of portions of the Common Area subject to a septic sewer easement, all of the Owners whom use and enjoyment of septic sewer easement is reserved) agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided that the foregoing shall not preclude the Association of Declarant, without such agreement by the Members, from granting easements to public authorities or utilities, or to others for the installation and maintenance of electrical, telephone, cable television, water and sewerage service and drainage facilities and other utilities upon, over, under and across the Common Area, including the portions of the Common Area subject to septic sewer easements, without the assent of the membership when, in the sole opinion of the Board of Directors or Declarant, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties;

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association, with the written assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots (Class A and Class B) to mortgage, pledge and deed in trust any and all of its real or personal property as security for money borrowed or debts incurred for the purpose of improving the Common Area and facilities, with the rights of such creditors to be subordinate to the rights of the Owners hereunder-provided, that the written consent of all Owners entitled to the use and enjoyment of septic sewer easements shall be required as a condition to the grant or conveyance of any mortgage, pledge or deed of trust encumbering those areas;

(f) The right of the Association to adopt, publish, and enforce rules and regulations as provided in Article IX; and

## Section 2. Off Site Septic Lots.

(a) Grant of Easement. A perpetual, non-exclusive easement to erect, construct, install, lay and use, and maintain and repair from time to time, septic sewer lines and a septic drainage field and related improvements, if any, is hereby created by the Declarant on certain "Septic Easement Lots" and on certain "Private Sewer Line and Maintenance Easements" in favor of the Owners of those certain Lots, all as designated on the plat or plats referred to in Article I, Section 6 above (the "Benefited Lots"). For example, a Septic Easement Lot designated for use by a particular Benefited Lot, is labeled with the number of the Benefited Lot. Each Private Sewer Line and Maintenance Easement shall also include the right to use any immediately adjacent area in order to provide access to a Private Sewer Line and Maintenance

Easement and to provide temporary usage during a period of construction, installation or repair to a septic sewer line. The Association may adopt reasonable rules and regulations governing the use of the Private Sewer Line and Maintenance Easements. Each Owner of a Lot across which runs a Private Sewer Line and Maintenance Easement (a "Burdened Lot") shall not, on the Burdened Lot, (a) plant or maintain any tree or other planting, (b) construct or maintain any improvement, or (c) conduct or permit any activity to be conducted, which shall interfere with the use of a Private Sewer Line and Maintenance Easement for its intended purpose.

(b) Use of Easement. The Owner or Owners of each Benefited Lot covenant to (a) use the septic sewer lines and septic drainage field and other related improvements within the applicable Septic Easement Lot and Private Sewer Line and Maintenance Easement in conformity with all applicable federal, state and local ordinances, regulations, health codes and guidelines, and (b) use, maintain and repair the septic tank, septic lines and other related improvements, if any, located on a Benefited Lot in conformity with all applicable federal, state and local ordinances, regulations, health codes and guidelines. The Owner or Owners of each Benefited Lot shall indemnify and hold the Association and Owners of any Burdened Lots harmless against any damages, costs, claims and fines, including the Association's and such Owners' reasonable attorney's fees, resulting from a breach of a covenant under this subsection. The covenants under the subsection shall be real covenants which run with the land.

Section 3. Sign Easements. The Association may maintain within the Common Area or upon a Lot, subdivision signs and landscaping and lighting surrounding such signs. The costs of all such maintenance, repair and replacements of the signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out in Article V of this Declaration. In addition, easements for the maintenance of subdivision signs and landscaping and lighting surrounding the signs are reserved as indicated on recorded plats. The Declaration hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over the portions of Lots designated as "sign easement" on the plats, to maintain, repair and replace the subdivision signs which may be located thereon from time to time, and the lighting fixtures and landscaping surrounding the signs. In addition to the easement granted above, the Declarant hereby gives grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or part of the Properties.

Section 4. Delegation of Use.

(a) Family. The rights and easement of enjoyment granted to every Owner in Section 1 and 2 of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Guilford County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 and 2 of this Article IV may be delegated by the Owner to his or her tenants or contract purchasers who occupy a residence within the Properties as their principal residence in Guilford County, North Carolina.

(c) Guests. Common Area may be utilized by guests of Owners, tenants or contract purchasers subject to the rules and regulations of the Association governing said use, as established by the Board of Directors.

## **ARTICLE V**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Owner of any Lot subject to the provisions of this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges as herein provided;
- (b) Special assessments for capital improvements, such assessments to be fixed, established, and, collected from time to time as hereinafter provided; and
- (c) To the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against the Common Elements, and a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months.

All annual and special assessments on a Lot, together with interest thereon and costs of collection thereof, as hereinafter provided, 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 and costs, and reasonable attorney's fees (as provided in North Carolina general Statutes 6-212) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the owner of such Lot at the time when the assessment became due. The personal obligation of any Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by such successor or assign.

### Section 2. Purpose of Assessments.

(a) The assessments levied by the Association shall be used exclusively for the purposes of the general enhancement and promotion of Autumn Creek, including without limitation the recreation, health, safety and welfare of the Owners in Autumn Creek, the enforcement of these covenants and the rules of the Association, and in particular, the improvement and maintenance of the Common Elements, including, without limitation, the maintenance of any dedicated streets which are not accepted for maintenance by the appropriate governmental authority, the maintenance of entrance ways, landscaping and lighting of Common Elements, the cost of operating, maintaining and repairing any offsite septic pump lines, street light or signs created by the Association or the Declarant, the payment of taxes assessed against Common Elements, the payment of assessments for public capital improvements levied against the Common Elements, the maintenance of liability and other insurance and for such other needs consistent with this Declaration as may arise, the employment of attorneys and other agents to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements, the payment of management fees and such other needs as may arise. In



addition, the assessments shall be used as required or deemed appropriate by the Association for the repair and/or maintenance of the permanent wet detention ponds and bio-retention areas. Repairs and maintenance shall include, but not be limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision. Assessments shall also provide for the procurement and maintenance of insurance in accordance with the By-Laws of the Association, the provision of adequate reserves for the replacement of major structures incorporated into the permanent wet detention ponds and bio-retention areas, and such other needs as may arise.

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

Section 3. 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 \$1000.00 per Lot, which assessments shall be payable annually or in installments, as determined by the Board of Directors.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors, effective January 1 of each year, without approval by the membership by an amount not to exceed the greater of ten percent (10%) or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for All Cities for the previous year; and

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) without limit by the assent of two-thirds (2/3) of the votes appurtenant to each Class of Lots represented in person or by proxy 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 setting forth the purpose of the meeting.

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

Section 4. Special Assessment for Repairs. In the event any portion of the Common Elements is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or family members, the Association is hereby authorized to repair such damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material including a twenty percent (20%) fee, shall become a special assessment upon the Lot of said Owner.

Section 5. Special Assessment for Capital improvements. In addition to the annual assessments authorized above, the Association may levy one or more special assessments applicable to that year for the purpose of defraying the costs of construction or reconstruction, unexpected repair, or replacement of a capital improvement upon the Common Elements, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Without limiting the foregoing, the Association may levy special assessments that may be necessary to defray costs necessary to maintain the water quality of any ponds on the Common Elements.

Section 6. Notice and Quorum for any Action Authorized Under Section 3 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 5 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 fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and no quorum shall be required at the subsequent meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Effect of Non-Payment of Assessments: Remedies of the Association. Assessments authorized by this Declaration shall be due and payable on the dates established by the Board of Directors from time to time. Fees, fines, and other charges authorized by this Declaration shall be due and payable thirty (30) days after written notice thereof from the Association to an Owner. Any Assessment, fee, fine, or other charge not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust. Interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements or abandonment of his Lot, nor shall damage to or destruction of any improvement on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided herein.

Section 8. Default of Owners' Association. Upon default by the Association in the payment to the Jurisdiction entitled thereto of any assessments for public improvements or ad

valorem taxes levied against the Common Elements, which default shall continue for a period of six (6) months, each Lot Owner in Autumn Creek shall become personally obligated to pay the taxing or governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of lots in Autumn Creek. If such sum is not paid by the Lot Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien of the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclosure that lien against the Lot of the Owner.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage or first deed of trust on such Lot, and subordinate to ad valorem taxes. The sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure on a first mortgage or first deed of trust thereon or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessments, fees, fines or other charges as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments, fees, fines or other charges thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 10. Exempt Property. Any portion of Autumn Creek dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein; provided, however no land or improvements devoted to use as a Dwelling shall be exempt from said assessments.

Section 11. Reserves. The Board of Directors of the Association, in establishing the annual budget for operation, management and maintenance of Autumn Creek, may designate therein a sum to be collected and maintained as a reserve fund for replacement or any extraordinary repairs or maintenance of any capital improvements to the Common Elements (Capital Improvement Fund). The amount to be allocated to the Capital Improvement Fund shall be established by the Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacements or extraordinary repairs or maintenance in the Common Elements. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such money shall be used only to make capital improvements to the Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Although the funds held in the Capital Improvement Fund, and any increments thereto or profits derived therefrom, shall be held for the benefit of the members of the Association, no member of the Association shall have to right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. The funds held in the Capital Improvement Fund shall not be subject to withdrawal by an Owner.

Section 12. Uniform Rate of Assessment. Both annual and special assessments shall, except as otherwise specifically provided for in this Declaration, be fixed at a uniform rate for all Lots and shall be collected on a schedule established by the Board of Directors.

Section 13. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot beginning with the month following the earlier of (a) issuance of a certificate of occupancy for a dwelling on the Lot, of (b) the first anniversary of the conveyance of the Lot by the Declarant to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot and in event the Board elects not to affix such assessment as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any change in the assessment rate shall be sent to every Owner. The due dates for the payment of annual and special assessments 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.

## **ARTICLE VI**

### **MAINTENANCE, REPAIR AND REPLACEMENT**

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area and all improvements thereon. The maintenance shall include without limitation maintenance, repair and replacement of all landscaping and grass areas, street lights (if not maintained by a governmental entity or utility), sediment traps, retention ponds and other water runoff and erosion control devices and other improvements situated on the Common Area. In the event that the need for replacement, maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's family, guests lessees, or invitees, the cost of such replacement, maintenance or repairs shall be the obligation of that Owner and shall be added to and become a part of the assessment to which such Lot is subject.

Section 2. Management Agreement. The Association shall have the right to hire a management company to undertake any of its responsibilities set forth in the Declaration. However, any such management agreement shall be terminable by the Association, without liability, upon not more than ninety (90) days' notice to the other party.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

Section 1. Architectural Committee. An Architectural Committee consisting of three (3) or more persons shall be appointed (including their replacements) by the Declarant to review building/development plans and initial construction. At such time as construction has been completed on Dwellings on all Lots, or following notice in writing by Declarant or Declarant's personal representative (as that term is defined in the North Carolina General Statutes) that Declarant is unwilling or unable to perform such function, the Committee shall be appointed by the Board of Directors of the Association.

Section 2. Purpose. The Architectural Committee shall have sole discretion to regulate the external design, appearance, use, location and the orientation on site of all initial construction and subsequent additions to all Lots and of improvements thereon, including but not limited to landscaping and exterior finishes and colors, in such a manner so as to preserve and enhance economic, aesthetic and environmental values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 3. Plan Design Approval.

(a) Approval of Initial Improvements Required By Architectural Committee. No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, Dwelling Units, outbuildings, driveways, fences, walls, swimming pools, tennis courts, signs, television antennas, mailboxes, post lamps and other structures, or additions, or excavation, or changes in grade shall be undertaken upon and Lot unless the plans and specifications therefore, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to and expressly approved in writing by Architectural Committee. No approval shall be required, however, for any improvements made by the Declarant.

After the date of the completion of the initial improvements to a Lot (which is herein defined as being the date of the first occupancy of the Dwelling Unit initially constructed on the Lot); plans and specifications for subsequent improvements shall be submitted for approval to the Architectural Committee.

(b) Approval Required from Architectural Committee After Completion of Initial Improvements After the date of the completion of the initial improvements to a Lot (as defined in (a) above), no subsequent alteration or modification of existing improvements may be undertaken or allowed to remain without the review and express approval in writing of the Architectural Committee.

Section 4. Effect of Failure to Approve or Disapprove. In the event that the Architectural Committee, as the case may be, fails to approve or disapprove any of the foregoing within thirty (30) days after plans and specifications therefore have been submitted and received (receipt being hereinafter defined), approval will not be required, and the requirements of this Article shall be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Committee, as the case may be, if they contain erroneous data or fail to present full and adequate information upon which the Architectural Committee, as the case may be, can arrive at a decision.

For purposes of this Section 3, plans and specifications will not be deemed to have been "received" unless a member of the Architectural Committee, as the case may be, either acknowledges in writing such receipt or the plans and specifications are sent by certified or registered mail to a member of the Architectural Committee, as the case may be, and return receipt is received acknowledging the receipt thereof by such member.

Neither Declarant, nor any member or manager of the Declarant, nor any member of the Association's Board of Directors, nor any member of the Architectural Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by them, nor for any structural defects done according to such plans or specifications. Further, neither Declarant, nor any member or manager of the Declarant, nor any member of the Association's Board of Directors, nor any member of the Architectural Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the exercise of any other power or right provided for in this Declaration. Every person who submits plans or specifications for approval agrees, by submission of such plans and specifications, and every owner of any Lots agrees, that he or she will not bring any action or suit against Declarant, nor any member of the Association's Board of Directors or Architectural Committee, to recover any such damage.

Section 5. Right of Inspection. Declarant, its agents or assigns, shall have the right, at its election, to enter upon any of the Lots in Autumn Creek during preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications. If such work is not being performed in conformity with the approved plans and specifications, such work shall immediately cease upon verbal or written notice by Declarant, and shall either be removed, replaced or repaired so as to conform to the approved plans and specifications or new plans and specifications shall be submitted to Declarant for approval and no work shall commence until such approval is expressly made in writing by Declarant.

Section 6. Maintenance. The maintenance of Lots and the Dwelling Units located thereon and other improvements constructed thereon shall be the duty and responsibility of the Owner of such Lot and shall not be the responsibility of Declarant or the Association. If, however, in the opinion of the Declarant or the Architectural Committee or the Association any Owner shall fail to discharge his or her repair, maintenance or upkeep responsibilities in a responsible and prudent manner to a standard harmonious with that of other Lots in Autumn Creek, the Declarant, Architectural Committee or Association, at its discretion, and following ten (10) days' written notice to the Owner, may enter upon and make or cause to be made maintenance work or repairs as may be deemed by said persons to be reasonably required. Declarant, Architectural Committee or the Association, shall have an easement upon any lot for the purpose of accomplishing the foregoing. The costs incurred in rendering such services plus a service charge of twenty percent (20%) of such costs, shall be added to and become part of the assessments to which such Lot is subject.

Section 7. Original Improvements by Declarant. Nothing herein contained shall in any way prevent or interfere with the right of the Declarant or a member of the Declarant to construct the original improvements desired by them on any Lot, and no approval shall be required for the Architectural Committee for any such construction.

## **ARTICLE VIII**

### **INSURANCE**

**Section 1.** By the Association. The Association shall procure and maintain insurance coverage as follows:

(a) Common Areas. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made where available for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefore by any Owner.

(b) Coverage. All insurable improvements upon the Common Areas and all personal property of the Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and

(ii) Such other risks as the Association may from time to time elect to protect against.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and no/100 (\$1,000,000.00) Dollars per occurrence and may include an endorsement to cover liability of the Owners, as a group, to a single Owner.

(d) Board and Officers. If available at a reasonable cost, liability insurance on each officer and director of the Association shall be secured by the Association.

(e) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described in Article V above.

(f) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and shall provide that all proceeds thereof shall be payable to the Association.

**Section 2.** Fidelity Insurance of Bond. All persons responsible for or authorized to expend funds or otherwise execute control over the assets of the Association or those held in trust, 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 six (6) months' assessments, plus reserves accumulated at the time of the bonding. This requirement may be waived by the Board of Directors if the Association has engaged the services of a property management firm who shall have the responsibility for receiving, depositing, and disbursing monies of the Association.

## **ARTICLE IX**

### **USE RESTRICTIONS**

**Section 1. Rules and Regulations.** Use and enjoyment of the Properties shall be governed and regulated by the rules and regulations set out in this Article IX, which may be amended or abrogated only by amendment to this Declaration, as provided in Article XII, Section 3. However, the Board of Directors of the Association shall have power to formulate, publish and enforce reasonable supplemental rules and regulations and may provide for imposition of fines and other penalties for the violation thereof or for the violation of any of the covenants and conditions contained in the Declaration.

**Section 2. Residential Use.** Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only. Lease or rental of a house for residential purposes shall not be considered to be a violation of this Covenant, so long as the lease is in compliance with the provisions of this Declaration, the Bylaws and reasonable Rules and Regulations adopted by the Board.

**Section 3. Prohibition or Renting for Transient or Hotel Purposes.** No Owner shall rent his Lot for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than one hundred eighty (180) days or any rental if the lessee of the Lot is provided customary hotel services; provided, however, an Owner may rent his Lot for a shorter term, not less than five (5) days for up to two times within a calendar year. Each permitted lease shall be in writing and shall be subject to this Declaration, the Bylaws, and the Rules and Regulations adopted hereunder and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing restrictions, each Owner shall have the full right to lease all or any portion of his Lot.

**Section 4. Antennas/Satellite Dishes.** As provided in Article VII, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no outside radio or transmission tower or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot without the prior written approval of the Board of Directors or the Architectural Committee, if any.

**Section 5. Dwelling Size and Specifications.** Each dwelling constructed on a Lot shall have enclosed, heated living area within the main structure, exclusive of open porches, garages, and other unheated spaces, as follows:

- (a) for one story dwellings, no less than 2500.00 heated square feet;
- (b) for one story dwellings with bonus rooms, no less than 2,700.00 heated square feet;
- (c) for one and one-half story dwellings, no less than 2,800.00 heated square feet; and
- (d) for two story dwellings, no less than 3,000.00 heated square feet.



The Board of Directors (or Architectural Committee, if established) shall have the authority to approve reduction of the square foot minimum area as to a particular dwelling by no more than ten percent. All exterior coverings of the dwellings may not be exposed cinder block. The exterior design of any dwelling must meet guidelines established by the Architectural Committee. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling, not to exceed two and one-half (2 %) stories in height, minor out buildings (such as utility buildings) to be located behind the main dwelling and which must be constructed on a permanent foundation, and at least one (1) private garage constructed in conformity with this Article. No structure, overhang or extension thereof shall be built closer to the front property line of any Lot nearer the side Lot lines than shall be established by any governmental body having such jurisdiction over the subject property.

Section 6. Additional Specifications. Without limiting the approval requirements of Article VII on Architectural Control, the following criteria shall provide minimum standards for construction of improvements on a Lot.

(a) Outbuildings. Any outbuilding and/or utility building must be of new construction, must have a permanent foundation, and must be constructed in keeping with aesthetics of the main dwelling on said Lot and approved by the Board of Directors (or Architectural Committee, if established). Any detached garage must be located behind the rear building line of the main dwelling and the opening must face the front of the Lot.

(b) Roof. No roof shall be permitted without a minimum pitch of 8:12 except with the written consent of the Board of Directors (or Architectural Committee, if established).

(c) Driveways. All driveways shall be paved in concrete only and shall be no less than ten feet in width and four inches in depth. All driveway culverts are to be installed according to North Carolina Department of Transportation specifications.

(d) Solar Panels and Skylights. Solar heating panels and skylights are permitted, but must be installed in such a manner as not to be visible from any street in the Properties.

(e) Swimming Pools. No above ground swimming pools shall be constructed or maintained upon any Lot.

(f) Fuel Tanks. All propane tanks and other fuel tanks shall be buried in the ground, or screened from view so as not to be noticeable or apparent from the abutting street(s) or lots immediately adjacent thereto. Any above ground tanks must be located on the rear of the dwelling or on the side of the dwelling at least fifteen (15) feet to the rear of the front corner of the dwelling.

(g) Fencing. No portion of any fence shall be erected or maintained on any Lot which is closer to the street (which the main structure faces) than the rear building line of the structure. No fence shall exceed six (6) feet in height. All fences (including composition of materials and manner of construction) must be approved in writing in advance of construction by the Board of Directors (or Architectural Committee, if established). Without limiting the generality of the foregoing approval requirement, no chain link fencing of any kind shall be

allowed. The Board of Directors (or Architectural Committee, if established) shall have the power and authority to determine if a structure constitutes a "fence" as referred to in this paragraph. No portion of any invisible fencing shall be allowed or maintained on any Lot which is closer to the street (which the main structure faces) than the rear building line of the structure.

(h) Play Equipment. No basketball backboards, swings, sliding boards or other child's play apparatus may be affixed or placed in the front yard of any Lot.

(i) Mailboxes. Mailboxes shall be of a uniform design pursuant to the specifications of the Board of Directors (or Architectural Committee, if established).

Section 7. Maintenance. Each Lot shall be maintained and preserved by the Owner in a clean, orderly, and attractive manner within the spirit of the development. Each Owner of a Lot shall be responsible for maintenance of the portion of the street right-of-way between his Lot and the street and for the portion of any sidewalk on the Owners Lot or between the Owner's Lot and the street. The Declarant or its agent and the Association shall have the right to enter upon any Lot or area to remove such waste or cut and remove any construction material, grass, weeds, trees, etc., on any Lot or area deemed by public authority or the Declarant or its agent or the Association, to be unsightly. If the Declarant or Association performs the work to comply with this restriction then the cost shall be borne by the Lot Owner and the cost shall be a lien upon the Lot until paid as with other assessments. Trash, garbage, or other waste shall be screened from view from any immediately adjacent Lot or street except on day of collection, and promptly removed from the street after collection.

All landscaping shall be done in such a manner that erosion and sedimentation shall be stabilized and controlled in accordance with applicable state and county regulations. Landscaping must be in harmony with other homes within the subdivision. Until the Declarant relinquishes this right, the Declarant shall have the final decision as to whether the property has been landscaped in accordance with these restrictions.

Section 8. Nuisances. No activity deemed noxious or offensive by the Board of Directors of the Architectural Committee, if any, shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Board or Committee. Examples of such offensive activities shall include, but not limited to, the origination or emission of any bud or disturbing noise or vibrations, failure of occupants to insure that garage doors are closed at all times except when automotive traffic is moving in or out; the maintenance of an auto repair site; the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards; and similar unsightly activity (such as use of outdoor clothes drying lines) not in keeping with aesthetic character and high level of appearance of the community.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner that will not permit spills or runoff of such materials anywhere within the Properties. No activity shall be allowed which violates local, state or federal laws or regulations

and the Board shall have the right, but not the obligation, to take enforcement action in the event of a violation.

Section 9. 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. The number of household pets generally considered to be outdoor pets, such as dogs and cats, shall not exceed two (2) in number, except for newborn offspring of such household pets which are under six (6) months in age. Notwithstanding the foregoing, Pitbulls and Rottweilers, are expressly prohibited, and the Association shall have the right to prohibit, or require the removal of, any dog or other animal which the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard after consideration of factors such as size, breed and disposition of the animal, likely interference by the animal with the peaceful enjoyment of the Properties by Owners and the security measures takes by the Owner with respect to such animal.

Section 10. Temporary Structures. No residence or other improvement of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 11. Vehicles. Except during construction or for temporary loading and unloading of household goods, no truck or commercial vehicle in excess of one ton load capacity may be parked on or permitted to remain on any Lot or Common Area.

No vehicle of any type which is abandoned, inoperative, wrecked, or lacking or current license tag and inspection sticker shall be stored, parked or kept in the Common Area nor shall any such vehicle be stored, parked or kept on any Lot if it can be seen from any other Lot or from any street or neighboring Lot within the Properties, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No vehicles of any type shall be parked on the sidewalk or within a street right-of-way, nor shall vehicles of any type be parked or stored on any part of a Lot not improved for that purpose (a garage, driveway or parking pad). This prohibition shall not preclude occasional, overnight or temporary daytime overflow parking within the street right-of-way by guests of an Owner, or tenant of an Owner, as long as no inconvenience is imposed upon one or more Owners of other Lot(s).

The provisions of this Article shall not preclude the parking of construction trailers within the Properties or the construction, maintenance and use by a builder or temporary buildings and other structures while there is new construction and/or sales activities within the Properties. Daytime and overnight parking of trucks and other construction vehicles shall also be permitted throughout the Lot development and construction periods.

No trailers of any type, mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motorcycles, scooters, motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle (known generally as "campers"), commercial vehicles of any kind (including buses) or boats or boat trailers shall be permitted, parked or stored in the Common Area, or on any street, or within any Lot unless garaged; provided that the

temporary parking of commercial vehicles will be permitted while the driver thereof is on business delivering goods or services to a customer within the Properties.

Mini-bikes, go-carts, ATVs and similar vehicles are prohibited from being used or operated on or with the Properties.

Section 12. Signs. No signs or other advertising devices shall be erected upon or displayed or otherwise exposed to view on any Lot, or any improvement thereon, without the prior written consent of the Association, except that "for Sale" signs not exceeding 20" x 35" may be placed upon a Lot and provided, further, that Declarant may post temporary "For Sale" and other advertising signs anywhere on the Properties until such time as all Lots owned by Declarant have been sold and conveyed.

Section 13. Control of Dogs. Every person owning or having possession, charge, care, custody or control of a dog shall keep such dog exclusively upon his or her Lot; provided that such dog may be off premises if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 14. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage and other waste shall be stored in sanitary containers in accordance with the rules and regulations of the Association and of any health or public safety authority having jurisdiction over the Properties. No trash, garbage or other waste may be placed within the Common Area, except in containers approved by the Association.

Section 15. Waiver. Declarant reserves the right to waive, in whole or in part, minor violations of any of the foregoing restrictions and Declarant may appoint a successor by an instrument filed in the Guilford County Registry who shall also have the right during such period to waive, in whole or in part, any minor violations of the foregoing restrictions. After the period of Declarant control has ceased (that is, when Class B membership has ceased), minor violations of the restrictive covenants contained herein may be waived by the Board of Directors (of the Architectural Committee, if established) and immediately adjacent Lot owners by an instrument signed by both parties.

## **ARTICLE X** **EASEMENTS**

Section 1. Easements Reserved by Declarant. Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex additional property and (ii) the development by Declarant, its successors and assigns, of additional property, should Declarant elect not to annex the additional property, including, without limitation, easements for ingress, egress and regress over private roads and streets now or hereafter erected in Autumn Creek and easements for the use of all utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing water, light, power, telephone, sewage and sanitary service to the additional properties.

Declarant further reserves unto itself, its successors and assigns, and its agents, a perpetual, alienable, and releasable easement or right to go on, over and under any bermes and the entrance area, to erect, maintain, and use suitable equipment to erect and maintain the bermes and entrance. Such rights shall not create any obligation on the part of the Developer to provide or maintain such bermes or entrance.

Declarant reserves unto itself, the Homeowners Association, and its successors and/or assigns, the perpetual and in alienable right to establish additional easements upon any Lot or Lots within the subdivision for access to and use of any emergency septic fields within the subdivision Common Elements, provided that such easement does not render such Lot unsuitable for building pursuant to these Restrictions and to Guilford County ordinances.

Section 2. Easement for Governmental Bodies and Utility Companies. An easement is hereby established for county, municipal, state or public utilities serving Autumn Creek, their agents and employees over all Common Elements hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing utility or drainage facilities and connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection and collection of garbage.

Section 3. Sign Easements. Declarant and the Association shall each have the right to erect within the Common Elements subdivision signs and landscaping and lighting surrounding same. Declarant hereby reserves unto itself and grants, gives and conveys to the Architectural Committee and the Association a perpetual, non-exclusive easement over the portions of Lots to maintain, repair, and replace the subdivision signs which may be located thereon, and the lighting fixtures and landscaping surrounding same. The Association shall be responsible for maintaining, repairing and replacing any such signs, landscaping and lighting and the costs of such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners. In addition to the easements reserved and granted above as to the portion of Lots designated "sign easement", Declarant hereby reserves unto itself and gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

## **ARTICLE XI**

### **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Neither Declarant, nor any Member of Declarant, nor any Member, nor the Board of Directors (individually or collectively), nor any officers, directors, agents or employees of the Association, shall be personally liable for debts contracted for, or otherwise incurred by, the Association or for a tort of a Member, whether such Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents, members or employees, shall be liable for any incidental or consequential damages for failure to inspect the Lots, the Common Areas or any other portion of the Properties, or any improvements thereon, or for failure to repair or maintain the same, Neither Declarant, the Association, nor any other person, firm or entity making such repairs or maintenance shall be

liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Properties or improvements.

The Association shall, to the extent permitted by applicable law, indemnify, defend and save harmless all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify every director, officer, former director and former officer of the Association and any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not-for-profit, against expenses (including attorney's fees) and liabilities actually and reasonably incurred by him or her in connection with the defense of, or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being, or having been, such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by-law, agreement, vote of members or of disinterested directors, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall undertake to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XI, or in the by-laws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

## **ARTICLE XII**

### **RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS**

Section 1. Entities Constituting Institutional Lenders. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

Section 2. Obligation of Association to Institutional Lenders. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

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

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

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

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

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

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

Section 1. Enforcement. The Declarant, Association, Architectural Committee, 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. The non-compliant Lot Owner shall be assessed interest at the maximum legal rate, attorney's fees and court costs should legal action be taken. Failure by the Declarant, Association, Architectural Committee 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. Should any Lot Owner fail to comply with these Declarations following ten days written notice by Declarant, the Architectural Committee or the Association, Declarant, the Committee members or a member of the Board of Directors have an easement to and may enter upon any Lot to make or cause to be made such work or repairs to create compliance with these Declarations. The costs incurred for such work plus a service charge of twenty percent (20%) of such costs, shall be added to and become a part of the assessments to which such Lot is subject.

Section 2. Amendment and Termination. The covenants, conditions and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated or amended as hereafter provided. Prior to the sale of any Lot by the Declarant, this Declaration may be amended or revoked by Declarant in its sole discretion. After the sale of Lots commences, this Declaration may be amended by an instrument signed by the Declarant and not less than sixty-seven percent (67%) of the Lot Owners. No amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant, and no amendment relating to the maintenance or ownership of any permanent wet detention or retention ponds, rock check dams or diversion berms shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection and no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements or affects any lien for the payment thereof established herein.

Section 3. Annexation. Additional residential property and Common Elements may be annexed to the Properties by Declarant.

Section 4. Conflicts. In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of incorporation of the Association, the provisions of the Articles of Incorporation shall control.

Section 5. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 6. Minor Violations. Minor violations of these covenants may be waived by Declarant or the Association or their agent or successors or assigns, by written instrument.

Section 7. Interpretations of These Covenants. Declarant, Its Successors and/or Assigns shall make all Final Interpretations as to the meaning and intent of these Covenants.



Section 8. Contract Rights of Association. The undertakings and contracts authorized by the initial Board of Directors (including contracts for the management of Autumn Creek) shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by any Board of Directors duly elected by the membership after recording of this Declaration, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of Directors of the Association in accordance with this Declaration, the Articles of Incorporation and the Bylaws.

Section 9. Special Declarant Rights. The Declarant is hereby Granted those "Special Declarant Rights" as referred to in the Act (N.C. Gen. Stat. §47F-1-103(28)).

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned Owners herein have caused this Declaration to be duly executed this the 29 day of March, 2010.

ATLAS NC I SPE, LLC, a North Carolina limited liability company

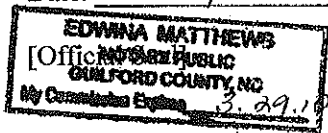
by: Thomas Shave Shuler  
Title: Vice President  
Owner of Lots: 4, 5, 6, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 25, 26, 27, 28, 29

STATE OF NORTH CAROLINA

Guilford COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Thomas Shave Shuler.

Date: 3.29.10



Edwina Matthews  
Notary Public  
Print Name: Edwina Matthews

My commission expires: 3.10.2015

Thomas Shave Shuler  
Owner Vice President Atlas NC I SPE LLC

Owner

Owner of Lot(s) number(s) 4, 5, 6, 8, 9, 10, 11, 12, 16, 17, 18, 19, 22, 25, 26, 27, 28, 29

STATE OF NORTH CAROLINA

Guilford COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Thomas Shave Shuler.

Date: 3.29.10



Edwina Matthews  
Notary Public  
Print Name: Edwina Matthews

My commission expires: 3.10.2015

Richard D. Dumas  
Owner

Owner

Owner of Lot(s) number(s) 23

STATE OF NORTH CAROLINA

Guilford COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Richard Dumas

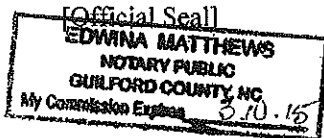
Date: 4.14.10

Edwina Matthews

Notary Public

Print Name: Edwina Matthews

My commission expires: 3.10.15



Banco Builders Inc  
Owner George L. Member Manager

Owner

Owner of Lot(s) number(s) lot 21

STATE OF NORTH CAROLINA

Guilford COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: MJ Cook

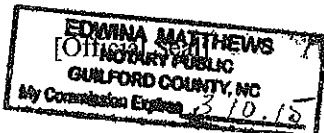
Date: 4.14.10

Edwina Matthews

Notary Public

Print Name: Edwina Matthews

My commission expires: 3.10.15



Joanne Q. Dobbins  
Owner

Owner of Lot(s) number(s) 14  
by: Susan Cocke

Susan Cocke, as Proxy (proxy card attached)

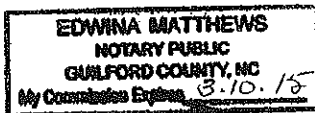
STATE OF NORTH CAROLINA

Cherokee COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Susan Cocke

Date: 4.14.10

[Official Seal]



Edwina Matthews  
Notary Public  
Print Name: Edwina Matthews

My commission expires: 3.10.15

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner of Lot(s) number(s)

STATE OF NORTH CAROLINA

\_\_\_\_\_  
COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_

Date: \_\_\_\_\_

[Official Seal]

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

**APPOINTMENT OF PROXY**

The undersigned member of Austin Mill Homeowners Association, Inc. a N.C. non-profit corporation (the "Association"), hereby constitutes and appoints \_\_\_\_\_ (or Susan Cocke if a proxy is not named in the blank) as proxy for the undersigned with full power of substitution to attend the annual meeting of the members, to be held on Monday, March 29, 2010 at 7:30 p.m. at Mr. & Mrs. Darrell Friddle residence at 8207 Summersweet Ct in Summerfield, NC 27358 (the "Annual Meeting") and to vote or otherwise act in respect of the membership of the undersigned in said Association, hereby granting said proxy full power and authority to act for the undersigned at said meeting or any adjournment thereof upon the matters set forth in the notice of meeting dated March 1, 2010, including but not limited to the amendment to the Declaration referenced therein, as fully as the undersigned could do if personally present, hereby ratifying and confirming that my said proxy may do in my name, place and stead. If more than one person has an ownership interest in the property noted below, the undersigned represents that all owners of such property have agreed to the foregoing appointment. The undersigned hereby acknowledges receipt of said notice of said meeting dated March 1, 2010 and hereby revokes any proxy or proxies with respect to the membership of the undersigned in the Association heretofore given by the undersigned to any person or persons other than the person named above.

IN WITNESS WHEREOF, the undersigned has executed this Proxy on the 22 day of March, 2010.

**CORPORATE EXECUTION**

Name of Corporate Owner \_\_\_\_\_

By \_\_\_\_\_  
Signature of Officer

Title of Office Held \_\_\_\_\_

**INDIVIDUAL EXECUTION**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_