

Prepared by ;md Return to:

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Post Office Box 20389, Raleigh, NC 27619-0389

STATE OF NORTH CAROLINA

**DECLARATION OF MASTER
PROTECTIVE COVENANTS FOR
MEADOWMONT VILLAGE**

COUNTY OF ORANGE

("Declarant"): DECLARATION OF MASTER PROTECTIVE COVENANTS made this ____
day of yV/sv^^ . 20<9£ by Meadowmont JV, LLC. a Delaware limited_ habjlif.v-.company.

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WITNESSETH:

ARTICLE I

Declaration

1.01 General. Declarant is the owner of that certain 13.53 acre, more or less, tract of land situated in Chapel Hill, Orange County, North Carolina, more particularly described on Exhibit "A" attached hereto and known as Meadowmont Village (the "Property").

1.02 Declaration. Declarant hereby establishes, adopts and declares that the Development (as defined below) is and shall be subject to, and that all land and Improvements (as defined below) within the Development shall be acquired, held, owned, encumbered, used, managed, based, occupied, enjoyed and transferred subject to, the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, terms and provisions hereinafter set forth, all of which shall be covenants running with the title to land within the Development, and shall be personal covenants and obligations of and shall inure to the benefit of each Owner. Each contract of sale, option, deed, deed of trust, lease, sublease, concession, franchise, license, easement or other instrument which may hereafter be executed with respect to any Real Estate and Improvements within the Development shall be deemed to have been executed, delivered and accepted subject to this Declaration and to have incorporated this Declaration by reference therein, regardless of whether and such instrument specifically incorporates this Declaration by reference therein.

1.03 Additions: Deletions: Modifications. Declarant shall have, and hereby reserves, the exclusive unrestricted and unconditional right to add property to or delete property from this Declaration. Property so added or deleted need not be contiguous to property subject to this Declaration. Such addition or deletion shall be accomplished by the execution and recording of a Supplemental Declaration identifying the property to be added or deleted. In addition, as to any Supplemental Declaration which adds property to this Declaration, Declarant may include such additional or different covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, rights, terms and provisions as Declarant in its sole discretion may determine.

ARTICLE II

Definitions As used in this

Declaration, the following definitions shall pertain:

- (a) "Act" shall mean the North Carolina Nonprofit Corporation Act, as from time to time amended.
- (fb) "Approved Plans" shall mean the Plans for any Improvements which have been approved by the Declarant.
- (cj) "Assessments" shall mean the Regular Group Assessments, the Special Group Assessments and the Special Individual Assessments levied from time to time by the Declarant as set forth in Article VIII.
- (d) "Building Site" shall mean a parcel of real estate within the Development which has been designated by Declarant as a site on portions of which private building or private ownership may occur (whether for office, institutional, retail, residential, condominium or other private purposes, as distinguished from Common Area purposes). A Building Site may consist completely of air rights.
- (e) "Common Areas" shall mean those areas, and all improvements located under, on or above those areas, within the Development which are designated from time to time by Declarant in such manner as Declarant deems appropriate for use for recreational and general welfare purposes by all, or specific groups or categories of Owners.
- (f) "Declarant" shall mean Meadowmont Village JV. LLC. a Delaware limited liability company being the owner of the Development, and its successors and assigns.
- (g) "Declaration" shall mean this Declaration of Master Protective Covenants as from time to time amended and supplemented.
- (h) "Declarant's Lien" shall mean the first and prior lien on each Building Site established and assigned to the Declarant to secure sums due the Declarant.
- (i) "Development" shall mean the land and the Improvements as to which this Declaration from time to time applies, which currently is the Real Estate described on Exhibit "A" attached hereto.
- (j) "Development Standards" shall mean those development plans and design standards which may from time to time be adopted by Declarant as applicable to the Development.

- (k) "Exception" shall mean any written approval granted by the Declarant to any Owner for a deviation or noncompliance with this Declaration or the Development Standards.
- (l) "Governing Documents" shall mean this Declaration and any Development Standards, Articles of Incorporation and Bylaws of the Association as may be adopted and from time to time be in effect and, as applicable, any rules and regulations from time to time in effect pursuant to Section 5.02 hereof.
- (m) "Governmental Authority" shall mean any court, board, agency, commission, office or authority of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.
- (n) "Improvements" shall mean any structure or other improvement of any kind, whether below, at or above grade, located anywhere in the Development, including but not limited to office buildings, commercial facilities, institutional facilities, retail facilities, condominiums, garages and other parking facilities, refuse collection containers or facilities, utility installations, storage tanks and other facilities, cables, conduits, wiring, towers, masts, antenna, microwave dishes, loading facilities, walkways, driveways, fences, berms, landscaping, sculptures and other works of art, fountains, lighting standards and fixtures, recreational facilities, site grading and other artificial earth movement.
- (o) "Legal Requirements" shall mean any and all (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, directives, requirements, permits, certificates or ordinances of any Governmental Authority, insurance underwriter or utility company in any way applicable to any Owner or such Owner's Building Site, including but not limited to any of the aforesaid pertaining to maintenance, operation, use, insurance, zoning, environmental and utility matters and (ii) the Governing Documents.
- (p) "Occupant" shall mean a tenant, subtenant, concessionaire, franchisee, licensee or other person who occupies, uses or otherwise conducts any business or other activity from, or has the right to occupy, use or otherwise conduct any business or other activity from, any Building Site or Improvement.
- (q) "Owner" shall mean the record owner, whether one or more, of the fee simple title to a Building Site or, if the Building Site is subject to a ground lease, the ground lessee, whether one or more, of the Building Site. Notwithstanding any legal theory of mortgage or otherwise, no holder of a deed of trust or mortgage on any Building Site or of any security interest with respect thereto, shall be deemed an "Owner" hereunder unless and until the holder has acquired title to the fee of the Building Site or the leasehold estate of the ground lessee thereof. For purposes of this Declaration, the Owner of any parcel of Real Estate subjected to a condominium regime pursuant to the North Carolina Condominium Act shall be

the Condominium Owners Association formed pursuant to such Act, and not the individual condominium unit owners.

- (r) "Person" shall mean any natural person, trust, corporation, association, partnership, limited partnership, limited liability company, joint venture or other legal entity, public or private.
- (s) "Plans" shall mean final working drawings, plans, specifications and other documentation and materials as the Declarant may require with respect to any Improvements which are being submitted for approval by the Declarant.
- (t) "Real Estate" shall mean any estate or interest (including a leasehold interest) in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.
- (u) "Record Date" shall mean (i) such date as the Declarant may, from time to time, set for the purpose of determining which Owners shall be liable for a Regular Group Assessment or a Special Group Assessment or (ii) upon the failure of the Declarant to set a specific date for the determination referred to in clause (i) hereof, on the date the annual budget (in the case of Regular Group Assessments) or the specific expenditures (in the case of Special Group Assessments) are adopted or approved by the Declarant.

ARTICEE III

Association

3.01 Formation. Declarant, in its discretion, has the right to form an Association in accordance with the provisions of the North Carolina Nonprofit Corporation Act ("Association") to take over all of the rights and obligations of Declarant under this Declaration. Upon formation, all of the Owners shall become members of the Association ("Members") pursuant to the terms of the articles of incorporation and bylaws of the Association. Upon formation of the Association, all references to the Declarant herein shall be deemed to refer to the Association.

3.02 Declarant's Control. Declarant shall have the right to retain control over the Association, including appointment of the board of directors of the Association, until such time as Declarant relinquishes its rights to the Members.

ARTICEE IV Desimi and Construction of

Improvements

4.01. General. All Improvements shall be designed and constructed in accordance with the provisions hereof.

4.02. Architectural Control. No Owner (other than Declarant) shall construct any Improvement (or alter any Improvement which the Declarant has previously approved) unless and until the Declarant has issued its written approval to the Approved Plans. Without in any way limiting the permissible scope of the Declarant's review process, or the objective or subjective considerations the Declarant may utilize in approving or disapproving any submittal hereunder, the Declarant shall be fully authorized and empowered to reject any proposed Improvement or alteration on the basis of the Declarant's judgment of the unsuitable nature of its architectural character, the inadequacy of its design characteristics or site dimensions, its incompatibility with any Development Standards or any other existing or proposed improvements within the Development or the use of inappropriate building materials or techniques.

4.03. Development Standards. Declarant reserves the right to adopt, as applicable to the Development, certain development standards, (the "Development Standards"). Declarant hereby reserves the exclusive right, power and authority to make any and all revisions to and restatements of the Development Standards as Declarant deems advisable from time to time to accomplish the purposes of this Declaration. Revisions to and restatements of the Development Standards may be adopted by Declarant at any time without any formal requirements therefor. In particular, it shall not be necessary that any revisions or restatements be recorded or otherwise filed in any public records. However, the operative Development Standards which are in effect at any time shall be available for inspection by any Owner or prospective Owner at the Declarant's office during reasonable business hours. If revisions to and restatements of the Development Standards are adopted, they shall, upon adoption, become automatically binding on each and every Owner; provided, however, that no such revision or restatement shall require the reconstruction or alteration of any Improvement as to which Approved Plans are in existence on the date the revision or restatement was adopted. The previous sentence shall not, however, limit the ability of the Declarant to require that any Owner bring its Improvement into compliance with the then operative Development Standards if and when such Owner submits to the Declarant a request for approval of any alterations to Improvements previously constructed by it, or of the construction of new Improvements.

4.04. Review Procedure. Owner shall submit plans to Declarant for review pursuant to the following procedures ("Review Procedures"). Within thirty days after its receipt of the Plans, together with such additional information as the Declarant may require, the Declarant shall review and approve (absolutely or conditionally) or disapprove all or any portion of the Plans. The Declarant shall give written notification to the party submitting the material of the Declarant's action. The decision of the Declarant with respect to any Plans submitted to it shall be final. Upon Declarant's approval, such plans shall become "Approved Plans."

4.05. Changes in Approved Plans: Construction in Accordance With Approved Plans; Alterations. No changes shall be made in any Approved Plans without the prior written approval of the Declarant. No Improvement shall be constructed or, if constructed, allowed to remain, on any portion of the Development other than in strict accordance with the Approved Plans therefor.

4.06. Underground Installation. Subject to such Exception as the Declarant may grant, all electrical, telecommunication, CATV, water, gas, sanitary sewer, storm sewer, drainage and other utility facilities and appurtenances thereto, including lines, pipes, cables, conduits and wires located within the Development shall be installed and shall remain underground, buried to such depth as the Declarant or Legal Requirements may require.

4.07. Records. The Declarant shall keep records of each submittal, and of each action taken by the Declarant with respect to each submittal, made by any Owner or proposed Owner hereunder. The Declarant shall retain for such period as the Declarant determines to be appropriate one set of the Approved Plans for each Improvement. No Owner or prospective Owner shall have any right of access to, or any right to inspect or reproduce, any portion of any submittal made by any other Owner or prospective Owner.

4.08. Exceptions. Notwithstanding anything to the contrary contained in or inferable from this Declaration or any other Governing Document, the Declarant shall have the sole, exclusive right, power, authority and discretion to grant at any time or times, and with or without conditions, any and all Exceptions from the Review Procedures and the Development Standards as the Declarant determines to be appropriate. Exceptions may be granted prospectively or retroactively. Exceptions shall be legally effective only if in writing executed by the Declarant, with the specific nature of the Exception described therein. No Exception may be granted orally and no Exception shall be deemed granted by virtue of any inaction or custom of the Declarant. Once an Exception is granted, it shall inure solely to benefit of the issue Owner, and its successors, assigns and subsequent Owners of the Building Site with respect to which the Exception was specifically granted for so long as each owns the Building Site, and shall become legally binding upon all other Owners. An Exception granted in any one instance shall be applicable only to that specific instance and shall not form a precedent for the granting of any subsequent Exception. Once granted, Exceptions shall not be subject to rescission.

4.09. Other Legal Requirements. Legal Requirements may now or hereafter exist which address some or all of the same issues (including but not limited to the design, construction, maintenance and use of Building Sites and Improvements) as are addressed by the Governing Documents. If two or more applicable Legal Requirements exist with respect to an issue which is addressed in the Governing Documents, the more or most restrictive of those requirements shall govern.

' ARTICLE V :

Uses

5.01. General. No Owner may use any portion of the Development, or permit its Building Site to be used, other than in strict accordance with all Legal Requirements and, with reference to the Owner's Building Site, the documentation which formed the operative Approved Plans. All Improvements constructed prior to the date hereof, and the uses associated therewith, are deemed approved by Declarant. If any Owner proposes to use, or permit to be used, its Building Site in any manner other than as specifically permitted by the Approved Plans, then such Owner shall submit a written proposed use request to the Declarant which shall state, with reasonable

particularity, the use or uses proposed by the Owner. The Declarant shall thereafter approve (absolutely or conditionally) or disapprove the request. The Declarant shall give written notification to the submitting party of the Declarant's action, which shall be final and binding on all Owners.

5.02. Rules and Regulations. The Declarant shall have, and Declarant hereby reserves the right, power and authority to establish, adopt, revise and restate from time to time such rules and regulations regarding the Development as the Declarant deems appropriate. Such rules and regulations may (by illustration and not by limitation) address any and all aspects of the design, construction, maintenance, repair, replacement, repainting and operation of Improvements; pedestrian and vehicular traffic; security; landscaping and landscape maintenance; utility usage; trash removal; pest control; loading and unloading of shipments; exterior signage (or interior signage which is visible from the exterior of an Improvement); exterior lighting; telecommunications; advertising; and promotional matters. Upon adoption, such rules and regulations shall become binding on all Owners of the property to which they are made applicable by the Declarant. After adoption, the Declarant shall furnish or otherwise make available to each Owner a copy of such rules and regulations.

5.03. Specifically Prohibited Acts. Without in any way limiting the permissible scope of the rules and regulations which may be promulgated by Declarant, the following restrictions shall be applicable to the entirety of the Development:

- (a) No Owner shall conduct any noxious, offensive or illegal activity or any nuisance within the Development or permit any noxious, offensive or illegal activity or any nuisance to be conducted within its Building Site.
- (b) No Owner shall use any portion of the Development or permit the use of its Building Site, to raise, breed or keep any animals, reptiles or fowl of any kind: provided, however, that domestic dogs, cats and other usual household pets may be kept by an Owner in its residence if (i) the purpose thereof is not commercial. (ii) in the determination of the Declarant, the presence thereof does not constitute *ii* nuisance or a danger to other Owners or Occupants and (iii) such pets are kept confined and leashed in strict accordance with all applicable Legal Requirements.
- (c) No Owner shall use any portion of the Development, or permit the use of its Building Site, as a dumping ground for rubbish, trash, garbage, construction or other debris or any other waste material, other than at those sites (if any) specifically designated by the Declarant for such purposes. All Owners shall place their rubbish, trash, garbage, debris and waste materials in sanitary, tightly closed containers located (i) on days when no removal is scheduled, at or inside of specific retention points so designated on each Owner's Approved Plans and (ii) on days when removal is scheduled, at specific collection points also so designated on each Owner's Approved Plans.
- (d) No Owner shall discharge from any portion of the Development, or permit to be discharged from its Building Site, any rifle, shotgun, pistol or other firearm, or

any bow and arrow, or any other device or weapon designed to fire or shoot any projectile for the purpose of injuring or killing.

- (e) Other than as set forth in the Approved Plans, no Owner shall place anywhere in the Development, or permit to be placed on its Building Site, sign, billboard, poster or advertising device of any nature. This restriction shall not limit Declarant's right to place any signs in the Development, including, without limitation, marketing signs advertising the availability of portions of the property for sale or rent.
- (fj) No Owner shall deface, destroy, cut, remove or injure, or permit any of its employees, contractors. Occupants or invitees to deface, destroy, cut, remove or injure, any improvement or any trees, shrubs, bushes, hedges or other vegetation growing within the Development, except with Declarant's prior written consent.
- (g) No Owner shall use any portion of the Development, or permit to be used its Building Site, in any manner other than in strict compliance with all applicable Legal Requirements.

5.04. Declarant Uses. Declarant may, and hereby reserves the right to, conduct its administrative activities and marketing program for the Development from any location within the Development, whether from permanent or temporary facilities.

5.05. Construction Maintenance. The Owner of the Building Site on which construction (including alteration, rebuilding and reconstruction) activities are being conducted shall at all times (a) cause its Building Site to be maintained in a safe and reasonably clean condition during the course of the construction activity, (b) assure that no construction materials or equipment are stored or deposited outside of its Building Site other than with Declarant's prior written consent, (c) assure that no construction debris associated with its construction activity is deposited or allowed to remain anywhere within the Development, (d) take care not to damage, and assure that its contractors and subcontractors do not damage, any street, sidewalk, easement, utility facility, landscaped area or other Improvement and (e) remove all mud, debris and other materials which may have been deposited on any street within the Development by vehicles used in connection with the construction or by "run off" from the Building Site.

ARTICLE VI

Common Areas

6.01. General. From time to time Declarant may designate certain areas within the Development as "Common Areas". The Common Areas may be used for recreational and general welfare purposes and such other lawful purposes as designated by Declarant. Such Common Areas may include, but need not be limited to, parking areas, drives, roadways, medians, pedestrian walkways, open areas, greenbelts and general park areas. Declarant shall have the sole and exclusive, unrestricted and unconditional right to determine when and how areas will be designated as Common Areas, to designate areas as Common Areas, to regulate the

use of Common Areas, and to delete areas previously designated as Common Areas from such designation.

6.02. Maintenance. The Declarant shall maintain the Common Areas and their facilities in a safe, clean, sightly, attractive and good state of condition and repair. Such maintenance shall include, without limitation and whenever appropriate, repairing, replacing, reconstructing, renewing and repainting any and all facilities constructed within the Common Areas; removing all litter, trash, garbage and waste; and mowing, watering, fertilizing, weeding, replanting, replacing, pruning and otherwise maintaining all landscaping in the Common Areas. The Declarant may also maintain areas within public utility easements and repair public streets within or adjacent to the Common Areas. The Declarant need not perform any maintenance otherwise required under this Section if and to the extent that same is performed by a Governmental Authority.

6.03. Contracts. The Declarant shall have full right, power and authority to execute, deliver, perform and enforce any and all contracts (written or oral, with any Person, including a Person affiliated with Declarant), including but not limited to maintenance contracts, painting contracts, swimming pool service contracts and landscape maintenance contracts, which the Declarant authorizes and which related to the Common Areas.

6.04. Easements. Declarant hereby declares, creates and reserves, on behalf of itself, perpetual nonexclusive easements for ingress and egress under, across, over, in and upon all Common Areas for the purpose of performing in the Common Areas functions which the Declarant is required or permitted to perform pursuant to this Declaration.

6.05. Transfer and Dedication. Declarant may, at any time and from time to time, convey to an Association any or all of its right, title and interest in and to any area forming a Common Area. Declarant, and after the transfer to the Association, the Association, may at any time and from time to time dedicate or otherwise convey, in the Common Area, to any Person or authority any and all water, sanitary sewer, storm water, drainage, street, electrical, telecommunication, gas and other utility easements, lines and facilities and areas in which appurtenances thereto will be constructed and/or maintained. Neither the conveyance, dedication nor acceptance thereof shall, in and of itself, relieve the Declarant or the Association from the obligation to maintain such areas and the facilities located therein, or relieve the Owners from the obligation to participate in the cost thereof.

6.06. Ad Valorem Taxes. Whenever a Building Site contains within its boundaries an area designated as a Common Area, the Owner of the Building Site and the Declarant shall seek a division of the parcel for tax assessment purposes if deemed feasible by Declarant and the taxes on the portion designated as a Common Area shall be borne by the Declarant. In the absence of such division, the Declarant shall determine what portion of the taxes shall be allocated to the Common Area.

ARTICLE VII

Parcel Maintenance

7.01. General. Each Owner shall at all times maintain its Building Site and all Improvements thereon in a safe, clean, sightly, attractive and good state of condition and repair. The Owner's maintenance obligation shall include, but shall not be limited to, without limitation and whenever appropriate, the repairing, replacing, reconstructing, renewing and repainting of all Improvements constructed on the Owner's Building Site and the storage and prompt removal of all litter, trash, garbage and waste in accordance with applicable Legal Requirements.

7.02. Damage or Destruction of Improvements. Unless otherwise approved by Declarant in writing, if any Improvements are damaged or destroyed, the Owner thereof shall promptly, and in any event within twelve months after the date of such damage or destruction, either repair, replace, restore or rebuild the Improvements in strict accordance with Approved Plans or raze the Improvements and re-landscape the affected area to a condition satisfactory to the Declarant.

7.03. Declarant's Right to Perform. If an Owner fails to perform any maintenance, repair, replacement, restoration or rebuilding required of it pursuant to any Governing Document, and if such failure continues for ten days after written notice thereof is given to the Owner, then the Declarant may, but shall not be obligated to, perform such obligation for the account and at the expense of the Owner involved. The amount expended by the Declarant for such purpose shall be a debt of the Owner, due the Declarant upon demand, and shall accrue interest at the rate provided for in this Declaration. The rights of the Declarant to perform any work which an Owner was obligated, but failed, to perform shall not be the Declarant's exclusive right arising as a result of such failure, but rather shall be cumulative of all of the Declarant's other rights, remedies and recourses, whether at law or in equity, arising as a result thereof.

ARTICLE VIIIAssessments

8.01. General. The Declarant shall have full right, power and authority to assess the Owners for, collect and expend all sums which the Declarant determines to be necessary or reasonably appropriate for the general enjoyment, health, safety, welfare and protection of the Owners with respect to the Development and, in general, to achieve the purposes of this Declaration. Without in any way limiting the generality of the foregoing, the Declarant may assess, collect and expend sums for

- (a) the payment of any and all expenses of operating the Development, including, without limitation, payroll salaries and burdens, rent, insurance premiums, ad valorem or other taxes, utility charges, supplies, materials and equipment;
- (b) the design, purchase, installation, replacement and maintenance of facilities or landscaping within (or, with respect to landscaping, adjacent to) the Common Areas;

- (c) all sums payable by the Declarant pursuant to any contract entered into by the Declarant; and
- (d) any other costs and expenses incurred by the Declarant in connection with the performance of its functions under this Declaration, including professional fees such as accounting fees, legal fees, and the like.

The Declarant shall also have the right to assess the Owners for and collect funds for such reserves and to expend sums out of such reserves as the Declarant may determine to be appropriate.

8.02. Covenants for Assessments. Declarant, for itself and each successor Owner, hereby covenants to pay to the Declarant or its designee its Regular Group Assessment, Special Group Assessment and Special Individual Assessment as and when due pursuant to this Article VIII. The covenant contained in this Section 8.02 shall become binding on each Owner by virtue of such Owner's acceptance of a deed, ground lease or other instrument of conveyance of a Building Site (or interest therein), regardless of whether the covenant is contained in or otherwise referred to in such deed, ground lease or other instrument of conveyance, and shall be deemed to constitute a portion of the purchase money consideration for the acquisition of the Building Site.

8.03. Annual Budget. Regular Group Assessments. Declarant shall have the right to adopt an annual budget for the Development estimating the total anticipated collections and expenditures for such year and a reasonable reserve for replacements and other contingencies. The total amount of the Regular Group Assessment for each fiscal year shall be the total amount of the annual budgeted expenditures adopted by the Declarant with respect to that fiscal year which are determined by the Declarant to be generally applicable to the entire Development (and thus which will not include any budgeted expenditures for such year which the Declarant has designated to be covered by a Special Group Assessment pursuant to Section 8.04(b) hereof minus any interest attributable to any prior or the current year's Regular Group Assessments or other income. A Regular Group Assessment shall be payable by all Owners of record on the applicable Record Date. The Regular Group Assessment for any Owner (other than the Meadowmont Village Condominium Owners Association) shall equal the product of the total Regular Group Assessment for such year multiplied by a fraction, the numerator of which is the gross square feet on Improvements on the Owner's Building Site and the denominator of which is the total gross square feet of all Improvements on the applicable Record Date on all Building Sites, excluding the Meadowmont Village Condominium Site. The Regular Group Assessment for the Meadowmont Village Condominium Owner's Association shall be 10% of the total Regular Group Assessment for such year. If, at the end of any fiscal year, the Declarant has surplus funds on hand attributable to any prior or the current year's Regular Group Assessments, the Declarant may, at its discretion, either reduce the Regular Group Assessment for the following year by an equivalent amount or add the surplus to the reserve fund maintained by the Declarant. In the event Declarant does not prepare an annual budget, then the Regular Group Assessment shall be based upon the actual expenditures of the Declarant, and shall be due and payable upon billing by the Declarant.

8.04. Special Group Assessments. In addition to the Regular Group Assessments provided for in Section 8.03 hereof, the Declarant may, at any time and from time to time, levy a Special Group Assessment for the purpose of covering any proper expenditure of the Declarant (a) for which no provision was made in the annual budget or (b) which benefits only a particular category or group of Owners (such as Office, Retail or Residential). A Special Group Assessment shall be payable by either all Owners of record on the applicable Record Date or those Owners of record on which the Declarant has determined has been or will be directly benefited by the expenditure. An Owner's share of a Special Group Assessment shall equal the product of the total Special Group Assessment multiplied by a fraction, the numerator of which is the gross square feet of Improvements on the Owner's Building Site and the denominator of which is the total gross square feet of all Improvements on the applicable date (y) where the Special Group Assessment is to be paid by all Owners, on all Building Sites or (z) where the Special Group Assessment is to be paid by certain categories or groups of Owners, on all Building Sites owned by those Owners which the Declarant has determined have been or will be directly benefited by the expenditure by the Declarant of the funds raised pursuant to the Special Group Assessment.

8.05. Special Individual Assessments. In addition to the Regular Group Assessments and the Special Group Assessments, the Declarant may, at any time and from time to time, levy a Special Individual Assessment on any Owner for the purpose of paying for, or reimbursing the Declarant for its prior payment of:

- (a) repairs, replacements or restoration of any damage to any Improvements subject to the conditions precedent that (i) the Declarant has determined, in its sole discretion, that the damage has been caused, directly or indirectly, by the acts or omissions of the Owner or its employees, contractors, agents, Occupants or invitees, (ii) the Declarant has notified the Owner involved of the Declarant's determination and has afforded the Owner ten days within which (A) to introduce evidence effectively rebutting the Declarant's determination or (B) to repair, replace and restore the damaged Improvement to the satisfaction of the Declarant (if the damage was to Improvements within a Common Area) or to the other Owner (if the damage was to Improvements owned by the other Owner) and (iii) within the ten day period, the Owner has failed to introduce evidence which effectively rebuts the Declarant's determination or to repair, replace or restore the damaged Improvement.
- (b) all direct and indirect costs of performing any maintenance, repair, replacement, restoration, rebuilding or other obligation which an Owner was obligated, but failed, to perform under the Governing Documents, subject to the conditions precedent that (i) the Declarant has determined, in its sole discretion, that the Owner has not performed the obligation in accordance with the Governing Documents, (ii) the Declarant has notified the Owner involved in writing of the Declarant's determination and has afforded the Owner ten days within which (A) to introduce evidence effectively rebutting the Declarant's determination or (B) to perform the obligation in the manner required in the Governing Documents and (iii) within the ten day period, the Owner has failed to introduce evidence which

effectively rebuts the Declarant's determination or to perform the obligation in the manner required.

If an Owner commences corrective action on any matter for which a Special Individual Assessment may be levied against the Owner after the Declarant has also commenced any corrective action with respect thereto (including the expenditure of sums and the entry into contractual undertakings), the Owner shall be obligated to the Declarant for the direct payment or the reimbursement to the Declarant of all liabilities and expenditures incurred or made by the Declarant in connection therewith.

8.06. Payment of Assessments: Bank Accounts: Investments. Regular Group Assessments and Special Group Assessments shall be due and payable at such time or times as the Declarant, in its sole discretion, may determine. Special Individual Assessments shall be due and payable on demand. Any Assessment (Regular Group, Special Group or Special Individual) which is not paid when due shall accrue interest at the rate specified in this Declaration from the date due until the date paid. All Assessments paid to Declarant shall be deposited in one or more bank accounts and shall not be co-mingled with other funds. Pending their disposition for the purposes set forth in this Declaration, all Assessments collected by Declarant and all Declarant funds may, at the Declarant's discretion and direction, be invested in such securities as the Declarant deems appropriate. Such funds may also, at the Declarant's discretion, be maintained- in non-interest bearing accounts.

8.07. Enforcement. Assessments shall be personal and individual debts of the Owner to which the Assessment pertains. No Owner may, for any reason and in any manner, exempt itself from liability for the payment of an Assessment. The Declarant shall have the right to accept partial payment of any Assessment or reject partial payment and to demand full payment thereof. If the Declarant elects to accept any partial payment, it shall do so on account only and without in any way waiving any rights, remedies or recourses against the Owner for the balance of the Assessment. The obligation of an Owner to pay Assessments imposed on it during the Owner's period of ownership shall remain the Owner's personal obligation, and a sale, assignment or other transfer of the Owner's interest in the Building Site shall not, to any extent and in any respect, release the Owner from such liability, even if the grantee, assignee or other transferee of the interest in the Building Site expressly assumes the obligation for payment of all prior Assessments. Accordingly, the Declarant's Lien shall continue in full force and effect after, and be unaffected by, any sale, assignment or other transfer of an interest in a Building Site. Other than pursuant to a request made in accordance with Section 10.07 hereof, the Declarant shall have no duty to advise any Owner, any proposed Owner or any other party as to whether any delinquent Assessments exist with respect to an Owner.

8.08. Lien and Foreclosure. Declarant hereby establishes, reserves, creates and subjects all Building Sites to the Declarant's Lien, which shall be a first and prior lien, subject to the provisions of Section 8.09, below. Upon formation of an Association, the Declarant may assign, without recourse, the Declarant's Lien to the Association. The Declarant's Lien shall be self operative, shall arise by virtue of the conveyance by Declarant of any Building Site to the first Owner thereof and shall continue thereafter in inchoate form without any deed of trust, mortgage or other document being executed or granted, without such lien being reserved in or referred to

in any deed or other conveyance document, and without any other action being taken by any party. The Declarant's Lien shall secure the repayment to the Declarant of all sums due by an Owner to the Declarant pursuant to any of the Governing Documents, including but not limited to the Owner's share of any Regular Group Assessment or Special Group Assessment, the Owner's Special Individual Assessment, all attorney's fees, court costs and other expenses incurred by the Declarant in collecting or attempting to collect such amounts, or in foreclosing or attempting to foreclose the Declarant's Lien or otherwise in exercising any of its rights, remedies or recourses hereunder or thereunder, and interest thereon as permitted hereunder. Although no further action is required to create or perfect the Declarant's Lien, the Declarant may, as further evidence and notice of the Declarant's Lien, execute and record a document setting forth, as to any Building Site, the amount of the delinquent sums due the Declarant at the time such document is executed and the fact that a lien exists to secure the repayment of same. However, the failure of the Declarant to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the Declarant's Lien. The Declarant's Lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in like manner of any deed of trust on real property. At any foreclosure proceeding, any Person, including but not limited to Declarant, any Owner, and any Affiliated Person, shall have the right to bid upon and become the purchaser of the property being sold.

8.09. Lien Subordination. The Declarant's Lien shall be subordinate and inferior to (i) any first lien deed of trust or first lien mortgage granted by an Owner in favor of any financial institution to secure the repayment of funds advanced by such financial Institution, on any term basis, for the purchase of a Building Site and the construction or purchase of the Improvements thereon and (ii) any first lien deed of trust or first lien mortgage granted by an individual condominium unit owner of an}' parcel of Real Estate within the Development subjected to a condominium regime pursuant to the North Carolina Condominium Act. This subordination shall apply only to sums that have become due to the Declarant prior to the granting of a "deed in lieu" or other similar conveyance to the holder thereof or its designee. No foreclosure sale or other transfer made pursuant to any such financing transaction shall extinguish or impair, to any extent, the obligation of any new Owner to pay all sums thereafter due by it to the Declarant or the Declarant's Lien on the Owner's Building Site.

8.10. Common Areas Exempt. All Common Areas shall be exempt from all Assessments and the Declarant's Lien.

ARTICLE IX

Certain Easements

9.01. General. Declarant hereby establishes, creates and reserves (a) a perpetual easement for the installation, operation, modification, maintenance, repair, replacement, removal and reinstallation of all electrical, telecommunication, CATV, fiber optic cable, water, gas, sanitary sewer, storm sewer, drainage and other utility facilities and appurtenances thereto, under, across and over the entirety of the Development and (b) a perpetual easement for the installation, operation, modification, maintenance, repair, replacement, removal and reinstallation of a pedestrian walkway (said walkway not to exceed five feet in width) across those portions of the

Development lying within road rights of way. "setback" areas or other areas within which the construction of Improvements is prohibited or restricted. The easements herein reserved may, from time to time, be more precisely located in the Development Standards or by Declarant executing and recording in the appropriate public records a plat or other instrument (including deeds) so designating a particular location or locations. The easements herein reserved shall include the right of ingress and egress to and from each Building Site for the purpose of implementing the purposes of the easements together with the right to remove any obstructions which, from time to time, interfere with the reasonable use of the easements. Declarant shall have the right to assign the easements herein reserved to the Declarant or, in the case of the easement referred to in clause (a) hereof, to one or more companies furnishing the services therein referred to. Declarant shall have the right (y) to relocate the easement referred to in clause (a) hereof under, across or over any Building Site without the consent of or any compensation being payable to the Owner thereof, provided that the relocation does not materially and adversely affect the utility, value or marketability of the Building Site for the then Owner's approved use and (z) to relocate the walkway referred to in clause (b) hereof across any Building Site provided that the walkway, as relocated, falls only within the areas described in clause (b) hereof and does not exceed five feet in width.

ARTICLE X

Miscellaneous

10.01. Term. The covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, burdens and liens set forth in this Declaration shall be personal covenants of each Owner, shall run with the title to the land subject to this Declaration and shall be binding upon and inure to the benefit of Declarant and each Owner, and their respective heirs, successors and assigns. This Declaration shall become effective upon the date it is recorded in the Deed Records in Orange County, North Carolina and, subject to the provisions of Section 10.02 hereof, shall remain effective for fifty years thereafter. If, at the conclusion of the said fifty year period, or at the conclusion of any ten year period thereafter during which this Declaration remained in effect, this Declaration has not been terminated pursuant to Section 10.02 hereof, it shall remain automatically effective for an additional ten year period.

10.02. Amendment: Termination. Declarant shall have the sole and exclusive right, power and authority to amend and terminate this Declaration, subject to the limitations that no amendment shall be adopted, or if adopted shall become effective, which material!}' and adversely affects the rights of (0 any Owner or the utility, value or marketability of the Owner's Building Site, without the prior written consent of the Owner or (ii) any lender holding a superior lien on a Building Site without the prior written consent of such lender.

10.03. Correction of Errors. During the existence of this Declaration, the Declarant shall have full right, power and authority to correct errors in this Declaration which the Declarant determines to be of a clerical or otherwise nonsubstantive nature. Such correction shall not be deemed an amendment hereto for purposes of Section 10.02 hereof but shall, upon being made by the Declarant, become binding on all Owners.

10.04. Enforcement. The enforcement of this Declaration shall be vested in the Declarant. Accordingly, the Declarant shall initially have the exclusive right, power and authority to enforce (or to elect not to enforce) any or all of the terms of this Declaration by any legal proceedings, at law or in equity, against any Person violating or attempting to violate any of them, or to seek any other recourse against any such person whether the recourse sought is an injunction, the recovery of damages, the foreclosure of the Declarant's Lien or otherwise. If the Declarant fails or refuses to exercise any right remedy or recourse afforded it for a violation of this Declaration as to which no Exception was or is granted, then any Owner may give written notice to the Declarant demanding that the Declarant exercise such rights, remedies or recourses. If, within thirty days after its receipt of the Owner's notice, the Declarant does not commence to exercise such rights, remedies or recourses against the Person violating this Declaration, or grant an ExXception to such person then the Owner sending the notice may exercise any or all of the rights, remedies and recourses afforded the aggrieved Owner at law or in equity as a consequence of such violation.

10.05. Responsibility of Owner. Each Owner shall be responsible for any breach of this Declaration which is the result of the acts or omissions of the Owner, or its officers, directors, shareholders, partners, employees, contractors, agents, invitees or Occupants. Any breach of this Declaration relating to the use or maintenance of a Building Site is hereby declared to be a nuisance. Accordingly, every right, remedy or recourse allowed by law or equity as a result of, or with respect to the abatement of, any such nuisance is hereby declared to be available to the Declarant or, subject to the provisions of Section 10.04 hereof, any aggrieved Owner.

10.06. Applicable Law. This Declaration shall be governed by, and construed in accordance with, the laws of the State of North Carolina. All monetary and other obligations of any Owner hereunder are performable in Orange County, North Carolina.

10.07. Compliance Certificate. Upon the written request of any Owner or the holder of any first lien deed of trust or first lien mortgage on any Building Site, the Declarant shall issue a certificate stating whether the Owner is delinquent in the payment of any sum due the Declarant or whether, to the knowledge of the Declarant, the Owner is otherwise in violation of this Declaration. The Declarant may impose and collect from the Owner with respect to which the certificate is requested a reasonable charge as a condition to the issuance thereof.

10.08. Notices. All notices and other communications given pursuant to this Declaration shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth in this Section 10.08. or delivered in person to the intended addressee, or sent by commercial overnight delivery service. Notice mailed in the aforesaid manner shall become effective three days after deposit; notice given in any other manner, and an}' notice given to Declarant shall be effective only upon receipt by the intended addressee. For the purpose of notice, the address of (a) Declarant shall be 3605 Glenwood Avenue, Suite 435, Raleigh, North Carolina 27612 and (b) any Owner shall be its last address as shown on the records of the Declarant at the time the notice is sent. Declarant, and any Owner shall have the continuing right to change its address for notice hereunder by: in the case of a change of address by an Owner, the giving of fifteen days prior written notice to the Declarant in accordance with this Section 10.08, or, in the case of a change of address by Declarant, at the election of Declarant, either the execution of a supplement to this Declaration

reflecting such change of address and the recording of same in the appropriate public records or the giving of written notice to each Owner of record in the manner set forth above.

10.09. Severability. This Declaration and the other Governing Documents are to be performed in accordance with and only to the extent permitted by applicable legal requirements. If any provision of this Declaration or any other Governing Document or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Declaration and the other Governing Documents and the application of such provision to other Persons or circumstances shall not be effected thereby, but rather shall be enforced to the greatest extent permitted by law.

10.10. Number and Gender. Captions and References. As the context of this Declaration may require, pronouns shall include all Persons, the singular number shall include the plural and neuter shall include the masculine and the feminine gender. Article and section headings in this Declaration are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define any article or section hereof. Whenever the word "hereof", "herein", "hereunder" or a word of similar import is used in this Declaration, it shall be construed as referring to this Declaration in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Declaration.

10.11. Attorney's Fees. If Declarant or any Owner entitled to do so initiates any litigation against any Owner relating to this Declaration, and prevails in such litigation, or if Declarant defends against any litigation brought against it by any Owner relating to this Declaration and prevails in such litigation, then such prevailing party shall be entitled to recover, in addition to all damages and other relief allowed by law. all court costs and reasonable attorney's fees-incurred in connection with such litigation.

10.12. Interest on Owner's Obligations. Any amount due from an Owner to the Declarant pursuant to this Declaration which is not paid when due shall bear interest at the rate of eighteen percent per annum (or, if 18% per annum exceeds the maximum rate allowed by law on the date the amount became due, at the maximum rate allowed by law) from the date the amount becomes due until the date the amount is paid, but the payment of such interest shall not excuse or cure the default in payment. It is the specific intent of Declarant to, at all times, comply with applicable usury law with respect to this Declaration. Accordingly, if at any time, it is determined that any amount called for, charged or collected pursuant to this Declaration exceeds the amount which may be lawfully called for, charged or collected under applicable usury law then all excess amounts theretofore collected by the Declarant shall be immediately refunded to the payer, the provisions hereof shall be immediately deemed reformed and the amounts thereafter collectible hereunder shall be immediately deemed reduced without the necessity of the execution of any-new document so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

10.13. Incorporation by Reference. The exhibit hereto is incorporated herein for any and all purposes.

10.14. Interpretation. If any disagreement shall arise between Owners as to the interpretation or application of this Declaration or any other Governing Document, the disagreement shall be resolved by the Declarant and the determination of the Declarant shall be final and binding upon all Owners unless the determination was fraudulently induced or arbitrarily or capriciously rendered. If there is any conflict between the terms of this Declaration and any articles of incorporation or bylaws adopted by an Association formed pursuant to Article III, then the terms of this Declaration shall govern.

10.15. Waiver. This Declaration may not be waived orally or impliedly, but only by Declarant evidencing such waiver in writing. Thus, neither the acceptance of a payment by the Declarant nor any other custom or practice followed in connection with this Declaration shall constitute a waiver of any provision hereof. Further, neither the failure of the Declarant to complain of any violation of this Declaration, regardless of how long such failure continues, nor the failure of the Declarant to invoke (or the election by the Declarant not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the Declarant with respect to such violation. No waiver by the Declarant of any provision of this Declaration as to any Owner shall be deemed to be a waiver of any other provision hereof as to such Owner, or a waiver of the same provision as to any other Owner. The Declarant's consent to any act requiring the Declarant's consent hereunder or under any other Governing Document shall be not be deemed to render unnecessary the attaining of the Declarant's consent as to any other act. No consent shall be binding upon the Declarant unless such consent is evidenced in writing executed by an officer of the Declarant duly authorized to execute the same.

10.16. Owner's Liability: Subsequent Sale. Upon the divestiture (voluntarily or involuntarily) of the interest of an Owner in all or a portion of its Building Site, the prior Owner shall thereupon be relieved of all liability accruing under this Declaration with respect to such Building Site or the portion thereof as to which the Owner has been divested after the date of divestiture. The preceding sentence shall not, in any way and to an} extent, impair the Declarant's Lien against the Building Site for sums due the Declarant by the prior Owner or any subsequent Owner, or the obligation of the subsequent Owner for any liabilities accruing after the date of divestiture.

10.17. Exculpation. Neither Declarant nor any of its officers, directors, shareholders or members, (individually and collectively, an "exculpated person"), shall be personally liable to any Person for any act or omission of any nature whatsoever occurring in the course of acting under or in connection with this Declaration, except, willful misconduct or criminal conduct. Without in any way limiting the generality of the foregoing, no exculpated person shall have any liability of any nature whatsoever by virtue of any action taken or not taken with respect to any plans, drawings, specifications, documents, materials and requests for Exceptions presented to it for review and approval, and under no circumstances shall any such person be deemed to have passed upon the structural integrity or safety of any Improvement described on or in any such materials.

10.13 Assignment. Declarant shall have the absolute right in its sole discretion to assign its rights under this Declaration to any Person, including without limitation an Association, an Owner, or any other Person. Upon such assignment. Declarant shall transfer any funds from

Assessments being held by Declarant to the assignee together with an accounting of such funds. Upon such assignment and transfer of funds. Declarant shall be released automatically from any further responsibility or obligations in connection with these Declarations.

IN WITNESS WHEREOF. Declarant has caused this Declaration to be executed as of the date and year above first written.

Meadowmont JV. LLC, a Delaware limited liability company By: Meadowmont Village Associates, LLC, its managing member

B:  WaV
Crane M. Davis, Manager /

STATE OF NORTH CAROLINA

COUNTY OF

ORANGE, Wake

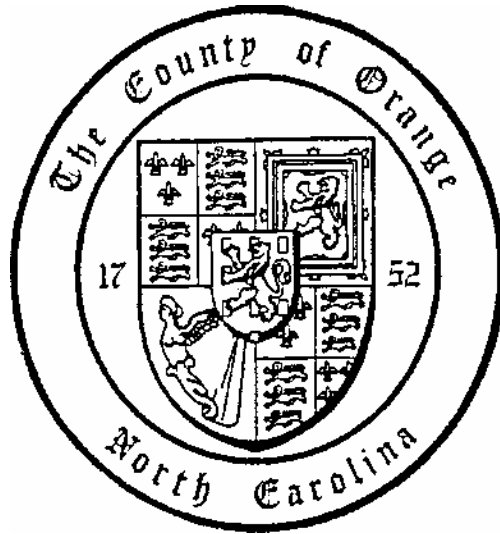
I, Notary Public of the state and county aforesaid certify that Craig M. Davis personally came before me this day and acknowledged that he is the Manager of Meadowmont Village Associates, LLC, managing member of Meadowmont JV. LLC, a Delaware limited liability company, and that he as Manager being so authorized to do so, executed the foregoing on behalf of the limited liability company as managing member of Meadowmont JV. LLC.

Witness my hand and official seal, this the 15th day of May



M. Commission Expires

Jen-one B. Ursprung
Notary Public - North
County of Wake My Commission
Expires 05/24/2005



Joyce H. Pearson
Register of Deeds
Orange County
North Carolina

FILED
DEC 2001, at 02:24:25pm
Book 2444, Page 155 - 155
Joyce H. Pearson
Register of Deeds.

State of North Carolina, County of Orange

The foregoing certificate/s of Jonene B. Ursprung, Notary/Notaries Public for the Designated Governmental units is/are certified to be correct. See filing certificate herein. This day December 7, 2001

JOYCE H. PEARSON, REGISTER OF DEEDS By:

Deputy/Asa^sHit Register of Deeds

Exhibit A
to
Declaration of Master Protective Covenants for
Meadowmont Village

BEING all of Parcel 1 of Village Center, containing 13.53 acres more or less, as shown on that plat entitled "Final Plat-Village Center." recorded in Plat Book 85. Page 78-80. inclusive, in the Orange County. North Carolina Registry.



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