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Iredell County, NC
Brenda D. Bell Register of Deeds

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**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE
UNITED STATES OF AMERICA AND STATE OF NORTH CAROLINA AS PROVIDED BY
N.C.G.S. SECTION 47F-3-121(1)**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS AS
PROVIDED BY N.C.G.S. SECTION 47F-3-121(2)**

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
ASHLYN CREEK**

This Declaration of Covenants, Conditions and Restrictions is made effective this 29th day of July, 2008, by Niblock Development Corp., a North Carolina Corporation, referred to in this instrument as "Declarant."

STATEMENT OF PURPOSE

Declarant is the owner of that certain parcel of land which is known as **Ashlyn Creek** located in Iredell County, North Carolina, which is more particularly described as follows (the "**Submitted Property**"):

Lying and being in the City of Mooresville, Coddle Creek Township, Iredell County, North Carolina, and being all that property shown on the map of **ASHLYN CREEK**, a map of said property being on file in the Office of the Register of Deeds for Iredell County, North Carolina, in Map Book 54, Pages 113 and 114, specific reference thereto being hereby made for a more complete description thereof by metes and bounds.

Declarant desires to create thereon the Submitted Property an exclusive residential community of single-family residences to be named **Ashlyn Creek**. Declarant will convey the Submitted Property subject to certain protective covenants, conditions, restrictions, reservations and charges as hereinafter set forth.

Declarant contemplates that separate easements, covenants, conditions, and restrictions may be imposed in regard to specific and additional sections or phases of **Ashlyn Creek**, and Declarant reserves the right to impose certain additional and/or supplementary easements, covenants, conditions, and restrictions.

Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community and for the maintenance of the properties and improvements thereon, and to that end desires to subject the Submitted Property, together with any and all such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, and as may be hereafter supplemented, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to sufficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas and amenities. To that end, the Declarant has caused to be incorporated under North Carolina law, **Ashlyn Creek Homeowners' Association, Inc.**, as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

In consideration of the premises and for the purposes stated, Declarant hereby declares that all of the Submitted Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions (all of which are collectively referred to in this instrument as "restrictions"), which restrictions shall be construed as covenants running with the land and shall be binding upon all parties having any right, title or interest in the described real property or any part thereof, and to their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. It is the intent of Declarant that the provisions of this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act. To the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the North Carolina Planned Community Act shall control.

ARTICLE I: DEFINITIONS

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

Section 1. "Additional Property" shall mean additional real estate other than the Submitted Property which may be subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

Section 2. "Affiliated Entity of Declarant" shall mean and refer to any person(s) which is/are a majority shareholder of Declarant or any legal entity in which more than half of its outstanding

voting stock is owned by Declarant or the majority shareholder(s) of Declarant, including, but not limited to Niblock Development Corp.

Section 3. "Annual Assessments" shall mean the assessments established pursuant to Article V, Section 2 and Article V, Section 6 of the Declaration.

Section 4. "Appropriate Local Governmental Authority" shall mean and refer to the City of Mooresville, Iredell County or other appropriate local governmental authority having jurisdiction over the Property.

Section 5. "Architectural and Landscape Guidelines" shall mean and refer to the Architectural and Landscape Guidelines promulgated from time to time by the Board of Directors of the Association or the Architectural Review Committee.

Section 6. "Architectural Review Committee" shall mean and refer to the committee of the Association appointed to oversee the development and enforcement of architectural and landscaping control standards and restrictions with respect to the Property and to perform certain other functions described in the Declaration.

Section 7. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended, modified, supplemented or restated from time to time.

Section 8. "Assessment" or "Assessments" shall mean and refer to the Capital Contribution ("Capital Contribution"), Annual Assessments ("Annual Assessments"), Special Assessments ("Special Assessments"), Supplemental Annual Assessment ("Supplemental Annual Assessment"), and Special Individual Assessments ("Special Individual Assessments") established by Article V of this Declaration.

Section 9. "Association" shall mean Ashlyn Creek Homeowners' Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

Section 10. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and serve pursuant to the Bylaws.

Section 11. "Builder(s)" shall mean and refer to any licensed contractor (either person or firm) in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Development, including, but not limited to Niblock Development Corp.

Section 12. "Bylaws" shall mean the Bylaws for the Association.

Section 13. "Capital Contribution" shall mean the charge established by Article V, Section 5 of this Declaration.

Section 14. "Common Area" or "Common Elements" shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot, in Ashlyn Creek for the common use and enjoyment of members of the Association lying within the boundaries of the Property. Common Areas, with respect to the Property subject to this

Declaration, shall be shown on the plats of **Ashlyn Creek** recorded in the Iredell County Registry and designated thereon as "Amenity Area", "Common Area", "Common Open Space", or "Common Area/Open Space" or similar designations. Common Areas shall include entranceway area(s), berms, signage, and buffer areas. The assessments, charges and liens created under Article V herein shall not apply to the Common Area. The Common Area shall include any stormwater device that serves more than one (1) Lot.

Section 15. "Declarant" shall mean and refer to Niblock Development Corp., its successors and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the Declarant hereunder by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the Declarant hereunder at any time.

Section 16. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of **Ashlyn Creek**, as the same may be amended from time to time as herein provided.

Section 17. "Development" shall mean and refer to **Ashlyn Creek**, a single-family residential subdivision proposed to be developed on the Property by Declarant.

Section 18. "FHA and VA" shall mean and refer to the Federal Housing Administration and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

Section 19. "Lot" shall mean and refer to any separately numbered or lettered tract of land, with delineated boundary lines, to be used for residential purposes shown upon any recorded subdivision plat of the Property subject to this Declaration. No tract shall become a "Lot" as that word is used herein until a Plat of the area on which the same is located is recorded in the Office of the Register of Deeds for Iredell County, North Carolina. "Lots" shall refer to all lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority, nor shall any Lot within the Property contain fewer square feet than the minimum square feet from time to time required by the Appropriate Local Governmental Authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall, in the manner required by the Appropriate Local Governmental Authority, record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 20. “**Master Plan**” shall mean and refer to the plan(s) for the Property now or hereafter approved by the Appropriate Local Governmental Authority, as such plan(s) may be from time to time amended and approved.

Section 21. “**Map**” shall mean and refer to the map or maps of the Submitted Property which are recorded or are to be recorded in the Iredell County Public Registry, and the map(s) of any additions to the Submitted Property which may be recorded hereafter by the Declarant in the Iredell County Public Registry.

Section 22. “**Member**” shall mean and refer to every person or entity that holds membership with voting rights in the Association.

Section 23. “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including Declarant, which is a part of **Ashlyn Creek**, but excluding those having such interest merely as security for the performance of an obligation.

Section 24. “**Person**” shall mean a natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

Section 25. “**Planned Community Act**” shall mean and refer to the provisions of Chapter 47F of the General Statutes of North Carolina, as the same may be amended, modified, supplemented or restated from time to time.

Section 26. “**Property**” or “**Properties**” shall mean the Submitted Property described in herein the Statement of Purpose together with such additions thereto as may from time to time be designated by Declarant in accordance with Article II hereof, whether or not such additions are contiguous with or adjoining the boundary line of the Submitted Property. “Property” or “Properties” may sometimes be referred to herein as “**Ashlyn Creek**”.

Section 27. “**Special Assessments**” shall mean the assessments established pursuant to Article V, Section 8 of the Declaration.

Section 28. “**Special Individual Assessments**” shall mean the assessments established pursuant to Article V, Section 8 of the Declaration.

Section 29. “**Submitted Property**” shall mean that certain parcel of real property described herein the Statement of Purpose.

Section 30. “**Supplemental Annual Assessment**” shall mean and refer to that assessment established pursuant to Article V, Section 6 of the Declaration.

Section 31. “**Supplemental Declaration**” shall mean and refer to any Supplemental Declaration of Covenants, Conditions, and Restrictions, which are filed of record to being Additional Property within the coverage of this Declaration and/or which are specific to certain sections, phases, or Maps of **Ashlyn Creek** as defined herein.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Only the Submitted Property is hereby made subject to this Declaration; provided, however, Declarant shall have the right to subject additional real property to these restrictions as provided herein Article II, Section 2.

Section 2. Without further assent or permit, Declarant shall have the right from time to time to subject additional real property to the terms and scheme of this Declaration said property to be developed as part of **Ashlyn Creek** and thereby bringing such additional properties within the coverage of this Declaration by filing a Supplemental Declaration in the Office of the Register of Deeds for Iredell County, North Carolina, containing a description of the additional property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the additional property.

Section 3. Any addition of real property (or easements or rights-of-way to such real property) shall be made by filing of record one or more Supplemental Declarations in respect to the property in the Iredell County, North Carolina, Public Registry to be then made subject to this Declaration, shall thereby then extend to such property.

Section 4. Any Supplemental Declaration may contain complementary additions and modifications to the covenants, conditions, and restrictions contained herein as may be necessary in the judgment of Declarant to reflect the different character of the Additional Property. Nothing contained in this Article II however, shall be construed to obligate Declarant to bring any Additional Property within the coverage of this Declaration.

Section 5. No property of Declarant shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Declarant shall be subject to any restrictions by implication arising from Declarant imposing these restrictions on the property herein described.

ARTICLE III: PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association after completion by Declarant of improvements thereon, if any, and upon such time as Declarant determines that the Association is able to maintain same. **Within five (5) years of conveyance of the Common Areas to the Association, the Board of Directors of the Association, without the assent of the Owners, may reconvey to Declarant all or any part thereof of the Common Area in order to facilitate the development of the Property.** Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2. Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration. No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Declarant's intent that this paragraph inure to the mutual benefit of all owners within the properties Each Owner's nonexclusive right and easement of

enjoyment in and to the Common Area is subordinate to the right of the Association to dedicate and convey Common Area pursuant to subsections (e), (f), (g), and (h) of this paragraph. Each Owner's easement of enjoyment is subject to the following:

(a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and to insure the safety and rights of all Owners on the Common Areas;

(b) 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 Area;

(c) The right of the Association to limit the use of the Common Area to Owners, their families and guests;

(d) The right of the Association to suspend the voting rights of an Owner(s) and/or the right(s) of such Owner(s) for any period during which any assessment against his lot remains unpaid, or for any infraction of the Association's published rules and regulations, if any;

(e) 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 Association members. No such dedication or transfer shall be effective after the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cable television, internet service, natural gas, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership;

(f) The right of the Declarant and/or the Association to grant utility, drainage and other easements across the Common Areas, including the easements of the type and for the purposes set forth in Article VIII across the Common Areas;

(g) The Board of Directors of the Association, without the assent of the Owners, shall have the right to dedicate or transfer all or any part of the Common Area to the Declarant within five (5) years of its conveyance to Association, in order to facilitate the development of the Property;

(h) The Board of Directors of the Association shall have the right to dedicate or transfer all or any part of the Common Area to third parties provided the Association acquires in return other property which will be held thereafter as Common Area of equal or greater value;

(i) The right of the Declarant to construct fencing and activities by Declarant and/or Builder(s) in construction or marketing activities in the Property; and

(j) The Declarant reserves the right to designate all or certain parts of the Common Area as areas which are to remain in perpetuity as open areas, in order for the Property to comply with Subdivision Requirements and/or Impervious Area Requirements and/or Erosion Control Requirements of the City of Mooresville and/or Iredell County, if applicable.

Section 3. Delegation and Use. The right and easement of enjoyment granted to every Owner in Article III, Section 2 may be exercised by members of Owner's family and guests thereof. An Owner may delegate to his tenants his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Association's bylaws and rules and regulations, if any.

Section 4. Changes to Declaration or Supplementary Declaration. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns one (1) lot in the Property and unless the Declarant surrenders the rights set forth in this paragraph by an express amendment to the Declaration executed and recorded by Declarant, the prior written consent of Declarant shall be required for any parties to modify, change or amend, in whole or in part, the terms and provisions of this Declaration or any Supplementary Declaration or to impose new easements, covenants, conditions, restrictions, charges or liens on any part of the Property.

Section 5. Rules and Regulations of the Association. The Board of Directors of the Association shall have the power and authority to promulgate rules and regulations to enable the Association to carry out the letter and intent of this Declaration. All Owners shall abide by all rules and regulations so adopted by the Board of Directors from time to time. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association:

- a. shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner violating such rules and regulations shall be liable to the Association for all damages and costs, including, without limitation, reasonable attorney's fees, resulting from such violations; and
- b. shall not have the powers to impose restrictions, rules or regulations or limitations on Declarant.

Section 6. Stormwater Management Improvements. The Association will be responsible for maintenance of any private stormwater management inlets, pipes, swales, channels, check dams, detention ponds or retention ponds, or the like, within the Common Area. Such maintenance shall include periodic removal of sediments, restabilization of swales and channels as needed, checking dam repairs, flushing of driveway culverts, and maintenance of fencing and vegetation cover as necessary. The use of fences in the swales shall be governed by the provisions of Article VI, Section 10(h)(viii) hereof. The Association's responsibility for stormwater management facilities, or any component thereof, and any costs thereof shall be treated as either an expense of the Association, paid through annual and/or special assessments.

ARTICLE IV: MEMBERSHIP & VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment and the Declarant 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. The Declarant shall be a member of the Association so long as Declarant owns one (1) lot in the Property.

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

(a) **Class A.** Class A members shall be all Owners with the exception of Declarant (or any affiliated entity of Declarant) and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B.** The Class B members shall be Declarant (or any Affiliated Entity of Declarant). The Declarant (or any Affiliated Entity of Declarant) shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- i. the date on which Declarant (or any Affiliated Entity of Declarant) no longer owns any part of the Property; or
- ii. the date Declarant shall elect, in its sole discretion, that the Class B membership shall cease and be converted to Class A membership (which election may be made, if at all, by giving written notice at its choice, to the Board); or
- iii. Ten (10) years from the date of this Declaration; or
- iv. Notwithstanding Sections 2(a) and (b) hereof, so long as there shall be any Class B Lots in the Development and unless the Declarant surrenders the rights set forth in this paragraph (iv) by an express amendment to the Declaration executed and recorded by Declarant, (a) the Bylaws of the Association may not be amended without the Declarant's prior written consent, and (b) the Declarant shall have the right to appoint or remove any Member(s) of the Board of Directors of the Association or any officer(s) of the Association; or
- v. Other provisions applicable to the rights and obligations of the Members of the Association are set forth in the Declaration and in the Bylaws.

Section 3. Board of Directors and Declarant's Right To Representation. The Association shall be governed by a Board of Directors (the "Board") in accordance with the Bylaws. Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association during any Period of Declarant Control, unless the Declarant surrenders the rights set forth in this paragraph by an express amendment to the Declaration executed and recorded by Declarant. Whenever Declarant shall be entitled to designate and select any person or persons to serve on the 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 and/or Bylaws, and Declarant shall have the right to remove any person or persons selected by it to act and serve on the Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Section 4. Suspension of Rights. During any period in which a member shall be in default in the payment of any Capital Contribution, Annual Assessment, Special Assessment, Supplemental

Annual Assessment, Special Individual Assessment, or other periodic assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any rules and regulations established by the Board of Directors, such member's voting rights may be suspended by the Board after a hearing. Such hearing shall be held by the Board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the Board or the committee thereof. During any period in which a member shall be in default in the payment of any Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, Special Individual Assessment, or other periodic assessment levied by the Association or in violation of any rules or regulations established by the Board of Directors, such member shall be subject to a fine imposed by the Board of Directors which shall be the personal obligation of the person who is the Owner of such Lot at the time when the fine was levied.

The provisions as set forth in the preceding paragraph of this Article IV, Section 4 are further subject to the provisions of N.C.G.S. Section 47F-3-107 and 47F-3-107.1.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon thirty (30) days prior written notice to the manager without payment of a termination fee.

Section 6. Insurance.

(a) **Public Liability.** The Association shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determined to be customary for projects similar in construction, location and use to the development, covering each member of the Board of Directors, the Managing Agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than a million dollars per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Owners as a single group to a single owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than one million dollars per occurrence for claims for bodily injury and property damage; and

(b) **Hazard Insurance.** The Association shall be required to obtain and maintain to the extent obtainable hazard insurance on the common areas.

The provisions as set forth in the preceding paragraph of this Article IV, Section 6 are further subject to the provisions of N.C.G.S. Section 47F-3-113.

Section 7. Quorum and Notice Requirements. Except as otherwise may be specifically set forth in this Declaration, the Articles of Incorporation or the Bylaws, the vote of a majority of all votes

entitled to be cast by all classes of the Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Association. The number of votes present at a meeting of the Association Members that is properly called and that will be taken by the Association Members will be set forth in the Bylaws. Notice requirements for all actions to be taken by the Association Members shall be as set forth in the Bylaws. Notwithstanding the above, the affirmative vote of no less than two-thirds of all votes entitled to be cast by the Association Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the development of the Property or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Capital Contribution ("**Capital Contribution**"), Annual Assessments or charges ("**Annual Assessments**") and Special Assessments for capital improvements ("**Special Assessments**"), Supplemental Annual Assessments ("**Supplemental Annual Assessments**"), and Special Individual Assessments ("**Special Individual Assessments**") established and collected as hereinafter provided. In order to secure payment of the Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, and Special Individual Assessments, any such assessment or charge remaining unpaid for a period of thirty (30) days or longer, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such assessment or charge is made when a claim of lien is filed of record in the manner as described in N.C.G.S. Section 47F-3-116(a) and N.C.G.S. Section 47F-3-116 is otherwise incorporated fully herein by reference with regard to liens for assessments and as to the type of charges enforceable as assessments. Pursuant to N.C.G.S. Section 47F-3-116(a2), the Association shall have the specific authority to levy, charge, or attempt to charge, or collect a service, collection, or administration fee from any lot owner. Each such assessment or charge, together with interest, fines, late charges, costs of collection and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligations.

Section 2. Purpose of Annual Assessments.

(a) The Annual Assessments levied by the Association may shall be used to promote the health, safety, and welfare of the residents of the Property and in particular for the acquisition, improvement and maintenance of Property, services and facilities devoted to this purpose and related to the uses of the Common Areas or the Lots, including but not limited to, the following:

- i. To maintain all roads constructed within the Development to the standard of maintenance which would be required by the City of Mooresville, the County of Iredell, and/or N.C. Department of Transportation, and/or the appropriate governmental authority, before it will accept such roads for maintenance, and until such acceptance takes place;

- ii. To pay the cost of operating, maintaining and repairing all lighting of Common Area and streets, with the exception of lighting provided by a governmental agency or body, if any, including any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefore within the Property;
- iii. To maintain any and/or all pathways in the Common Areas in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased or decaying trees, shrubs and bushes removed from landscaped areas and to replace such with new trees, shrubs and bushes;
- iv. To keep any parks and/or picnic areas in the Common Areas clean and free from debris and to maintain all picnic tables and other amenities in a clean and orderly condition, and to maintain the landscaping therein, including any necessary removal and replacement of landscaping;
- v. To maintain the Common Areas, Public Storm Drainage Easements, and/or Sight Triangle areas, if any, which were reserved by the recordation of the Maps in the Iredell County Registry, in a clean and orderly condition and to maintain the signs, walls, fences on the Common Areas;
- vi. To maintain any swimming pool(s) and related facilities located on/or in the Common Areas in accordance with the highest standards for private swimming pools and related facilities;
- vii. To maintain all parking areas (for automobiles or otherwise), if any, located in the Common Areas free from debris and in good repair;
- viii. To maintain the Common Areas, Public Storm Drainage Easements, and/or Sight Triangle areas, if any, reserved or which will be reserved, on the Maps, in a clean and orderly condition and to maintain the signs, walls, fences, and landscaping thereon (including irrigation systems, lighting, signage, berms, groundcover, shrubs and flowers, if any) to the standards established at completion of landscaping of said Common Areas, Public Storm Drainage Easements, and/or Sight Triangle areas, if any, and upon the conditions provided for in the hereinabove recorded instruments;
- ix. To comply with all agreements with (whether of the Declarant or the Association), or statutes, ordinances, rules or regulations of, City of Mooresville (or any agency thereof), Iredell County (or any agency thereof), or the State of North Carolina (or any agency thereof), respecting the use of any Common Areas;
- x. To provide such security as may be deemed reasonably necessary for the protection of Common Areas from theft, vandalism, fire and damage from animals;
- xi. To maintain bodies of water and related facilities, if any, located on or in the Common Areas;

- xii. To maintain the entrance area to the Development in a clean and orderly condition and to maintain the subdivision entrance monuments and signs, wall, fences located on the Common Areas [it is noted that all fences in rear and side yards are the responsibility of the applicable Lot Owner(s)], and the landscaping thereon (including irrigation systems, lighting, signage, groundcover, shrubs and flowers) to the standard established at completion of the entrance area;
- xiii. To maintain all other landscaping in the Common Areas to the standard established at completion of such landscaping;
- xiv. To pay all ad valorem taxes levied against the Common Areas and any property owned by the Association;
- xv. To pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the Bylaws;
- xvi. To pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;
- xvii. The provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Association shall decide to provide. The purposes for which assessments may be levied shall include payment for utilities necessary to accomplish the foregoing purposes;
- xviii. To maintain open spaces and streets within the Common Areas which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-ways within the Property), drives and parking areas within the Common Areas, if applicable;
- xix. To maintain a contingency reserve for the replacement of capital improvements and to fund unanticipated expenses of the Association; and
- xx. To provide for such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund ("**Reserve Fund**") for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expenses. In order to fund unanticipated expenses of the Association, the Reserve Fund shall be equal to five percent (5%) of the sum of the amounts described in the preceding subsections of Article V, Section 2, in order to fund unanticipated expenses of the Association.

(c) All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment

of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws.

Section 3. Budgeting and Allocating Common Expenses. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated expenses for the operation of the Association and the operation and maintenance of the Common Areas for the coming year. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Capital Contributions, Annual Assessments, Special Assessments, Supplemental Annual Assessments, and Special Individual Assessments against the Lots, as authorized, established and collected as provided herein this Article V.

The Association is hereby authorized to levy Annual Assessments equally against all Lots, except Lots owned by Declarant (and any Affiliated entity of Declarant), subject to assessments to fund the Common Expenses. In determining the Annual Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated becoming subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy (in addition to any amount paid by Declarant under Article V), which may, in the Declarant's discretion, either be a contribution, an advance against future assessments due from the Declarant, or a loan. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

Pursuant to N.C.G.S. Section 47F-3-103(c) within 30 days after adoption of any proposed budget, the Board shall provide to each Owner a copy of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 days nor more than 60 days after mailing of the budget and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified, unless at said meeting a majority of all Owners in the Association or any larger vote specified in the Declaration rejects the budget. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Annual Assessment from time to time, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

Section 4. Exempt Property. The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquired title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessment shall again accrue on such lot. Any lot which Declarant may hereinafter designate for common use as

part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

Section 5. Capital Contribution. Each Owner of a completed dwelling unit shall contribute to the Association the sum of **\$200.00** payable at the closing of such purchase, which Capital Contribution shall be deposited into the Association's regular operating account. Further, such Capital Contribution shall not be due from the Declarant (or any Affiliated Entity of Declarant) or from Builders who purchase a lot on which to construct a dwelling unit for sale. [Builder(s) shall mean and refer to any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in Ashlyn Creek, including, but not limited to Niblock Development Corp.] Capital Contributions shall be used by the Association for the purpose of initial and nonrecurring capital expenses of the Association and for providing initial working capital for the Association. Capital Contributions shall not be considered to be advance payment or pre-payment of Annual Assessments or Special Assessments. Capital Contributions are payable the initial purchaser and all subsequent purchasers of a given dwelling unit.

Any Capital Contribution that remains unpaid for a period of thirty (30) days or longer, together with interest, costs of collection and reasonable attorney fees, shall be a charge and continuing lien upon the Lot against which such assessment is made when a claim of lien is filed of record as provided in Article V, Section 1. In addition, those remedies provided in Article V, Section 11 for the nonpayment of assessments and Article V, Section 12 (Subordination of the Lien to First Mortgages) applies to the Capital Contributions.

Section 6. Maximum Annual Assessments. The maximum Annual Assessment shall be determined by the Board of Directors. **The Annual Assessment for any lot owned by Declarant (or any Affiliated Entity of Declarant) shall be at a rate which is one-third (1/3) of the rate otherwise payable.**

Annual Assessments may only be increased in accordance with the following:

(a) From and after **January 1, 2010**, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the membership (unless required under the Planned Community Act or other applicable law), may increase the Annual Assessment applicable to each Lot by a maximum amount equal to not more than twenty five percent (25%) above the maximum Annual Assessment for the previous year. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the membership (unless required under the Planned Community Act or other applicable law).

(b) From and after **January 1, 2010**, the maximum Annual Assessment for Lots may be increased above twenty five percent (25%), and without limitation, if such increase is approved by Members entitled to no less than two-thirds (2/3) of all of the votes of Class A and Class B members combined and written consent of Declarant (so long as Declarant owns any part of the Property). Such voting may be represented 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 herein provided.

(d) If the Board of Directors shall levy less than the maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a Supplemental Annual Assessment ("**Supplemental Annual Assessment**"), subject to the procedures set forth hereinabove Article V, if applicable. In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable maximum Annual Assessment for such year other than as set forth herein.

(e) The Annual Assessments shall be paid as provided in Article V, Section 11.

Section 7. Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a special assessment ("**Special Assessment**") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the roadways serving the Property. Provided, however, (a) Declarant (or any Affiliated Entity of Declarant) shall not be obligated to pay any Special Assessment on Lots owned by Declarant (or any Affiliated Entity of Declarant) except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and approved by the assent of two-thirds (2/3) of the votes of appurtenant to the Lots which are subject to this Declaration. Such voting may be represented 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 quarterly basis or monthly basis, as established by the Board.

Section 8. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner ("**Special Individual Assessment**") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, Declarant (or any Affiliated Entity of Declarant) shall not be obligated to pay any Special Individual Assessment. The due date of any Special Individual Assessment levied pursuant to this Section shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 9. Notice and Quorum for Any Action Authorized Under Sections 6 and 7, 8 Written notice of any meeting called for the purpose of taking any action authorized under Article V, Section 6 or 7 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. There shall be no requirement that a quorum be present at the meeting.

Section 10. Date of Commencement and Due Dates of Annual Assessments.

- a. The Annual Assessments shall commence as to all Lots shown on a Plat of any Phase of the Property as of the date of the conveyance of the first Lot on such plat by Declarant to an Owner (other than Declarant or any Affiliated Entity of Declarant) of such Lot.
- b. From the date on which the Annual Assessments commence on a Lot until the date on which the Lot is sold by the Declarant (or an Affiliated Entity of Declarant) or Builder to the purchaser of a home, the Declarant (or an Affiliated Entity of Declarant) or Builder shall be liable for Annual Assessments at a rate which is one-third (1/3) of the rate otherwise payable.
- c. The first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year when filed. After the first year, the Annual Assessment shall be payable annually (or semi-annually at the election of the Owner), on the first day of each January (or if the Owner has elected semi-annual payments, on the first day of each July) or on such other payment dates as shall be established by the Board of Directors.
- d. The Board of Directors shall fix the amount of the Annual Assessment against each Lot as provided in Article V, Section 6.
- e. Written notice of the Annual Assessment shall be sent to every Owner.

Section 11. Effect of Non-Payment of Assessment; Remedies of the Association. Notwithstanding Article V, Section 10 hereof, the Declarant may, at its election, postpone in whole or in part the date on which the assessments shall commence provided that the Declarant maintains the Common Area for which no assessment is being collected during the period of such postponement. Any assessment (including the Capital Contribution) not paid within fifteen (15) days after the due date shall be assessed a late charge as determined by the Board of Directors and bear interest from the due date at an annual rate of twelve percent (12%), but in no event above the then maximum legal rate, and to the extent allowed by law. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area, abandonment of his Lot, or for any other reason.

The provisions as set forth in the preceding paragraph of this Section are further subject to the provisions of N.C.G.S. Sections 47F-3-107, 47F-3-107.1, and 47F-3-116, which are incorporated fully herein by reference.

Section 12 Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or under a power of sale or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may, in

its sole discretion, determine such unpaid assessments to be and Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, or Special Individual Assessment, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the maximum permitted in Article V, Section 6. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

Section 13. Certificate of Payment. The Association shall, upon demand for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, and/ or Special Individual Assessment if any, (collectively referred to as "**the Assessments**") on a specified Lot have been paid to date. No charge shall be assessed Declarant or an Affiliated Entity of Declarant for a certificate or other proof of payment of the Assessments. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

ARTICLE VI: ARCHITECTURAL AND LANDSCAPING CONTROL

Section 1. Architectural Review Committee. There is hereby established an Architectural Review Committee. The Architectural Review Committee (the "**ARC**" or "**Committee**") is established to perform the Architectural Review functions set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the ARC, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. **For purposes of this Article VI, the Declarant shall approve all initial plans and specifications for the construction of residences within the Property and function as the Architectural Review Committee, so long as Declarant is the record owner of one (1) Lot within the Development.** After the termination of the Declarant's ownership interest in the Development as described herein, the Board of Directors of the Association shall appoint the Members of the Committee to carry out the functions set forth in this Article. However, pursuant to Article I, Section 15, and Article X, Section 9 hereunder, Declarant may assign in its sole discretion all or some of the rights and/or responsibilities of the Architectural Review Committee to another Person (as defined in Article I, Section 24).

Section 2. Architectural Design Guidelines and Development Standards. The Declarant and/or the ARC may develop, publish and promulgate architectural standards and guidelines (hereafter "**Architectural Design Guidelines**") which are incorporated herein by reference. The Architectural Design Guidelines shall be used by the ARC in reviewing any proposed plans, specifications and materials submitted to the ARC for approval. The Architectural Design Guidelines shall establish development standards setting forth the minimum standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping and relevant criteria deemed important by the ARC or Declarant for the construction of improvements of any nature in the Property, and which may vary for different Phases or Sections of the Property with different housing types and different architectural themes. The purpose of such development standards will be to preserve and promote the character and orderly development of the Property while allowing diversity of design and architectural themes for different Sections of the Property. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agrees to be bound by all provisions of such development standards as may be

adopted by the ARC and to use diligence in keeping abreast of the provisions thereof and any amendments thereto.

Section 3. Review by Committee. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property until: (a) the Architectural Review Committee has approved the plans and specifications therefore and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural Design Guidelines; and (b) the fees set forth in or contemplated in this Article VI have been paid.

The provisions of this Article VI shall not apply to the construction of any improvements commenced, erected or maintained by Declarant or an Affiliated Entity of Declarant on any Lot or upon any of the Common Areas or Maintenance Areas.

In addition, no alteration or modification to an existing dwelling unit or any other structure previously approved by the ARC whether dwellings, buildings, gazebos, storage sheds, room additions, armadas, rooms, fences, walls, canopies, statuary, awnings, roofs, devices to be mounted on roofs, exterior lighting facilities, recreational/athletic facilities, changes in exterior paint color, or other similar improvements or attachments shall be constructed and no alteration of the established drainage on a Lot shall be made unless complete plans and specifications therefore have been first submitted to and approved in writing by the ARC.

Final plans and specifications shall be submitted to the ARC as specified in the Architectural Design Guidelines. The plans and specifications (the "**Plans**") shall show the nature, kind, shape, height, materials and location of all improvements and landscaping, including but limited to the following: (i) foundation plans, (ii) floor plans of all floors, (iii) elevation drawings of all exterior walls, (iv) roof plan, (v) plot plan showing location and orientation of all structures (including accessory buildings) proposed to be built on the Lot with the setback lines as shown on the recorded Map drawn in, (vi) the square footage of the proposed structures, (vii) the location of and materials for any driveway, and, where the driveway is to cross a drainage ditch adjacent to any roadway, and (viii) samples or appropriate description of materials and exterior colors. The documents shall specify any requested variance from the set back lines, garage location or any other requirement set forth in this Declaration or the Architectural Design Guidelines.

The Committee shall have the absolute and exclusive right to refuse to approve the proposed Plans or make recommendations for modifications in the Plans. In passing upon such Plans and samples, the Committee may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the Lot involved, the quality of the proposed workmanship and materials, and the harmony of the external design with the natural features and the existing structures of the surrounding neighborhood and the appearance of such proposed improvements as viewed from neighboring Lots.

At such time as the plans meet the approval of the Committee, one complete set will be retained by the Committee and the another set shall be marked approved on behalf of the Committee and returned to the Owner or his designated representative in addition to a certificate evidencing such approval. If disapproved by the Committee, one set of such plans shall be marked "disapproved" and shall be

accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans.

If the Committee fails to approve or disapprove such plans and specifications within the time frame specified in the Architectural Design Guidelines, written approval of the matter submitted shall not be required and compliance with this Article shall be deemed to have been completed, so long as the submission does not otherwise violate or fail to conform to any restrictions or requirements of the Declaration or previously established requirements of the ARC and/or the Architectural Design Guidelines, in which event submission shall be deemed disapproved by the Committee. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

Section 4. Fee. Pursuant to N.C.G.S. Section 47F-3-116(a2), the Architectural Review Committee shall have the specific authority to charge a fee for reviewing submitted applications. The fee shall be paid at the time the request for approval is submitted. Refusal or approval of plans, specifications, builder or location may be based upon any grounds including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Architectural Review Committee shall be deemed sufficient.

Section 5. No Waiver. The approval or disapproval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC shall not be deemed: (a) to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and specification, drawings, or matters whatever subsequently or additionally submitted for approval or consent not; (b) to prohibit the ARC from modifying and amending the Architectural Design Guidelines from time to time (with the approval of the Board) to specifically permit any improvement previously prohibited or (c) to prohibit any improvement previously permitted.

Section 6. Variance. The ARC may authorize a variance from compliance with the Architectural Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the ARC, and no variance shall (a) be effective unless in writing or (b) estop the ARC from denying a variance in other circumstances.

Section 7. Violation of Approved Plans and Right of Entry. If it is determined by the ARC that a violation exists on a Lot, or that work completed on any Lot has not been completed in compliance with the final plans approved by the Committee, the Committee of the Association shall notify the Owner in writing of such non-compliance. The ARC shall specify in reasonable detail the particulars of non-compliance and may require the Owner to remedy the same. The Architectural Design Guidelines shall provide the policies and procedures for notification by the ARC and compliance by the Owner.

The Association shall have the right to enter upon the Lot of any Owner and to perform compliance or remedy non-compliance as ordered by the Committee and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand therefore. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance, Declarant or the Association (as their interest shall appear) shall notify the Owner that it shall take action to remove the

non-complying improvements and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed ten percent (10%) of the cost of achieving compliance.

Section 8. Non-Liability for Approval of Plans. Architectural Review Committee (and, if applicable, Declarant) approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. Neither the Architectural Review Committee, the Members thereof, the Association, any Member thereof, the Board nor Declarant assumes any liability or responsibility by approving such plans and specifications, or for any defect in any improvements constructed from such plans or specifications. Neither the Committee, any Member thereof, the Association, the Board nor Declarant shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 9. Definitions. For purposes of this Declaration, the following terms shall have the following meanings unless the context clearly requires a different meaning:

(a) **"accessory building"** means every detached garage, carport, tool shed, storage or utility building, well house, guest quarters, cabana or other similar building constructed on a Lot which is not a dwelling;

(b) **"buildings"** mean accessory buildings and dwellings;

(c) **"dwelling"** means a building constructed for single-family residential use but not excluding guest quarters or other similar quarters;

(d) **"heated living area"** excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, heated living area excludes vaulted ceilings areas, attics, unheated porches (roofed or unroofed), attached or detached garages, porte-cocheres, accessory buildings, and unheated storage areas, decks, terraces, and patios. The term story shall mean a finished horizontal division of heated living area extending from the floor of such division to the ceiling above it. The term half story shall mean a story which contains fifty percent (50%) or less heated living area than the story in the house containing the most heated living area; and

(e) **"improvements" or "structures"** shall mean and include any and all man made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; decks, and patios; planters; terraces; roofed structures; parking areas; fences; pet fencing; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; tubs/spas; swimming pools; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Review Committee, provided such replacement or repair does

not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Review Committee.

Section 10. General Guidelines. Listed hereinafter are guidelines which are not intended to be absolute and complete guidelines, but address certain critical areas which will be carefully considered by the Architectural Review Committee in the approval or disapproval of an Owner's plans and specifications:

(a) No structures (except accessory buildings, inground swimming pools, fences or walls, approved by the Architectural Review Committee) may be erected above grade except within those setbacks as more particularly reflected on the recorded Maps. (Note: The maps of **Ashlyn Creek** recorded or to be recorded in the Iredell County Registry, provide building requirements and/or setback lines which neither create nor impose private restrictions, but instead reflect zoning and/or subdivision regulations of the City of Mooresville.) For purposes of this covenant, eaves and stoops shall not be considered as a part of a building provided; however, this shall not be construed to be deemed to permit the encroachment of any improvement onto another Lot. In addition, all improvements shall be constructed in order to comply with Impervious Area Requirements of the City of Mooresville (and/or Iredell County, if applicable.)

(b) Further, all dwellings constructed on a lot shall not contain less than **1,800 square feet** of Heated Living Area.

(c) The Architectural Review Committee has the right to decide in its sole and absolute discretion the precise site and location of any structure placed upon any Lot; provided, however, that the Owner shall be given the opportunity to recommend a specific site for such structure.

(d) All structures constructed or placed on any Lot shall be built on site of new materials of good grade, quality and appearance, and shall be constructed in a good, workmanlike manner, conforming to all applicable building codes. No used structures shall be relocated or placed on any such Lot.

(e) The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, stucco, wood, or siding consisting of wood, composite wood or vinyl material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished.

(f) Roofs shall have not less than a 6 inch pitch, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing.

(g) **Permitted Accessory Uses.** No accessory uses to any residential dwelling shall be permitted on the Property other than the following:

- i. Accessory buildings shall be consistent in style, design, and harmony with the primary dwelling.
- ii. There shall be only one (1) accessory building constructed on or placed on a Lot.
- iii. No accessory buildings shall be placed or constructed on a Lot prior to submission to and approval by the Architectural Review Committee.

- iv. All driveways, and turning, and parking, areas shall be concrete surfaced, or shall be surfaced with such other materials as may be approved by the Architectural Review Committee; such surfacing must be completed prior to the occupancy of any dwelling on a Lot. Other surfaces or center grass strips may be utilized for driveways as approved by the Architectural Review Committee in order to comply with Impervious Area Requirements of the City of Mooresville (and/or Iredell County, if applicable.) That portion of the driveway located within the street right-of-way, or adjoining the street, shall be constructed in strict accordance with the restrictions and requirements of the North Carolina Department of Transportation, or such other governmental agency (ies) as may control such access areas.

(h) **Fencing:** The following guidelines apply to fencing:

- i. No fence, wall or other enclosure, except those approved with initial plans submitted by Builders as provided in Article VI, Section 3 and fencing located on the Commons Areas as provided in Article VI, Section 10(h)(viii) hereof, shall be constructed on any Lot without first obtaining the approval of the Architectural Review Committee. Furthermore, approved fences, walls and enclosures cannot be removed, altered, replaced, and/or reconstructed without the approval of the Architectural Review Committee.
- ii. No portion of any fence erected on any Lot may exceed six (6) feet in height.
- iii. No chain link fences, concrete block, or exposed wire fences of any nature shall be permitted.
- iv. The Architectural Review Committee may permit the following:
 - a. Fences extending nearer to any front street than the back building line of the residence located on that Lot;
 - b. Fences extending nearer to any side street than the side building line of the residence located on that Lot; and
 - c. Front yard and side yard accent fencing and walls not to exceed 36 inches in height.
- v. No electronic fence or electronic pet containment system, or “hidden” fence including, but not limited to an Invisible Fence©, underground fence, remote fence, wireless fence, and/or radio controlled fence, can be installed or located within the front yard of any Lot (i.e., That area extending across the full width of the lot and extending from the closest front wall of the dwelling to the margin of the right-of-way of the road on which the Lot fronts. The front yard of a corner lot is the yard adjacent to the designated front lot line.).
- vi. No “dog runs”, chain link animal enclosures, or animal enclosures of any nature shall be allowed within the Development.
- vii. Once an approved fence or wall has been erected or installed along a side Lot boundary line which is a common boundary line with another Lot, such approved fence or wall shall be the only fence or wall that may be erected along thus

common boundary line, and the Owner who installs or erects such fence or wall shall finish both sides thereof. All fences shall be maintained in a structurally sound and attractive manner.

- viii. Notwithstanding the foregoing, all fencing located or installed on the Common Areas are exempt from the fencing requirements provided herein. Declarant, its successors and assigns, and the Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Area for any purposes without the approval of the Architectural Review Committee, such fences and other enclosures to become a part of the Common Area shall be installed by the Declarant and shall be maintained by the Association to comply with all agreements with (whether of the Declarant or the Association) or statutes, ordinances, rules or regulations of, the City of Mooresville (or any agency thereof), Iredell County (or any agency thereof), and/or the State of North Carolina (or any agency thereof).
- ix. Notwithstanding the foregoing, the Declarant, its successors and assigns, or an Affiliated Entity of Declarant shall have the right to erect fences, walls or other enclosures on any Lot without the approval of the Architectural Review Committee. After the initial construction and/or installation, said fences, walls and enclosures cannot be removed, altered, replaced and/or reconstructed without the approval of the Architectural Review Committee.
- x. Declarant reserves the right and easement to erect permanent fences and/or walls and/or enclosures on the Lots (other than areas of the Lots upon which buildings are constructed) for the purpose of providing screening, privacy, decoration, retainage, and topographical stability in connection with the overall plan and development of the Property and the various Lots located thereon.

(i) Minimum landscaping for each structure shall include seeding of all lawn areas and/or maintained natural areas and appropriate foundation plantings.

(j) Exteriors of all dwellings and accessory structures must be completed within one (1) year after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction; provided, however, the Committee may waive this requirement if construction delays have been caused by strikes, war, fire, acts of God, material shortages or other events which render the completion of construction within such time impossible.

Section 11. Landscaping. The Architectural Review Committee may from time to time promulgate Landscape Guidelines. The Landscape Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Review Committee in reviewing plans and specifications. The Landscape Guidelines may be revised and amended at any time by the Architectural Review Committee. Notwithstanding the above, each Owner shall have completed lawn seeding and foundation plantings in and around the structure within two (2) months of issuance of the Certificate of Occupancy by the applicable governmental authority; provided, however, this requirement may be waived if delays have been caused by strikes, war, fire, acts of God, material shortages or other events which render the completion of the landscaping within such time impossible. Owners are responsible for maintenance of any planting strip between the back of the street curb and the front lot boundary line.

Section 12. Approval of Changes in Structure. Prior to making any material changes, alterations, or exterior additions to any structure on a Lot [such changes to include without limitation any addition to the existing structure, any construction or addition of an accessory building, fence, wall, or other structure or any change (including changes in color) in the exterior wall covering, the erection of antennas, aerials, awnings, the replacement of reflective or other material in the windows of a house or other exterior attachment], the Owner shall submit in writing to the Architectural Review Committee all plans and specifications showing the nature, kind, shape, height, materials, and location covering such proposed change. The Architectural Review Committee shall have the absolute and exclusive right to refuse to approve the proposed plans and shall notify the Owner of its approval or disapproval within thirty (30) days of receipt of the plans from the Owner. The ARC shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that such changes, improvements and alterations, to dwellings, landscaping and structures shall not jeopardize or impair the soundness, safety or appearance of any Lot.

ARTICLE VII: USE RESTRICTIONS

Section 1. Use of Common Areas. No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Declarant's intent that this paragraph inure to the mutual benefit of all owners within the Property, and each Owner shall have a nonexclusive easement right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to those limitations enumerated herein Article III, Section 2.

Section 2. Land Use. All Lots shall be used for single-family residential, non-transient, purposes only, and common recreational purposes auxiliary thereto, and for no other purpose. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the property. However, "mother-in-law suites" may be included in a single-family residence provided that same meets the approval of the Architectural Review Committee and all applicable zoning requirements. Specifically prohibited uses include Institutional uses, including, but not limited to group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, and beds and breakfasts. Each Lot shall be in compliance with the zoning laws of the City of Mooresville and if applicable, Iredell County. Only one detached single-family residence shall be erected on any one Lot. Only one family may occupy a Lot as a principal residence at any one time. Declarant and/or Builder(s) may maintain a sales office, models and a construction office on any Lot until all Lots have been sold.

Section 3. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot or Common Area shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or becomes an unreasonable annoyance, inconvenience or nuisance to the residents of the Development, or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any local, state, or federal laws or

regulations. There shall not be maintained on any Lot or Common Area any plants or animals or device or things of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Development. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot or Common Area unless required by law. Fires on any or on any portion of the Common Area are prohibited. Yard, garage, or "moving" sales are prohibited on any Lot, Common Area, Street, and/or parking area anywhere within the Property.

Section 4 Animals and Pets. No animals shall be raised, bred or kept on any Lot except that dogs, cats, or other household pets (which are registered, licensed, and inoculated as required by law) may be kept or maintained provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with all laws and ordinance of the State of North Carolina, City of Mooresville (if applicable), and Iredell County. The number of household pets shall not **exceed three (3) in number**, except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to other Lot Owners or to the Development. Any animal that constitutes an unreasonable annoyance, inconvenience or nuisance may be required to be removed from the Property. **Animals specifically prohibited include poisonous snakes, constrictor snakes (certain snakes that wrap their coils around and squeeze their prey in order to kill it by suffocation such as the anaconda, boa, kingsnake, milk snake, and python), livestock, pot bellied pigs, poultry, bees, llamas, alpacas, and wild animals such as big cats (lions, tigers, etc.) and monkeys (primates). The following breeds of dogs are specifically prohibited: Chows, Pit Bulls, Presa Canario, and Rottweilers.**

Dogs, cats or other household pets must be kept within the confines of the Owner's Dwelling Unit, except when being held on a hand leash by the owner of the animal or confined within the rear yard of the Owner's lot within a fence approved by the Architectural Review Committee or erected by the Declarant per Article VI. No pet may be chained, "staked", or tied up in a yard. Furthermore, no pet may be housed or restrained by an electronic pet containment system (i.e. electric fence, "hidden" fence, Invisible Fence®, underground fence, remote fence, wireless fence, and/or radio controlled fence), or otherwise left unsupervised by the pet owner in the front yard of any Lot (i.e., that area extending across the full width of the lot and extending from the closest front wall of the dwelling to the margin of the right-of-way of the road on which the Lot fronts).

If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property. The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing on the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in hereinabove.

Section 5. Mobile Homes, Trailers and Temporary Structures. No mobile home, manufactured or modular home, or structure having the characteristics or appearance of a mobile, modular or manufactured home, including, without limitation, any mobile, modular or manufactured home as defined by the building codes or other applicable laws of the State of North Carolina, shall be located upon the Property. Furthermore, no trailer, temporary house, temporary garage or other temporary outbuilding shall be placed or erected on any Lot; provided, however, that the Declarant may grant permission for temporary structures for storage of materials during construction, or location, of improvements. Except as may be otherwise provided in this Declaration, no building of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shack, tent, barn, detached garage, or any other building of a similar nature shall be used any time as a residence, either temporarily or permanently.

Section 6. Above Ground Swimming Pools. No above ground swimming pools shall be erected or installed on a Lot.

Section 7. Access to Lots. The Association, its agents or employees, shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situated upon such Lot which serve another Owner's Lot. The Association or its agent(s) shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.

Section 8. Clothes Drying. No clothesline may be erected or maintained on any Lot. No drying or airing of any clothing, towels, or bedding shall be permitted outdoors on any Lot or in any other unenclosed area (including porches and patios) within the Property.

Section 9. Signs. One (1) sign of not more than four (4) square feet in area and not to exceed six (6) feet in height, advertising a Lot for sale or rent, may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions herein shall not apply to Declarant or Builder(s), or their agents, who may erect such signs as they deem desirable to promote the sale of Lots. The display of a Political Sign is prohibited earlier than forty-five (45) days before the applicable election and later than seven days after an election day. Restrictions concerning the size and number of Political Signs that may be placed by the Owner on his Lot can be no more restrictive than any applicable City, Town, or County Ordinance ("local ordinance") that regulates the size and number of Political Signs on residential property. If there is no applicable local ordinance regulating the size and number of political signs on residential property, an Owner may place on his Lot one (1) political sign with the maximum dimension of 24 inches by 24 inches. Political Sign shall mean a sign that attempt to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

The provisions as set forth in this Section 9 are further subject to the provisions of N.C.G.S. Section 47F-3-121(2).

Section 10. Plumbing; Water and Sewer. All plumbing, dishwashers, toilets and sewage disposal systems shall be connected to a sewage system approved by the appropriate governmental authority(ies) and/or regulatory agency(ies) having jurisdiction. The applicable governmental authority(ies) must certify that such system may be used prior to the use and occupancy of any dwelling on the Lot.

Section 11. Fuel Tanks. All fuel storage tanks, if applicable, shall be buried below the surface of the Lot or screened by approved fencing or shrubbery.

Section 12. Garbage Containers. All outdoor receptacles for ashes, trash, rubbish or garbage shall either be screened or placed in the rear yard or the garage, so as not to be visible from any street or any other Lot, except on the days which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by the Lot Owners in the location designated for collection by the local waste removal authorities shall only remain in such location for a period not to exceed twenty-four (24) hours.

Section 13. Maintenance. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other causality. No structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated, or otherwise fallen into disrepair may be located upon any Lot. Each Owner shall further maintain the yard and landscaping on his Lot in a clean and neat condition and shall keep his yard mowed and landscaping trimmed so as not to be unsightly. Owners are responsible for maintenance of any planting strip between the back of the street curb and the front lot boundary line. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, undergrowth, dead, diseased or decaying trees, weeds, trash, rubbish and debris and shall keep all Lots in a neat and attractive condition. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. All improvements erected on Lots shall be maintained in a clean, neat, and orderly condition and in a good state of maintenance and repair.

Section 14. Vehicles and Parking.

- a. Each Owner shall provide space for parking (2) automobiles on his Lot prior to occupancy of any dwelling constructed on such Lot in accordance with reasonable standards established by the Architectural Review Committee.
- b. No vehicle shall be parked on any street except on a temporary basis. No automobiles may be parked on any Lot, except in the driveway serving such Lot or inside a garage.
- c. No commercial vehicles over one (1) ton capacity, aircraft, boat, boat trailer, jet ski, automobile trailer, bus (including school bus), motor home, travel trailer, house trailer, camper or other recreational vehicle may be stored overnight on any Lot unless the same be within an enclosed garage or area not visible from the streets or from adjoining dwellings. This restriction shall not apply to sales trailers, construction trailers, or other vehicles and construction equipment which maybe used by Declarant and/or Builder(s), and its/their agents and contractors, in the conduct of its/their business prior to completion of sales. No stripped, partially wrecked, or junked motor vehicle, or part thereof, or unlicensed vehicles may be kept, or stored, on a Lot.
- d. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time.

Section 15. Antennas. No towers, aerials, antennas, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind which are located outside of the dwelling on the Property, or any other external electronic equipment or devices, may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size and design has been

approved by the Architectural Review Committee, except (i) a customary antenna, which shall not extend more than ten (10) feet above the top roof ridge of the dwelling; and (ii) a satellite disc or dish no larger than eighteen inches (18") in diameter. No towers, aerials, antennas or other similar apparatus shall be located on the front or street facing elevation(s) of any dwelling. No freestanding transmission or receiving towers or any non-standard television antennae may be located upon a Lot.

Section 16. Exercise and Recreational Equipment. All swing sets, treehouses, play houses, children's climbing or play apparatus, sandboxes, wading pools, soccer goals, basketball goals, volleyball and badminton nets, and similar equipment must be located within the rear yard, and building setback lines, and must otherwise meet with the approval of the Architectural Review Committee as to design, construction, materials, etc. Skateboard ramps are specifically not permitted. On those Lots designated as Patio Home Lots, no basketball goals shall be erected or installed.

Section 17. Reconstruction. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building, with reasonable promptness; provided, however, that any such reconstruction must be commenced within six (6) months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within six (6) months of such destruction.

Section 18. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one (1) Lot, then such Lots shall (except as provided herein) be considered as one (1) Lot for the purposes of this Article VII upon the recordation in the Office of the Register of Deeds of Iredell County, North Carolina, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Review Committee); and in each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Review Committee. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, Declarant reserves the right to designate said combined Lots as one (1) Lot or multiple Lots in Declarant's sole and absolute discretion, for purposes of payment of assessments. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more Lots shown on the Maps of the Property, and to otherwise change the size, boundary lines or dimensions of any Lot(s) as it may deem necessary and for any reason.

Section 19. Interval Ownership. No Owner may deed, sell, convey, or otherwise transfer his Lot under any time-sharing or interval ownership arrangement as set forth in Chapter 93A, Article 4 of the North Carolina General Statutes ("North Carolina Timeshare Act").

Section 20. Hazardous Activities. Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance of the Common Area or any other Lot without the prior written consent of the Board of Directors of the Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which would result in the cancellation of insurance on any other Lot or on part of the Common Area, or which would be in violation of any law.

Section 21. Regulations. Reasonable regulations governing the use of the Common Area and external appearance of all structures erected on the Lots may be made and amended from time to time by the Board of Directors of the Association; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Members before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

Section 22. Mailboxes. No mailbox or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located upon any Lot, except such receptacle of standard design as shall have been approved by the Architectural Review Committee. No brick or stone mailboxes shall be erected or allowed to remain within the right-of-way of any street located within the Submitted Property. The Committee may adopt more restrictive requirements, including the requirement for the use of a uniform mailbox design for Ashlyn Creek. All mailboxes shall comply with the requirements of the North Carolina Department of Transportation (NCDOT).

Section 23. Removal of Trees. No living trees measuring ten (10) inches or more in diameter at ground level may be removed, unless such trees are located within ten (10) feet of the dwelling or any accessory building. No trees shall be removed from any Lot until the Owner is ready to commence construction of improvements without approval of the Architectural Review Committee.

Section 24. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any dwelling unit on a Lot. Additionally, air conditioning and heating equipment and apparatus on each Lot shall be screened from view of roadways. No window air-conditioning units shall be permitted.

Section 25. Dwelling Connections for Utilities. All dwelling connections for all utilities including, but not limited to, water, electricity, gas, telephone and television shall be run underground from the proper connecting points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority.

Section 26. Decorative Yard Ornamentation and Lawn Furniture. Seasonal house and lawn decorations must meet with the approval of the Architectural Review Committee and shall be removed within thirty (30) days following the applicable holiday period. No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects, birdbaths, fountains, ornaments, figurines, or any other decorative structure or items are permitted in the front or side yards of any Lot, unless the plans and specifications and a site plan showing the location of the yard ornamentation on the Lot shall have been submitted to the Architectural Review Committee and expressly approved by the same in writing. Failure to submit plans or placing yard ornamentation without the prior written approval of the Architectural Review Committee (as required herein) shall be grounds for the Board of Directors to levy a fine against such Owner. Said fine shall be a lien against the Lot, enforceable as a mortgage upon the filing of such lien as provided herein. Such lien shall be subordinate to the lien of any mortgage of record against such Lot.

Section 27. Site Distance at Intersections. All Lots located at street intersections shall be landscaped to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed, or permitted to remain, where it would create a traffic or sight problem.

Section 28. Business or Trade Activities. Any business or trade activity is prohibited on a Lot, except that an owner or occupant residing on the Property may conduct business activities within a dwelling on the Property, so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve regular visitation of the Property by clients, customers, suppliers, or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on the Property, or for which any parts, equipment supplies, raw materials, components or tools are stored on the Property; and (v) the business activity is consistent with the residential character of the Property and does not constitute an unreasonable disturbance to adjoining land owners or others, a nuisance, or a hazardous or offensive rise. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities provided that such activities are not held on the Property more than once in any six-month period. The terms business and trade, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the providers family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of the Property for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

Section 29. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Architectural Review Committee, shall be taken by the Owner to insure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

Section 30. Flags of the United States of America and State of North Carolina. One (1) flag of the United States of America and/or one (1) flag of the State of North Carolina, of a size not greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§§§ 5 -10, as amended, governing the display and use of the flag of the United States, may be placed or displayed by the Owner on his Lot. The provisions as set forth in this Section 30 are further subject to the provisions of N.C.G.S. Section 47F-3-121(1).

Section 31. Compliance with Wetland and Buffer Regulations. A portion of the Property has been determined to meet the requirements for designation as a wetland, stream or protected stream buffer. Such areas and the flora and fauna indigenous to them may not be disturbed in any way with or without Association approval, and all Owners are hereby prohibited from disturbing the same on his or any other Lot or Common Area in any manner. Any subsequent fill or alteration of this area shall conform to the requirements of the regulations adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this provision is to prevent additional wetland, stream or buffer filling or draining, as such, the Association or Lot Owner should not assume that a future application for filling or draining would be approved. The Association or Lot Owner shall report the name of the subdivision in any application pertaining to said rules. This covenant is intended to ensure continued compliance with all regulations adopted by the State of North Carolina. This covenant is to run with the land and shall be binding on all Parties and all persons claiming under them.

Section 32. Discharge of Firearms. Hunting and the discharge of firearms and bows and arrows within the Property is prohibited.

Section 33. Compliance. In the event that the Owner of any Lot fails to comply with any of the restrictions set forth in this Article or any such rules and regulations as may be subsequently promulgated by the Architectural Review Committee and/or Board of Directors, the Association or Declarant, shall have the right (among other remedies which may be available), but not the obligation, to enter any Lot and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Declarant or Association in curing such default shall be charged to the defaulting Owner, shall be payable by such Owner to the Declarant or Association immediately upon demand and shall constitute a lien on the applicable Lot until paid.

Section 34. Fences and Walls. The construction, design, and location of fences and walls shall be approved by the Architectural Review Committee pursuant to Article VI herein.

ARTICLE VIII: EASEMENTS

Section 1. General. Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, water lines, telephone and electric power lines, gas lines, cable television lines, sanitary sewer and storm drainage facilities, pumping and lift stations (if applicable), silt fences, drainage ditches and for other utility installations over the Property and Common Area, as provided in Article III of this Declaration. Each Owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Areas, acknowledges such reservation and the right to Declarant to transfer such easements to such utility companies as Declarant may choose. The easements reserved by Declarant include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Property under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage.

Certain of the easements referred to herein and reserved by Declarant may, but need not, be shown on the Maps. Declarant further reserves the right to locate wells, pumping stations, lift stations and tanks within any Common Areas or on any residential Lot designated for such use on any Map or upon any Lot adjacent to such designated Lot.

Declarant reserves sidewalk easements of variable width covering the entire area within all sidewalks, whether or not same is shown on the Maps, for the Association.

Declarant reserves wall easements of variable width covering the entire area within all retaining walls and all head walls, whether or not same is shown on the Maps, for the Association.

Declarant reserves the right and easement to erect permanent fences and/or walls on the Common Area and Lots (other than areas of the Lots upon which buildings are constructed) for the purposes of providing screening, privacy, decoration, retainage and topographical stability in connection with the overall plan and development of the Property and the various Lots located thereon.

Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. Furthermore, storm drainage easements of variable width, whether on depicted on a recorded plat, are reserved for the use of the Declarant, its successors and assigns, and are established for the use of the Association, over the entire area within all ditches along any Roadway.

Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot or Common Area which shall interfere with rights and use of any and all easements shown on said recorded plat.

In addition, Declarant reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along a ten (10) foot strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable television service, water, irrigation, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Review Committee, over such easements.

Section 2. Control of Signs. Declarant hereby reserves a perpetual, non-exclusive easement over any portions of the Lots designated as "sign easements" or Common Area on maps of the Property, now or hereafter recorded, to erect, maintain, replace and repair subdivision signs and landscaping and/or lighting surrounding the same and all such easements shall be part of the Common Area. The Association shall maintain all subdivision signs and landscaping and lighting surrounding the same now or hereafter erected within the Common Area. The costs of all such maintenance, repair and replacement of such signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out in Article V hereof. Furthermore, Declarant or any Affiliated Entity of Declarant shall have (i) the right to erect within the Common Area additional subdivision signs, landscaping, and lighting surrounding the same to be maintained by the Association as herein provided, and (ii) the right to erect within the Common Area and unsold Lots and within street rights-of-way permanent and temporary directional signs advertising the sale and promotion of Lots for **Ashlyn Creek** or any portion of the Additional Property until one hundred percent (100%) of the Lots have been sold by Declarant or any Affiliated Entity of Declarant.

Section 3. Right-of-way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, lessees, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property.

The Association or any Lot Owner shall not place any Improvements or make any changes to the Roadways or any site lines across a lot at any intersection that would cause the NCDOT not to accept the Roadways for public maintenance. If an Owner does not correct such items, the Declarant or Association shall have the right to correct such items and bill and place a Special Individual Assessment on such lot.

Section 4. Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and security guards employed by Declarant and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

Section 5. Municipal Easement. A general easement of access is granted to all utility providers, into, over and through each Lot for the purpose of maintaining, repairing and servicing the utility lines located on said Lot and for providing municipal services to which said Lot is entitled.

Section 6. Easement Reserved by Declarant. Declarant hereby reserves such easements on, across and over the Common Area as shall be reasonably necessary for (i) the exercise by Declarant, or any Affiliated Entity of Declarant of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property; and (ii) the development by Declarant or any Affiliated Entity of Declarant, their respective successors and assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including, without limitation, easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Property and easements for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing water, light, power, telephone, sewage and sanitary service to the Additional Property.

Section 7. Encroachments. In the event that any improvements on a Lot shall encroach upon any Common Area or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Area shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Area into any such Lot for so long as such encroachment shall naturally exist.

Section 8. No Merger. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

ARTICLE IX: GENERAL PROVISIONS

Section 1. Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Declaration.

Section 2. Duration. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each.

Section 3. Amendment. This Declaration and any Supplemental Declaration (except as set forth to the contrary in Article IX, Section 3) may be amended or terminated during the first twenty (20) year period by an instrument signed by the Owners of not less than **sixty-seven percent (67%)** of the Lots, subject to the following conditions:

(a) All additions or amendments must be consented to by Declarant in writing so long as Declarant is the owner of one (1) lot in the Development, which consent Declarant may grant or withhold in its sole discretion;

(b) Notwithstanding anything in this Article X, Section 3 to the contrary, Declarant shall have the unilateral right, in its sole and absolute discretion to:

- i. For a period of ten (10) years after the recordation of this Declaration, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation amendments or modifications to any procedural, administrative or substantive provision of this Declaration;
- ii. Make any amendments or modifications hereto which are correctional in nature and do not involve a change which materially adversely affects the rights, duties, or obligations specified herein; and
- iii. Amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of the FHA, VA, the Federal National Mortgage Association, or other similar agency.

(c) No Amendment shall become effective until the instrument evidencing such change has been filed of record in the Iredell County Public Registry; and

(d) For purposes of this Section, additions to existing property pursuant to Article II, Section 2 shall not constitute an Amendment.

Section 4. Release. For a period of ten (10) years after the recordation of this Declaration, Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association, any Association Member or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register of Deed of Iredell County, North Carolina. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

Section 5. Enforcement. Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity (including, but not limited, to an action to recover sums due, for damages or injunctive relief, or both) all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant or any Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidity of any covenant, condition or restriction or other provision of this Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 6. Headings. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

Section 7. Unintentional Violation of Restrictions. In the event of an unintentional violation of any of the foregoing restrictions with respect to any Lot, the Declarant or its successors reserves the right by and with the mutual written consent of the then Owner or Owners of such Lot to change, amend or release any of the foregoing restrictions as the same may apply to that particular Lot.

Section 8. Severability. The provisions of this Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

Section 9. Reservation of Declarant Rights.

(a) Declarant reserves the right to assign all or a portion of any rights or easements reserved herein by a written assignment thereof, recorded in the Iredell County Public Registry.

(b) Pursuant to N.C.G.S. Section 47F-1-103(28), Declarant reserves "**Special Declarant Rights**" which mean and refer to rights reserved for the benefit of a Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any Director, officer or executive board member of the Association or any master association during any period of Declarant control.

Section 10. Binding Determination. In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration, the determination thereof by Declarant for so long as Declarant owns at least one Lot in the Development, shall be final and binding on each and all such Owners.

Section 11. Occupants Bound. All provisions of the Declaration, any Additional or Supplemental Declaration and the By laws and any and all rules and regulations, use restrictions or Architectural and Landscape Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 12. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s) or other portion(s) of the Property owned by such Owner (including, without limitation, applicable zoning and watershed laws, rules, regulations and ordinances).

Section 13. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner or Association Member (including Declarant) is required hereunder, such notice shall be give by the mailing of same, postage prepaid, to the address of such Owner or Association Member appearing on the records of Declarant or the Association. If notice is give in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recordation of this Declaration is 300 McGill Avenue, Mooresville, North Carolina 28027.

Section 14. North Carolina Department of Environment and Natural Resources Division of Water Quality. Declarant has been issued various permits by the North Carolina Department of Environment and Natural Resources Division of Water Quality (the "DWQ") in association of the development of the Property. Pursuant to the approval of the 401 Water Quality Certification issued for the Property, deed notifications or similar mechanisms shall be placed on all lots with remaining jurisdictional wetlands and waters or areas within fifty (50) feet of all streams and ponds on the Property. A deed notification identifying applicable lots in the Property will be recorded in the Iredell County Register of Deeds. The DWQ deed notification provides the following:

"A portion of this lot has been determined to meet the requirements for designation as a wetland, stream or protected stream buffer. Any subsequent fill or alteration of this area shall conform to the requirements of the state rules adopted by the State of North Carolina in force at the time of the proposed alteration. The intent of this provision is to prevent additional wetland, stream or buffer filling or draining, so the property owner should not assume that a future application for filing or draining would be approved. The property owner shall report the name of the subdivision in any application pertaining to said rules. This covenant is intended to ensure continued compliance with all rules adopted by the State of North Carolina and therefore the State of North Carolina may enforce benefits. This covenant is to run with the land and shall be binding on all Parties and all persons claiming under them."

Declarant reserves the right to transfer or assign its rights, duties, and responsibilities as permittee under any permits issued by the North Carolina Department of Environment and Natural Resources Division of Water Quality to the Ashlyn Creek Homeowners' Association, Inc., subject to notice to and approval of the Director of the State of North Carolina Department of Environment and Natural Resources Division of Water Quality.

Section 15. North Carolina Planned Community Act. The provisions contained hereinbefore this Declaration notwithstanding, nothing herein contained shall be construed so as to be in conflict with, or contrary to, those provisions of Chapter 47F of the North Carolina General Statutes, entitled the "North Carolina Planned Community Act", which are to take precedence, or be controlling, over the content of a Declaration (as defined therein).

Remainder of this page left intentionally blank.

IN WITNESS WHEREOF the undersigned has caused this Declaration to be executed effective the day and year first above written.

**NIBLOCK DEVELOPMENT CORP.,
a North Carolina Corporation**

By: 
William T. Niblock, President

**NORTH CAROLINA
CABARRUS COUNTY**

I, Kimberly B. Breuer, a notary public of the County of Iredell and State aforesaid, certify that **William T. Niblock** personally came before me this day and acknowledged that he is President of Niblock Development Corp., a North Carolina Corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and notarial seal, this the 29th day of July, 2008.

Kimberly B. Breuer

Notary Public

My Commission Expires: My Commission Expires March 12, 2011

My Commission Expires: March 12, 2011

