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CABARRUS COUNTY
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LINDA F. MCABEE
Register Of Deeds
By. WJZ Deputy/Asst.
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File F45

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
YATES MEADOW SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), is made on the date hereinafter set forth by **Poplar Park LLC**, a North Carolina limited liability company, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described, on **Exhibit A** attached hereto (the "Property") on which Declarant intends to develop a planned unit development known as **YATES MEADOW SUBDIVISION** (the "Neighborhood"); and

WHEREAS, the Declarant desires to insure the attractiveness of the individual lots, community facilities, entrances and the common area and open spaces located in the Neighborhood, and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values of amenities of the said property and to provide for the continued maintenance of the common area, open spaces, greenway easements, entrances, walkways, private roadways, recreational facilities and other community facilities located in the Neighborhood, and, in order to accomplish these objectives, deems it advisable to subject the Property, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth; and

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in the Neighborhood and the residents' enjoyment of the specific rights, privileges and easements in the community properties and facilities that an organization be created to which will be delegated and assigned the powers of owning and maintaining common areas and easements areas, and of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of **Yates Meadow Homeowners Association, Inc.** as a non-profit corporation.

NOW, THEREFORE, the Declarant declares that the Property is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the real property (except as provided in Article VI, Section 10 hereafter) and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns.

This Declaration is made pursuant to the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and any lawful amendments or substitutions thereto. In the event of a conflict between the provisions of the Planned Community Act and the Articles of Incorporation and/or the Bylaws of the Association and this

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Declaration, the provisions of the Planned Community Act, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

ARTICLE I

DEFINITIONS

SECTION 1: "Association" shall mean Yates Meadow Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and assigns. Pursuant to G.S. 47F-3-103, the Executive Board will act in all instances for the Association. As used herein, "Executive Board of Directors", "Board of Directors" and "Board" shall mean "Executive Board".

SECTION 2: "Committee" shall mean the Architectural Review Committee established for the purpose of administering architectural review as provided in Article VIII of the Declaration.

SECTION 3: "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and designated as "Common Area," "Common Open Space," or "Private Road," including, but not limited to, parks, ponds, lakes, pools, tennis courts, paths, private roadways, walkways, playground area, and subdivision entrances on any plat of any portion of the Property duly recorded in the Cabarrus County Public Registry in accordance with the provisions of the Declaration. The Common Area which Declarant intends to convey to the Association at the time of Declarant's conveyance to any third party of the first lot shall be that Common Area shown on that plat of the Property to be recorded in the Cabarrus County Public Registry by the Declarant; provided, however, that any land designated as open space which is dedicated to public use on such plat and which is accepted for maintenance purposes by a public authority shall not be part of the Common Area.

SECTION 4: "Declarant" shall mean Poplar Park LLC, as well as its successors and assigns, if Declarant shall make an express conveyance of their rights hereunder to such successor or assign.

SECTION 5: "HUD/VA/FNMA/FHLMC" shall refer to the U.S. Department of Housing and Urban Development, and/or the Veterans Administration, and/or the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation, any governmental authority which succeeds said organizations, and/or any other governmental or quasi-governmental authority which governs, regulates or administers the selling of residential dwellings or the issuing of mortgages on such dwellings.

SECTION 6: "Landscape Easements" shall mean any easements designated "Landscape Easement" on any duly recorded plat of any portion of the property recorded in the Cabarrus County Public Registry. The Landscape Easement shall be in favor of the Association and shall be for the maintenance of any landscaping, fencing, signs or irrigation systems located thereon as provided in Article V hereof.

SECTION 7: "Lot" shall mean and refer to any lot of land, with delineated boundary lines, shown upon any plat of any portion of the Property duly recorded in the Cabarrus County Public Registry, with the exception of any streets or easements shown on any such recorded plat. In the event any lot is increased or decreased in size by recombinations or resubdivisions, through recordation of new subdivision plats, any such newly platted lot shall thereafter constitute a lot for the purposes of this Declaration.

SECTION 8: "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 9: "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers and owners of an equity or redemption, but excluding those having such interest in a lot solely as security for the performance of an obligation.

SECTION 10: "Property" shall mean that certain tract(s) of land located in Cabarrus County, North Carolina, which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference and such additional property as annexed pursuant to the next Article.

SECTION 11: "Sign Easement" and "Landscape Easement" shall mean and refer to any easement designated "Sign Easement" or "Landscape Easement," respectively, on any plat of any portion of the Property duly recorded in the Cabarrus County Public Registry and annexed into the Properties under the Declaration or Supplementary Declaration under Article II of the Declaration. Any Sign Easement or Landscape Easement shall be in favor of the Association and shall be for the maintenance of any subdivision signs, fences, irrigation systems, and landscaping located within the easement as provided in Article V hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

SECTION 1: "Property" shall mean that certain portion of the Property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, is located in Cabarrus County, North Carolina and is described on attached Exhibit "A". Additional Property, if any, described in Exhibit "B" may be brought within the scheme of this declaration and the jurisdiction of the Association by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional Property. Said Supplementary Declarations may contain such complimentary additions and modifications of the Covenants, Conditions and Restrictions contained in this Declaration as may be necessary to reflect only the different character of the added properties and shall not be inconsistent with the other provisions of the Declaration. Provided, however, that so long as there is a Class B Member, such annexation of additional property shall require the approval of HUD/VA/FNMA/FHLMC.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1: Every owner of a lot which is subject to assessments shall be a member of the Association. The Membership of the Association shall consist of Class A Members and Class B Members defined below.

SECTION 2: The Association shall have two classes of voting membership:

- (a) CLASS A: The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any lot which by covenants of record is subject to assessment by the Association, except Class B Members as defined below. The foregoing is not intended to include persons or entities who hold an interest in a lot merely as security for the performance of any obligation. Such membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Class A Members shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be Members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall a fraction of a vote be cast or more than one vote be cast with respect to any lot.
- (b) CLASS B: The Class B Members shall be the Declarant and any and all builders who have purchased a Lot for construction of a dwelling for sale to others. The Class B members shall be entitled to three votes for each Lot that it owns or as to which it has a contract to sell. The Class B

membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership;
- (ii) Ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds, Cabarrus County, North Carolina;
- (iii) Upon written notice of consent to such conversion by all Class B Members.

When Class B membership ceases to exist and is converted to Class A membership, former Class B members shall have the same voting rights as other Class A members.

ARTICLE IV

PROPERTY RIGHTS

SECTION 1: OWNERS' EASEMENT OF ENJOYMENT: Except as limited by Section 2 of this Article IV, and except in the event of dedication to public use of certain "Common Open Space" as provided herein, every Owner shall have a right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions.

- (a) the right of the Executive Board of Directors on behalf of the Association (i) to dedicate or transfer all or any part of the Common Area to any municipality, or any public agency, authority, or utility for the installation and maintenance of sewerage, utilities, including CATV, and drainage facilities upon, over and across the Common Area without the assent of the membership when such easements, in the opinion of said Executive Board of Directors, enhance the use and enjoyment of the Property; (ii) to dedicate or transfer all or any part of the Common Area to any municipality or any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and (iii) to dedicate or transfer all or any part of the Common Area to any municipality or any public agency, authority, or utility for such purposes and subject to such conditions as may be required under the zoning for the Property or by any agreement between Declarant and any municipality or governmental agency as a condition to approval of the zoning of the Property. In the latter event, the Association shall effectuate such dedication upon receipt of such written request, without the assent of the membership. No such dedication or transfer as provided in clause (ii) of the preceding sentence shall be effective unless the members entitled to cast at least two-thirds (2/3) of the votes of the Class A membership and at least two-thirds (2/3) of the votes of the Class B membership agree to such dedication or transfer and signify their agreement by a signed and recorded written document. Additionally, so long as there is a Class B Member, such dedication or transfer shall require the approval of HUD/VA/FNMA/FHLMC.
- (b) The right of the Association, with the assent of Members entitled to cast at least two-thirds (2/3) of the votes of each class of membership (Class A and B), to mortgage, pledge, deed of trust, or otherwise hypothecate any or all of its real or personal property, including, but not limited to, the Common Area, as security for money borrowed or debts incurred.
- (c) The right of the Association to suspend the voting rights of an Owner and the Owner's right to use any recreational facilities for any period

during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations.

- (d) The right of the Association to impose regulations for the use and enjoyment of the common area and improvements thereon, which regulations may further restrict the use of the Common Area;
- (e) The right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the common Area;
- (f) The right of the Association, by and through its Executive Board of Directors, to exchange portions of Common Area with the Declarant for substantially equal areas of the Property for the purpose of eliminating unintentional conveyances of Common Areas or unintentional encroachments of improvements onto any portion of the Common Area or for the purpose of enhancing the utility of the Common Area to be retained by the Association.

Provided, however, if ingress or egress to any Lot is through or over any part of the Common Area, then any of the above-noted conveyances of said Common Area shall be made subject to an express easement in favor of that Owner and that Lot.

SECTION 2: DELEGATION OF USE:

- (a) FAMILY- The right of easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in Cabarrus County, North Carolina.
- (b) TENANTS- The right and easement of enjoyment granted to every Owner in Section I of this Article IV may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in Cabarrus County, North Carolina.

ARTICLE V

LANDSCAPE EASEMENTS

The Association, its successors and assigns, shall have easement over those portions of Lots designated "Sign Easement" or "Landscape Easement" on the recorded maps for the Neighborhood. Such easements shall be for the purpose of installation, such as Declarant or the Association elect, of subdivision signs, fences or irrigation systems and for the purpose of maintaining any such structures erected by the Declarant or the Association and landscaping such easement areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such areas, other than those installed by Declarant or the Association, without the Association's prior written. Declarant and the Association shall at all times have the right of access for its employees, agents and subcontractors over such easements for the purpose of installing, maintaining, repairing and replacing the Neighborhood's signs, fences and irrigation systems for the purpose of landscaping, planting, mowing and maintaining the area within such easements. The designation of a portion of a Lot as a Sign Easement or a Landscape Easement shall not, in and of itself, give rise to any maintenance obligation. In the event Declarant or the Association elects to erect a sign, fence or irrigation system within any such easement, the Association shall maintain such structure and the cost of such maintenance shall be a Common Area expense, until such

time as the Association, in its sole discretion, may elect to remove the structure, in which event, the Association shall have no further maintenance obligation.

ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: The Declarant, for each lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges and (2) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Any payments made to the Association shall be first applied to costs and attorneys' fees related to collection efforts, then to late charges, then to interest, and only then to such assessments. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such property at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid assessment charges are not the personal obligation upon such Owner's successors in title unless expressly assumed by the successors in title, the unpaid assessment charges continue to be a lien upon the property against which the assessment has been made.

SECTION 2: PURPOSES OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property, the enforcement of this Declaration and the rules of the Association, and in particular for the improvement, and maintenance of the Common Area and providing the services and facilities devoted to this purpose and related to the use and enjoyment of any Sign Easements and Landscape Easements, and other areas maintained by the Association, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purpose, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planning) and maintenance of pools, dams, ponds or other bodies of water, parks, or other "Common Open Space", walking paths, playground area, tennis courts, entranceways, roadways, and the maintenance of any Sign Easement and Landscaping Easement areas, Common Areas and other areas to be maintained by the Association under this Declaration. The assessments may also be used to pay the cost of street lighting, if any, within the neighborhood.

SECTION 3: MAXIMUM ANNUAL ASSESSMENT: The initial annual assessment shall be \$120.00 for each Lot owned by Class A Members and a one time only assessment of \$100.00 for each Lot owned by Class B Members; except, however, if a swim club is constructed by the developer as common area and conveyed to the Association then the maximum annual assessment for the year immediately following conveyance of the swim club to the Association shall be \$ 350 per lot owned by Class A Members and \$ 150 per lot owned by Class B Members.

- (a) From and after January 1, 2004, the maximum annual assessment may be increased by the Executive Board of Directors effective the first day of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1, 2006, the maximum annual assessment may be increased without limitation if such increase is approved by no less than two-thirds (2/3) of the votes cast by each class of

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members (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

- (c) Any annual assessment established by the Executive Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Executive Board.

SECTION 4: SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair, replacement of and additions or improvements to capital improvement(s) upon Common Area and any Sign Easement or Landscape Easement areas.

SECTION 5: ASSESSMENT RATE: Except for the difference between assessments for Lots owned by Class A Members and Lots owned by Class B Members, both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on a monthly, quarterly or annual basis as decided by the Executive Board of Directors of the Association.

SECTION 6: NOTICE OF QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4: Written notice of any meeting called for any action authorized under Sections 3 and 4 above shall be given not less than ten (10) nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of members (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

SECTION 7: DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATE: CERTIFICATE OF PAYMENT: Unless otherwise provided by the Executive Committee, at the closing of the sale of a new home, the first annual assessment shall be due and payable in full on a prorated basis for the upcoming year. Thereafter, annual assessments shall be due in full on January 1st of each following year, and shall be payable, as determined by the Association in its absolute discretion, on a quarterly, semi-annual or annual basis. At least thirty (30) days before January 1st of each year, the Executive Board of Directors shall fix the amount of the annual assessment against each Lot and at least fifteen (15) days before January 1st of each year shall send written notice of any increase in the amount of the assessment over the previous year's annual assessment to every Owner subject thereto. Failure by the Executive Board of Directors to send the written notice of any such increase shall not affect the obligation of the Owner to pay the assessment. The due dates for the payment of annual and special assessments shall be established by the Executive Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Notwithstanding Sections 1 and 7 hereof, the Declarant may, at its election, postpone, in whole or in part, the date in which the assessment shall commence provided that the Declarant maintains any Sign Easements, Landscape Easements and Common Areas for which no assessment is being collected during the period of such postponement.

Failure by any Owner to pay any dues in a timely fashion shall give the Association the right to accelerate all dues for the year in which such deficiency occurs. Upon notice of such acceleration, the delinquent Owner shall immediately be obligated to pay all remaining dues for that year.

SECTION 8: EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a minimum rate of twelve percent (12%) per

annum or at the rate established by the Executive Board of Directors at the beginning of the fiscal year of the Association, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessment. In addition to the accrual of default interest, the Association may impose a penalty not to exceed four percent (4%) of the amount due for any assessment more than fifteen (15) days past due. Neither non-use of the Common Area or abandonment of his Lot by an Owner, nor damage to or destruction of any improvements on any Lot by fire or other casualty, shall result in any abatement or diminution of the assessments provided for herein.

An Owner's failure to pay any assessment shall not constitute a default under a mortgage given by that Owner, unless expressly agreed to by the Owner in writing.

SECTION 9: SUBORDINATION OF THE LIEN TO MORTGAGES: The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclose thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

SECTION 10: EXEMPT PROPERTY: All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

SECTION 11: APPLICATION OF PAYMENTS: In the event an owner pays any funds after the imposition of any fines, or the incurrance of collection fees, the funds paid shall be applied first to any fines levied, then to any other late fees, if any, then to any special assessment, if any, then to the Annual Assessments, if any.

ARTICLE VII RESTRICTION AGREEMENT

SECTION 1: USE OF LAND: All Lots in the tract shall be known and described as residential Lots. No structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single-family dwelling, not to exceed two and one-half stories in height, and a private garage for not more than two cars and other outbuildings incidental to residential use of the plot.

SECTION 2: MINIMUM SIZE OF RESIDENCE: No residence shall be constructed or permitted to remain on Lots 26 through 61 and Lot 8 in Yates Meadow Subdivision unless it shall have at least 1350 square feet of heated floor space for 1 story and for 2 story it shall have at least 800 square feet of heated floor space for the 1st floor. No residence shall be constructed or permitted to remain on the remaining lots in Yates Meadow Subdivision unless it shall have at least 1250 square feet of heated floor space for 1 story and for 2 story it shall have at least 800 square feet of heated floor space for the 1st floor.

SECTION 3: LOCATION OF BUILDINGS: No building, unattached garage or carport shall be erected on any Lot nearer any front or side street line than the building setback line shown on the recorded map, which map is incorporated by reference herein.

SECTION 4: SIZE OF LOTS: No residential structure shall be placed or erected on any Lot which has an area less than the minimum square footage required by the applicable zoning ordinances in effect as of the date hereof or a width less than the minimum width at the front setback lines required by the applicable zoning ordinances in effect as of the