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DAVIDSON COUNTY NC
Book 1812
Pages 0417-0432

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DAVID T RICKARD
Register Of Deeds

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
WINDFIELD, PHASE THREE ***

THIS DECLARATION, made on the date hereinafter set forth by BUEL B. BARKER, JR. and wife, VICKIE B. BARKER, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain property in Arcadia Township, Davidson County, State of North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference and whereas the Declarant desires to create thereon a residential community (the "Community") together with streets, roads, footways, open spaces, entrances, drainage facilities, access easements, site lighting and signage, and any other common facilities (hereinafter sometimes referred to collectively as the "facilities") for the benefit of the Community; and,

WHEREAS, the Declarant desires to provide for the preservation of the values, amenities and security in the Community and for the maintenance of facilities including a walking trail, play area, gazebo and picnic tables situated therein and, to this end, desires to subject the real property described in Exhibit A to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth each and all of which is, and are, for the benefit of said real property and each owner a portion thereof; and,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants, conditions, and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

NOW, THEREFORE, Declarant hereby declares that all of the properties described above, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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*** Comment: (not part of recorded document)
"The lots in Phase Two recorded in Plat Book 48, Page 49
are included in the Declaration of Covenants, Conditions
and Restrictions for Windfield Phase Three of record in Book
1812, Page 0417, pursuant to Exhibit A."**

ARTICLE ONE

DEFINITIONS

Section 1. The following words when used in this Declaration or any amended or supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

(a) "Assessments" or "assessments" or "Common Charges" shall mean and refer to the assessments and charges levied against the Owners of Lots in The Properties, as hereinafter defined, pursuant to Article Seven of the Declaration and corresponding Article of the Bylaws;

and the words assessments or Assessment shall have the same meaning as Common Charges, unless the context requires otherwise.

(b) "Association" shall mean and refer to the WINDFIELD, PHASE THREE, Homeowners Association, its successors and assigns.

(c) "Board" shall mean and refer to the Board of Directors of the Association.

(d) "Common Expense" shall mean and refer to:

(i) Expense of administration, maintenance, repair or replacement of the Common Areas.

(ii) Expense declared Common Expense by the provisions of this Declaration or the Bylaws.

(iii) Expense Agreed upon as Common Expense by the Association and lawfully assessed against Owners of Lots in accordance with the Bylaws or this Declaration.

(iv) Any valid charge against the Association or against the Common Areas as a whole.

(v) Expense for maintenance, upkeep and repair of the common areas.

(e) "Common Area" shall mean all real property, together with all improvements thereon, owned by the Association for the common use and enjoyment of the Owners. A portion of the Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

All of that land designated "Common Area" as shown on the plat entitled "Windfield" which appears of record in the Office of the Register of Deeds of Davidson County, North Carolina in Plat Book 51, Pages 15, 16, & 17.

(f) "Declarant" shall mean and refer to Buel B. Barker, Jr. and wife, Vickie B. Barker, their successors and assigns.

(g) "Dedication" means the act of committing a portion of the Development Area or the Subdivision to the purposes of this Declaration.

(h) "Developer" means Buel B. Barker, Jr. and wife, Vickie B. Barker, their successors or assigns.

(i) "Lot" means a separately numbered tract of land lying within the Subdivision or other dedicated portion of the Development Area and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Covenants and Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "dedicated". The owner of all of a numbered Lot may combine such numbered Lot, part or parts of another such numbered Lot and the aggregate shall be considered as one Lot for the purpose of this Declaration. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and dedicated streets.

(j) "Member" shall mean and refer to all those owners who are members of the Association as provided herein.

(k) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title any Lot situated upon The Properties, but notwithstanding any applicable theory of any lien or mortgage law, shall not mean or refer to any mortgagee of trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(l) "Subdivision" means WINDFIELD, Phase Three, Plat Book 51, Page 15, 16, & 17 and any portion of the Development Area which has been dedicated pursuant to this Declaration.

ARTICLE TWO

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, The Association or any owner, its and their respective successors and assigns, for a term of fifty (50) years from the date of this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods often (10) years, unless an instrument signed by the then owners of at least sixty-seven (67%) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part, provided however, that no such agreement

to change shall be effective unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or owner, under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid, Certified Mail - Return Receipt Requested, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of the mailing. Notice to any one (1) of the owners, if title to a Lot is held by more than one (1), shall constitute notice to all Owners of a Lot. Each Owner shall have the affirmative duty and obligation to inform the Association in writing of any change of ownership of the Lot owned by such Owner and the owner's current address. No owner may be excused from his obligations established in this Declaration or challenge any notice to such Owner if the Association mailed an assessment bill, statement, ballot, or notice to the last address of said Owner which is recorded on the books of the Association and for which the Association does not receive the owners current address or notice of change of ownership from the Owner.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter. The benefits and burdens of the Declaration run with the land, at law and in equity, and the Developer, its successors and assigns, or any Owner and his heirs, successors and assigns, with respect to The Properties, shall have the right to proceed pursuant to the terms and conditions of this Declaration against any party violating the terms of this Declaration, in order to compel a compliance under the terms and conditions hereof or to prevent the violation or breach of any of the terms and conditions of this Declaration or the Bylaws.

Section 4. Severability. Invalidation of any one of these covenants and restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

ARTICLE THREE

RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION AND OWNERS

Section 1. Restriction on Use and Rights of the Association and Owners.

a. LAND USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any building lot other than one detached, single-family residence and its customary accessory buildings and uses.

b. **SUBDIVISION OF LOTS:** No residence shall be erected on less than one lot and no lot shall be subdivided except that two owners may subdivide a lot between them, but only one residence shall be built on the combined original and subdivided portion of any lots.

c. **DWELLING SIZE AND COMPOSITION RESTRICTIONS:** No single family dwelling shall be built, erected, altered or used unless it shall contain at least one thousand five hundred (1,500) square feet of heated and finished floor space, to be measured from outside wall lines, for the main body of the structure, exclusive of basements, porches, garages, and terraces, if the structure is a one-story dwelling. A two-story dwelling shall contain at least one thousand eight hundred (1,800) square feet of heated and finished floor space as measured above, with a minimum of nine hundred (900) square feet on the first floor. A one and one-half (1 1/2) story dwelling shall contain at least one thousand seven hundred (1,700) square feet of heated and finished floor space, as measured above, with a minimum of one thousand one hundred (1,100) square feet of floor space on the first floor.

d. **BUILDING SETBACK RESTRICTIONS:** The minimum setback requirement for all dwellings is those established by local zoning ordinance and/or health department.

e. **FENCING:** No chain link or other restraining type fence may be erected nearer the front property line than the rear foundation wall of the single family dwelling thereon. In case of a corner lot, no chain link or other restraining type fencing may be erected nearer the side street than twenty (20) feet. The maximum height for privacy fences shall be eight (8) feet. All other fences shall not exceed five (5) feet in height.

f. **EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of the flow of water through drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easement. The Developer reserves the right to create and impose additional easements or rights-of-ways over any unsold lot or lots for street, drainage and utility installations purposes by the recording or appropriate instruments and shall not be construed to invalidate any of these covenants.

g. **FOUNDATIONS:** All dwellings shall have either brick veneer or stone on the foundation walls.

h. **ANIMALS:** No animals, livestock (including but not limited to goats and pigs) or poultry of any kind shall be raised, bred or regularly kept on any lot, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for commercial purposes, and provided further that such pets do not constitute a danger or nuisance to other lot owners or to the neighborhood.

i. **GARBAGE AND REFUSE DISPOSAL:** No lot shall be used or maintained as

dumping ground for refuse or rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

j. **TEMPORARY STRUCTURES:** No structure of a temporary character, trailer, basement, tent, shack, barn, garage, or other outbuilding shall be used on any lot as a residence either temporarily or permanently.

k. **SIGNS:** No sign of any kind shall be displayed to public view on any lot except one professional sign of not more than one (1) square fee, one sign of not more than six (6) square feet advertising the property for sale or for rent or signs used by a builder to advertise the property during the construction sales period.

l. **NUSIANCES:** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighbourhood.

m. **PARKING:** The parking on the streets or driveways of trucks, tractor trailers, any commercial vehicles, boats, marine craft, trailers, campers, motor homes, motorcycles or any unregistered/unlicensed vehicles overnight is prohibited within the development. All such vehicles shall be parked inside enclosed garages. Only non-commercial automobiles, pick-up trucks, or sport utility vehicles are permitted to be parked in the driveways overnight. Parking on yards is prohibited.

n. **SCREENING:** The erection of clothes lines and exterior garbage cans shall not be in clear view of a public street.

o. **ANTENNAE:** One satellite antenna dish per lot not to exceed thirty-six (36) inches may be installed on the rear or side walls at least fifteen (15) feet behind the front wall of the dwelling. No other outside antennae are permitted.

p. **STREETS:** All streets in this development have been constructed as public streets, meeting the standards of the North Carolina Department of Transportation (NCDOT) for subdivision streets. The Developer has dedicated a right-of-way, as shown on the recorded map referred to above, having a width of at least fifty (50) feet. As of the date of recording this map, the streets have been inspected by the District Engineer of the NCDOT and certified as having been planned and constructed according to NCDOT standards, including those relating to grading, roadbed, paving and drainage.

The streets may be accepted by the NCDOT for addition to the State Highway System as the state maintained roads upon petition by affected lot owners when a sufficient percentage of the lots are individually owned and when there are a sufficient number of occupied dwellings for each applicable segment of street. Reference is made to the regulations of the NCDOT for a more complete discussion of procedures regulating the admission of streets to the state system.

Following such a petition, the streets will be re-inspected by the NCDOT to insure that said streets continue to meet all state standards including condition of rights-of-way and drainage ditches and swales.

Nothing, including, but not limited to, walls, fences, gates, timbers, trees, or plants, shall be erected, placed or permitted to remain in the streets rights-of-way or related sight or drainage easements as shown on the recorded map of this development. No drainage ditch or swale shall be filled, tiled, or altered in any way except in accordance with the standards of the NCDOT.

q. **DEVELOPER'S RIGHT OF MODIFICATION:** The Developer has developed this subdivision pursuant to a general plan or scheme of development. However, the Developer, reserves the right to cancel, modify or change any of these restrictions by written consent of the Developer, which written consent shall be duly executed, acknowledged, and recorded in the Office of the Register of Deeds of Davidson County, North Carolina and which written consent may be given or withheld, within the uncontrolled and sole discretion of the Developer. The Developer may convey their right to remove modify or change any restriction, condition or covenant of this instrument to any person firm or corporation by instrument in writing duly recorded in the Office of the Register of Deeds of Davidson County, North Carolina.

r. **ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant either to restrain violation or to recover damages.

s. **ADDITIONAL PROVISIONS:** No captions or titles in these Restrictive Covenants shall be considered in the interpretation of any of the provisions hereof.

In case of conflict between any of the foregoing provisions and any Zoning Ordinances (or exceptions thereto which may lawfully be made by the Zoning Board of Adjustment) or laws which may be in effect, or which may hereafter be enacted, such Zoning Ordinances or laws shall control.

Invalidation of any one of these covenants, restrictions, or conditions by judgment of Court Order shall in no way effect any of the other provisions which shall remain in full force and effect.

Section 2. Restrictions on the Use of Common Areas. Use of Common Area shall be limited to that of the Owners, tenants of Owners and their guests.

Section 3. Rules and regulations. Rules and Regulations concerning the use of Lots and Common Areas may be made and amended from time to time by the Association. Copies of such Rules and Regulations shall be furnished to each Member prior to the time the same shall become effective.

Section 4. Abatement and Enjoinment of Violations by Owners: The violation of any Rule or Regulation adopted by the Association, or the breach of any obligation contained in the

Bylaws, or the breach of any obligation contained in the Declaration, shall give the Association the right, in addition to any other rights set forth by these Bylaws:

(a) To enter the lot on which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing of condition that exists therein contrary to the intent and meaning of the provisions hereof, and the Association shall not thereby be deemed guilty of trespass; or

(b) To enjoin, abate or remedy the continuance of any such breach by appropriate equitable proceedings including mandatory injunction, there being no appropriate legal remedy, at the cost of the member, including attorneys' fees.

(c) If the Association has adopted and published Rules and Regulations governing the use of The Properties and the personal conduct of any person thereon violates those Rules and Regulations, to suspend such use by any such person for violation of such Rules and Regulations for the period during which the violations continues plus thirty (30) additional days.

(d) To levy summary charges as liquidated damages against a Member for such violation, in addition to such damages as have actually been suffered, provided that no summary charges may be levied for more than \$5.00 for any one violation, but for each day a violation continues after notice, it shall be considered a separate violation. Collection of charges for damages or summary charges may be enforced against the Owner or Owners involved as if the charge were a Common Charge owed by the particular Owner or Owners.

ARTICLE FOUR

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot is subject by this Declaration to assessment by the Association and shall be a Member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of an obligation shall not be a Member.

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

(a) Class A: Class A Members shall be all owners of any Lot, other than the Developer (until such time as the Class B Membership in subsection (b) ceases and be converted to Class A status). Any Class A Member shall be entitled to one vote for each Lot which he owns.

(b) Class B: The Class B Member shall be the Developer, which shall be entitled to three (3) votes for each Lot owned by them. The Class B Membership shall cease and be converted to Class A Membership when the Developer owns less than fifty per cent (50%) of

the lots in the Development. When more than one person or entity holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, subject to the provisions of the Bylaws, such persons shall designate one (1) person for their lot, but in no event shall more than one (1) vote be cast with respect to any such Lot.

ARTICLE FIVE

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. **Members' Easements of Enjoyment.** Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. **Title to Common Areas.** The Developer may retain the legal title to any Common Areas until such time as it has completed improvements, if any, thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey any such Common Areas to the Association at the time it owns less than fifty per cent (50%) of the lots.

Section 3. **Extent of Members' Easements.** The rights and easements of enjoyment created herein shall be subject to the following:

(a) The right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any owner for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of any published rules and regulations adopted by the Board.

(b) The rights of the Members of the Association shall in no way be altered or restricted because of the location of any Common Areas in any additions to the Existing Area constituting a portion of The Properties in which such Member is not a resident. Common Areas belonging to the Association shall result in membership entitlement, notwithstanding that the Lot acquired which results in membership rights as herein provided is not located within any property (phase), made subject in whole or in part to this Declaration, which contains Common Areas.

ARTICLE SIX

COVENANT FOR PAYMENT OF ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Developer, for each Lot owned by it within The Properties, hereby covenants and each owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to all

the covenants and restrictions of this Declaration and to pay to the Association: (1) annual assessments or charges as herein or in the Bylaws provided, (2) special assessments for capital improvements, such annual and special assessments to be fixed, established and collected from time to time as herein or in the Bylaws provided and (3) any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorney's fees) incurred by the Association incidental to the enforcement of any Rules and regulations, collection of assessments (both annual and special) or collection of damages or charges arising under the Bylaws. The annual and special assessments and any liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereupon and cost of collection thereof as herein provided, shall also be the personal obligation of the persons or persons, jointly and severally, who is (are) the owner(s) of such Lot at the time when the Assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, security, safety and welfare of the resident of The Properties and in particular for:

- (a) the improvement, maintenance and replacement of any Common Areas,
- (b) establishment of capital replacement reserves, and
- (c) for the acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the common Areas, including but not limited to, the cost of repairs, replacements, additions, the cost of labour, equipment, materials, management and supervision, the payment of taxes assessed against the Common Areas, the procurement and maintenance of insurance related to the Common Areas, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association, if necessary, and such other requirements as may be necessary to perform all of the aforesaid functions and purposes.

Section 3. Assessment of Uniform Rates Within Different Capacities. Both annual and special assessments shall be fixed at Uniform rates for each Lot within the Properties. There will be no difference between regular assessments as to Lots, except the Owner(s) of some Lots may be subject to an assessment for the maintenance, improvement and replacement of Limited Common Areas located on or adjacent to the property on which such Lot is located. Assessments with respect to such categories shall be determined by the cost to the Association, experienced or reasonably anticipated, of carrying out the purposes and functions set forth in Section 2 above.

Section 4. Special Assessments for Capital Improvements. In addition to the regular annual assessments, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any

construction or reconstruction, unexpected repairs or replacement of any capital improvement located upon the Common Areas or the Limited Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the consent of at least sixty-seven percent (67%) of the votes of all the Members of the Association.

Section 5. Change in Basis and Maximum Amount of Regular Annual Assessments. The Association may change the basis of the regular annual assessments for any such period provided that any such change shall have the consent of at least sixty-seven percent (67%) of the votes of all the Members of the Association.

Section 6. Date of commencement of regular Annual Assessments; Due Dates. The regular annual assessments, shall commence on the first day of the month next succeeding the month of any Owner, other than the Developer, acquires titled to a Lot and shall be levied for the balance remaining in the calendar year payable monthly, in advance. The initiation fee will be due simultaneously when a Lot is purchased by an owner.

The due date of (i) any special assessment under Section 5 hereof, or (ii) any assessments under Sections 4 and 5 against any particular Lot, or (iii) any other assessments permitted by the Declaration, shall be fixed in the resolution or resolutions authorizing such assessment.

Section 7. Duties of the Board of Directors. Commencing with the first regular annual assessment, the Board of Directors of the Association shall fix the date of commencement, and the amount of the assessment or assessments against each Lot, for each assessment period at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the Office of the Association, or at any other place designated by the Board upon notice to the Members, and shall be open to inspection by any Owner. Written notice of the assessment or assessments thereupon shall be sent to every Owner subject thereto.

The Association, upon demand, shall furnish at any time to any Owner liable for said assessment or assessments, a certificate in writing, signed by an officer of the Association, setting forth whether said assessment(s) has been paid for, or, if paid, the amount of assessments due. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid or the amount of assessment due.

Section 8. Effect of non-Payment of Assessment: The Personal obligation of the Owner: The Lien, Remedies of Association. If any assessment is not paid on the dates specified in Section 7 of this Article, then such assessment shall become delinquent and shall, together with such interest and cost thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lots which shall bind such Lots in the lands of the then owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then-owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title (except as a lien

on the real property) unless expressly assumed by them.

If the assessment or assessments is not paid within thirty (30) days after the delinquency date, the assessment or assessments shall bear interest from the date of delinquency at the rate of interest set by the Board, not to exceed the maximum rate permitted by law, and the Board acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner(s) personally obligated to pay the same or to foreclose the lien against any such Lot, and there shall be added to the amount of such assessment, the costs of such action and a reasonable attorney's fees or other costs incurred by the Association. In the event a judgment is obtained against any owner for such assessments, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the cost of the action.

Section 9. Subordination of the Lien to Mortgage or Deeds of Trust. The lien of the assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot, subject to assessment. The subordination shall not relieve any Lot from liability for any assessments now or hereafter due and payable, but the Lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage of deed of trust was executed and recorded.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all Common Areas as defined in Article Two hereof; and (b) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption. Homestead exemptions shall not be considered an exemption.

Notwithstanding any provisions of this Section 11, no Lot shall be exempt from said assessments, charges or liens.

ARTICLE SEVEN

AMENDMENT TO DECLARATION

An amendment to this Declaration may be proposed by the Board of Directors acting upon a vote of a majority of the Directors, or by the Members of the Association owning a majority of the Lots whether meeting as members or by instrument in writing signed by them. Upon any Amendment to this Declaration being proposed by the Board of Directors of members, such proposed Amendment shall be transmitted in writing to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than fifty (50) days from receipt by him of the proposed Amendment. It shall be the duty of the Secretary to give to each Member written notice of such Special Meeting, stating the time and place, and reciting the proposed Amendment in

reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, Certified with Return Receipt requested; addressed to the Member at his address as it appears on the records of the Association, the postage thereon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Member. At the meeting, the Amendment proposed must be approved by an affirmative vote of at least sixty-seven percent (67%) of the votes of Members (including the Developer) entitled to vote in order for such Amendment to become effective. At any meeting held to consider such Amendment, the written vote of any Member of the Association shall be recognized if such Member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting and prior to voting. In order for such Amendment to be binding upon all the holders of mortgages or deeds of trust against any Lot in The Properties, written consent must be obtained from the then existing (as of the date of the meeting of Members which approved such Amendment) holders of First Lien Mortgages of Deeds of trust encumbering fifty-one percent (51%) of the Lots. If such consent is so obtained, the Amendment shall be binding on all the holders of mortgages or deeds of trust encumbering Lots in the Properties. If so approved, such Amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted approved by the requisite percentages of Members and lenders. The original or an executed copy of such Amendment so certified and executed by said officers with the same formalities as a deed, shall be recorded in the Davidson County Public Registry, and no such Amendment to this Declaration shall be effective until so recorded. If any Amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

So long as the Developer shall own any Lot, no Amendment shall be made to the Declaration, to any supplemental Declaration, to the Articles of Incorporation of the Association, to the Association Bylaws, or to any Rules and Regulations of the Association or other similar Association document, which shall constitute a "Developer Related Amendment" as hereinafter defined, unless such Developer Related Amendment shall be specifically approved in writing by Developer in advance of such execution, adoption promulgation and recording. "Developer Related Amendment" shall mean and refer to an amendment to this Declaration which does any of the following: (a) discriminates or tend to discriminate against Developer as an Owner or as a developer or otherwise; (b) directly or indirectly, by its provisions for impractical application, relates to Developer in a manner different from the manner in which it relates to other Owners; (c) modifies the definitions provided for this Declaration in a manner which alters Developer's rights or status; (d) modifies or repeals any provision of this Declaration pertaining to rights reserved by Developer; (e) alters the character and rights of membership as provided for by Article Five of this Declaration or effects or

modifies in any manner whatsoever the rights of Developer as a Member of the Association; (f) alters any previously recorded or written agreement with any public authorities or other similar agencies or bodies, respecting zoning suspension, streets, roads, drives, easements or facilities; (g) denies the right of Developer to convey to the Association as Common Areas any lands which lie generally with The Properties; (h) denies the right of Developer or otherwise making provisions in accordance with the powers granted to Developer in this Declaration; (i) modifies the basis or manner of Association or other assessments as applicable to Developer on any property owned by Developer within The Properties; (j) modifies any Provision of this Declaration regarding architectural controls applicable to Developer; (k) alters the provisions of any supplemental declaration; or (l) alters or repeals any of Developer's rights or any provision applicable to Developer's rights as set forth in any provision of this Declaration or of any supplemental declaration.

ARTICLE EIGHT

Incorporation of Chapter 47F of the North Carolina General Statutes North Carolina Planned Community Act

That Windfield is a planned community pursuant to Chapter 47F of the North Carolina General Statutes entitled "North Carolina Planned Community Act", N.C.G.S. §47F-1-101 to §47-3-120. Said Chapter 47F is hereby incorporated by reference in this Declaration as if fully copied herein. The Declarant and the Association shall have all of the powers set forth and described in said Chapter. In case of conflict between any of the foregoing provisions of the Declaration and any provision of said Chapter, the provisions of the Chapter shall control.

ARTICLE NINE

Captions, Introductions and Gender

The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the context so requires.

IN WITNESS WHEREOF, BUEL B. BARKER, JR. AND WIFE, VICKIE B. BARKER, have caused these declarations to be executed, and attested there to, all as of the day and year first above written.

By: Vickie B. Barker (SEAL)

Vickie B. Barker

Buel B. Barker, Jr. (SEAL)

Buel B. Barker, Jr.

STATE OF NORTH CAROLINA

COUNTY OF DAVIDSON

I, Crystal D Benfield, a Notary Public for said County and State, do hereby certify that BUEL B. BARKER, JR. AND VICKIE B. BARKER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal, this the 24 day of August, 2007.

Crystal D Benfield (SEAL)
Crystal D. Benfield
Notary Public

My Commission Expires: 10-11-2007

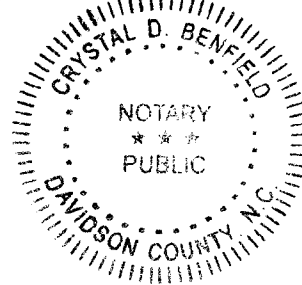


EXHIBIT A

BEGINNING at a railroad spike found in the right of way of Frye Bridge Road, NCSR #2998, Roger Fulk's southwestern corner as described in Book 566, page 237, thence with Fulk's line North $81^{\circ} 49' 39''$ East and crossing an axle found at 27.63 feet and continuing and crossing an iron pin found at 205.26 feet and continuing an additional 126.08 feet for a total distance of 358.97 feet to an iron pin set in the line of Frank Sechrest; thence with Sechrest's line South $81^{\circ} 03' 21''$ East 41.88 feet to an iron pin set, corner to Frank Sechrest; thence with Sechrest's line North $09^{\circ} 10' 19''$ East 206.22 feet to an iron pin found, Frank Sechrest northeastern corner as described in Book 1066, page 1845 and being in the line of Willie Martin; thence with Martin's line South $78^{\circ} 24' 56''$ East 365.16 feet to an axle found in the line of Willie Martin; thence with Willie Martin's line South $82^{\circ} 48' 16''$ East 291.04 feet to a 40 foot poplar tree found, corner to Willie Martin; thence with Martin's line North $64^{\circ} 34' 43''$ East 259.17 feet to an iron pin found corner to Willie Martin; thence with Willie Martin's line North $29^{\circ} 26' 17''$ West 309.99 feet to a stone found, the common corners of Willie Martin and Judy Griffin; thence with Griffin's line North $11^{\circ} 47' 33''$ East 863.93 feet to an iron pin found, corner to Judy Griffin; thence with Judy Griffin's line South $71^{\circ} 17' 16''$ East 460.03 feet to an iron pin found in Judy Griffin's line; thence with Judy Griffin's line South $66^{\circ} 05' 11''$ East 459.30 feet to a stone found, corner to Judy Griffin and being in Randy McKnight's line; thence with McKnight's line and the line of Larry Johnson South $36^{\circ} 46' 27''$ West 908.01 feet to an iron pin set corner to Larry Johnson; thence with Johnson's line South $48^{\circ} 36' 45''$ East 494.15 feet to an iron pin found corner to Larry Johnson and being in the line of Buel B. Barker, Jr.; thence with Barker's line South $70^{\circ} 51' 03''$ West and crossing an iron pin found at 838.53 feet and continuing and crossing an iron pin found at 65.44 feet and continuing and crossing an iron pin found at 90.86 feet and continuing an additional 50.22 feet for a total distance of 903.97 feet to an iron pin found, at the north east corner of Lot 16 of Phase Two of Windfield as set forth in Plat Book 48, page 49, Davidson County Registry; thence with the line of Lot 16 South $71^{\circ} 00' 16''$ West and crossing an iron pin found at 218.29 feet and continuing an additional 198.05 feet for a total distance of 557.42 feet to an iron pin found in William W. Leinbach's southeastern corner as described in Book 1215, page 1023, Davidson County Registry; thence with Leinbach's line North $19^{\circ} 21' 20''$ West 246.32 feet to an iron pin found, Leinbach's northeastern corner; thence with Leinbach's line South $73^{\circ} 07' 46''$ West and crossing an iron pin found at 424.06 feet and continuing an additional 29.91 feet for a total distance 453.97 feet to a point calculated in the right of way of Frye Bridge Road, NCSR #2998; thence with the right of way of Frye Bridge Road North $18^{\circ} 02' 56''$ West 35.36 feet to a railroad spike found in the right of way of Frye Bridge Road corner to W. Joseph Phillips; thence with Phillips' line North $73^{\circ} 15' 34''$ East 362.71 feet to an iron pin found corner to W. Joseph Phillips; thence with Phillips' line North $16^{\circ} 37' 29''$ West 152.64 feet to an iron pin found corner to Phillips; thence with Phillips' line South $81^{\circ} 53' 33''$ West 366.40 feet to a railroad spike found in the right of way of Frye Bridge Road, NCSR #2998; thence in the right of way of Frye Bridge Road North $16^{\circ} 38' 10''$ West 174.50 feet to the point and place of beginning and containing 34.690 acres more or less, according to a survey by J. Todd Everhart PLS #L-3558 dated August 16, 2006.