

NORTH CAROLINA  
PITT COUNTY

*file*  
PREPARED BY: HORNE & HORNE, PLLC  
RESTRICTIVE COVENANTS

THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS, made on the date hereinafter set forth by D and I Properties of NC, LLC, a North Carolina limited liability company with its principal office located in Hertford County, North Carolina, hereinafter referred to as "Declarant"; and, PROSPECTIVE PURCHASERS of lots in Brookstone Subdivision, Phase 1, a residential subdivision located in the Winterville Township, Pitt County, North Carolina, hereinafter referred to as "Owners"

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in the Winterville Township, Pitt County, North Carolina, which is more particularly described as follows:

Lying and being in the Winterville Township, Pitt County, North Carolina and being all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 and 74 of Brookstone Subdivision, Phase 1 as shown on that map prepared by Malpass & Associates which appears of record in Map Book 68, Page 158 of the Pitt County Registry.

WHEREAS, Declarant proposes to sell and convey Lots 1 through 20, inclusive, and lots 62 through 74, inclusive, as shown of the aforesaid plat to be used for residential purposes and to develop said Lots and additional property within the Development Area which may be added to the development by the Declarant to be developed into a well planned community by the Declarant; and

WHEREAS, Declarant, prior to selling and conveying the aforesaid residential Lots, desires to impose upon such Lots certain mutual and beneficial restrictions, covenants, conditions and charges (hereinafter collectively referred to as "Restrictions") for the benefit of all of the residential Lots in the subdivision in order to promote the best interest and protect the investments of Declarant and Owners;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, subdivided, 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.

#### ARTICLE I

Section 1: "Articles" means the Articles of Incorporation of Brookstone Homeowners Association of Pitt County, Inc.

Section 2: "Association" shall mean and refer to Brookstone Homeowners Association of Pitt County, Inc., its successors and assigns.

Section 3: "By-Laws" means the Bylaws of Brookstone Homeowners Association of Pitt County, Inc.

Section 4: "Common Area" shall mean all real property, including the Stormwater Detention Pond and all the improvements thereto owned by the Association to be reserved to the Association at the time of the conveyance of the first lot, upon which all Owners, their family members, guests and invitees shall have a non-exclusive easement of access to and use of said Common Area for their enjoyment, said easement being hereby granted to said Owners, their successors, heirs and assigns as an appurtenance to the ownership of their respective lots in the Subdivision. Common Area or Stormwater Detention Pond lots are described as follows:

Tract 1: Lying and being in the Winterville Township, Pitt County, North Carolina and being all of that 113,127 square foot Stormwater Detention Pond as shown on map of Brookstone, Subdivision, Section 1 as shown on that map prepared by Malpass & Associates which appears of record in Map Book 68, Page 158 of the Pitt County Registry.

Tract 2: Lying and being in the Winterville Township, Pitt County, North Carolina and being all of those 40' x 40' Sign Easements as shown on map of Brookstone, Subdivision, Section 1 as shown on that map prepared by Malpass & Associates which appears of record in Map Book 68 Page 158 of the Pitt County Registry.

Tract 3: Lying and being in the Winterville Township, Pitt County, North Carolina and being all of that 40 foot berm as shown on map of Brookstone, Subdivision, Section 1 as shown on that map prepared by Malpass & Associates which appears of record in Map Book 68, Page 158 of the Pitt County Registry.

Section 5: "Declarant" shall mean and refer to D and I Properties of NC, LLC, their successors and or assigns.

Section 6: "Dedication" means the act of committing a portion of the Subdivision to the purposes of this Declaration.

Section 7: "Development Area" means additional real property which may be incorporated by Declarant into the Subdivision subject to this Declaration.

Section 8: "Lot" means a separately numbered tract of land lying within the Subdivision and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed to the Declarant and owned in fee the by Grantee thereof, and held for such uses as are consistent with this Declaration and the 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."

Section 9: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 10: "Subdivision" means the property shown on the map entitled "Brookstone Subdivision, Phase 1" and any additional property within the Development Area which has been or may be dedicated pursuant to this Declaration.

## ARTICLE II

Section 1: A Corporation named Brookstone Homeowners Association of Pitt County, Inc. has been formed pursuant to the requirements of the Nonprofit Corporation Act as set out in the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain, protect and operate the Common Area and Stormwater Detention Pond, if any, to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owner's use and occupation of Lots.

~~Section 2:~~ Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2: Declaration of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one 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 then determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, and notwithstanding any other provisions herein, shall not be assessed at any rate. Class B membership shall cease and be converted to the Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than August 15, 2009.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned 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 such deed, is deemed to covenant and agree to pay to the Association: annual assessment or charges for all common area which includes the stormwater detention pond and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time of the assessment. Such assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the improvement and maintenance of the common areas, including the stormwater

detention pond. Services and facilities devoted to this purpose and related to the use and enjoyment of the common areas, including but not limited to, operation, the cost of repairs, replacements and additions, the cost of labor, equipment, materials management and supervision, the payment of taxes assessed against the common area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Basis and Maximum of Annual Assessments. No assessments shall be made on any lot until the platted lot shall have been conveyed by deed. The maximum annual assessment shall be \$450.00 per originally platted lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington D.C.) from the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for the next succeeding two (2) years may be increased above that established by the Consumer Price Index formula by a vote of the members, and for each succeeding period of two (2) years thereafter, provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy, at a ~~meeting duly called for this purpose, written notice of which shall be sent to all members not less than~~ thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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

Section 4: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose.

Section 5: Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Uniform Rate of Assessment. Except as provided for Class B members, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7: Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the common area and stormwater detention pond to the Association. However, it is not the intent of the declarants to assess any vacant lot owned by the declarant. That is to say the initial lot owner, other than the declarant, who receives a deed from the Declarant shall pay assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessments against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen per cent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape or deny liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect

the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10: Exempt Property. All property dedicated to and accepted by, a local authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V

### ARCHITECTURAL REVIEW AND ARCHITECTURAL REVIEW COMMITTEE

Section 1: The Board of Directors shall establish an Architectural Review Committee (hereinafter referred to as the "Committee") which shall be composed of three (3) members. The Board of Directors shall have the right to appoint and remove, at any time and without cause, one (1) member. Developer shall have the right to appoint and remove two (2) members of the Committee so long as Declarant owns any Lots within the Subdivision or any property within the Development Area. At such time as Declarant ceases to own any Lot within the Subdivision or other property within the Development Area, or upon notification by Declarant to the Board of Directors that it does not desire to continue to appoint two (2) members of the Committee, all three (3) members shall be appointed or removed, at any time and without cause, by the Board of Directors. The Committee will have the following powers and duties:

Section 2: No building, fence, wall, monument, or other structure shall be erected, placed or altered on any residential lot, nor shall the grade or elevation or physical characteristics including but not limited to slopes, ridges, and tree growth, of any such lot or portion thereof, be altered in any way until the proposed building plans, specifications, exterior colors and finishes, site, grading, and landscaping plans, and construction schedule shall have been approved in writing by the Committee.

Section 3: The Committee shall have exclusive jurisdiction over all original and added construction and landscaping on any Lot and later changes or additions after the initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved. The Committee shall prepare and, on behalf on the Board of Directors, shall promulgate architectural standards guidelines ("guidelines") and application and review procedures ("procedures"). The guidelines and procedures shall be those of the Corporation and the Committee shall have the sole and full authority to prepare and to amend the guidelines and

procedures. The Committee shall make the guidelines and procedures available to owners, builders, contractors and developers who seek to engage in the development of or construction upon the Lots and who shall conduct their operations strictly in accordance therewith.

Section 4: The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions or these Restrictions and the guidelines; if the design, color scheme or location upon the Lot or Lots of the proposed improvements are not in harmony with the general surrounding or adjacent structures; if the plans or specifications or detail, or any part thereof, to the contrary to the best interests, welfare or rights of all or any part of the real property subject to this Declaration or the owners thereof.

Section 5: The Committee shall approve or disapprove plans, specifications and detail submitted in accordance with the procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided, however, that plans, specification and details revised in accordance with Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans, specifications and details within thirty (30) days after submission of the same to the Committee, approval, for the purpose of this Article, shall be deemed to have been given by the Committee.

Section 6: The Committee, or its agent, shall have the right to inspect all construction to insure that it is performed in strict accordance with the approval plans, specifications and details. Upon completion of the construction in accordance with the approved plans, specification and details, the Committee shall issue a certificate of completion to the owner.

Section 7: No construction as defined herein nor any construction of any major improvements may be commenced or continued upon any Lot by any person, builder, contractor, developer or legal entity (all collectively referred to as "contractor") unless and until said contractor obtains the prior written approval of the Committee. For the purpose of this Article "major improvement" shall be defined as any improvement or structure, above or below ground, which is added to the original structure submitted for approval, including but not limited to buildings, outbuildings, driveways, fences, walls, garages, storage sheds, gardens and pools. The Committee shall prepare and, on behalf of the Board of Director, shall promulgate standards and application and review procedures pertaining to granting approved contractor status to contractors so applying. The standards and application and review procedures shall be those of the Corporation and the Committee shall have the sole and full authority to prepare and to amend the standards and application and review procedures.



The Committee shall make the standards and application and review procedures available to owners, builders, contractors and developers who seek to engage in construction upon the Lots.

The Committee shall approve or disapprove applications submitted by contractors within thirty (30) days from the receipt to the application and the decisions of the Committee shall be final. In the event that the Committee fails to approve or disapprove an application submitted by a contractor within (30) days after submission of the same to the Committee, approval, for the purpose of this Article, shall be deemed to have been given by the Committee.

Section 8: Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his residence or permitted appurtenant structures, or to paint the interior of the same any color desired.

Section 9: Neither Declarant nor the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

Section 10: The requirements of this Article shall not constitute a lien or encumbrance on any Lot on which construction is completed, and any subsequent purchaser thereof for value without notice thereof is in no way affected by the failure of his predecessors in title to comply with the terms hereof. The requirements of this Article shall not apply to the Declarant with regard to original erection or ~~construction of a dwelling or other improvements on a Lot.~~

## ARTICLE VI

### RESTRICTIONS ON USE AND OCCUPANCY

1. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them under until September 1, 2027, at which time said covenants shall be automatically extended for successive periods of ten (10) years.

2. If the parties hereto or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning real property situated in said development or subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violations.

3. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

4. All lots in this tract of the subdivision shall be known and described as residential lots. No lot may be subdivided without the written consent of the party of the first part their heirs or assigns.
5. No dwelling, building, structure or outbuilding, of any kind or nature, shall be constructed, erected, placed or altered on any lot on the property until the construction plans specifications and plans showing the location of such structures have been approved in writing by Declarant or its designee. In any event, no residence shall be built on any lot within the property on a concrete slab unless elevated and approved by owner or designee in writing prior to construction. No mobile home, pre-fab, modular home, package home, or other pre-built home shall be placed on any lot. Any residence built on any lot shall be "stick built" except that pre-fabricated roof trusses and pre-fabricated fireplaces and chimneys may be utilized in a residence built on any lot.
6. No structure shall be erected, altered, placed or permitted to remain on any residential plot other than one detached single family dwelling not to exceed two and one-half stories in height, exclusive of basements, one detached structure not exceeding two stories in height, to be used as a private garage for not more than two (2) cars, and one non-detached out building constructed and used incidental to the residential use of the property. Any garage facing the front or side yard, must have garage doors.
7. Any residence constructed on any lot shall have a minimum square footage, more specifically described as heated living area, exclusive of one-story open porches, garage and basements, of not less than Two thousand (2000) square feet. In the case of a multi-story structure the ground floor shall be no less than one thousand (1000) square feet in the case of one and one-half, and shall not be less than nine hundred (900) square feet in the case of a two or two and one-half story structure.
8. Any permitted outbuilding or detached structure erected or placed on any lot shall be constructed with the same materials, quality, general appearance, workmanship and be aesthetically compatible with the dwelling located on said lot. No metal carports, unenclosed carports or similar storage structure shall be erected, placed or permitted to remain on any lot.
9. All driveways must be constructed of concrete materials.
10. No building shall be located nearer to the front lot line or nearer to the side street line than the building setback line shown on the recorded map. No building, except a detached garage or other outbuildings located ninety (90) feet or more from the front line shall be located nearer than ten (10) feet to any side or back lot line.
11. No mail or paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar materials shall be erected or located upon any Lot except such

receptacle of standard design as shall have been approved by the Declarant or designee.

12. All drapes, curtains, window treatments or other similar materials hung at windows so as to be visible from outside the home shall be of a white, ivory or cream material.

13. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may become an annoyance or nuisance to other lot owners or the neighborhood.

14. No barber shops, beauty parlors or shops, commercial or business activity shall be permitted or suffered to remain on any of the lots shown on the map referred to herein, nor shall any activity be carried on which under the Ordinances of the Town of Winterville, North Carolina, are identified as "Home Occupations". The provisions herein shall not prevent an owner from having a "home office" so long as the "home office" does not create an unreasonable amount of commercial activity within the subdivision.

15. No trailer, "rv's", basement, tent, shack, garage, barn or other outbuildings erected, parked or placed on the tract shall at any time be used as a residence, temporarily or permanent, nor shall any structure of a temporary character be used as a residence.

16. No sign of any kind shall be displayed to the public view on this property except one sign of not more than eight (8) square feet advertising the property for sale, or signs used by a builder, developer, realtor or owner to advertise the property during construction and then for sale.

17. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred or kept on any portion of the property, except that domesticated dogs, cats and small non-offensive and harmless household pets may be kept by the owner of the property, provided that they are not kept or used for breeding or maintained for any commercial purpose, and it is further provided that it is the intent of this covenant to allow owners of lots of the property to keep pets, within reason. However, no owner of any lot within the property will be allowed to keep more than two dogs or two cats on the property. Pets kept outside must not constitute a danger or nuisance including, but not by way of limitation, excessive barking or causing property damage to other lot owners or to the subdivision. When outside no animal may be staked out and when not contained within a fenced area, all pets must be kept on a leash. No animal pens, runs, housing or like enclosure shall be kept or placed on any lot, however, this shall not exclude proper fencing of the yard as permitted herein or animal runs and housing that are not visible from the street.

18. No trucks or tractors may be regularly stored or parked upon the property. This provision shall not, however, be interpreted to prohibit the owner of a pick-up truck, up to 1 ton in size, being used

by any owner of this property for his personal conveyance, and such truck may be parked upon the property. Also the owner of any lot may park thereon a lawn tractor to be used for the upkeep of the property so long as it is parked behind a fence or behind the home.

19. No stripped, partially wrecked, or junk motor vehicles, shall be permitted to be parked or kept on any lot. All motor vehicles of any type kept on any lot shall have current registration and inspection certificates.

20. No lot shall be used or maintained as a dumping ground for 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 materials should be kept in a clean and sanitary condition.

21. All individual purchasers, from and after the date of the recording of this Declaration, shall be required to keep their respective portion of this property free and clear of weeds, rubbish, trash, debris and other matter.

22. No fence shall be constructed or erected without the prior approval of Declarant or its successors or designees. No fence shall be constructed, built or erected on any lot which exceeds six (6) feet in height. All fences shall be built or erected at least one foot from the property lines of such lot, after having obtained written approval for same from Declarant or its designee. It is further provided that no fence of any kind shall be constructed on any lots on the property in the front yard of such lot, said front yard being defined as that particular area of the yard located between the formal entrance of the residence and the street.

23. Any Liquid Propane Gas tank installed on a lot must be placed in the backyard and fenced or enclosed in a manner not visible from the front yard. The backyard portion of the premises being defined as that particular area of the yard located between the rear corner of the residence and the back or rear lot line.

24. All utilities must be placed underground.

25. No boats or other watercraft shall be permitted on any lot.

26. No above clotheslines or ground swimming pools will be permitted on any lot. No bicycle, skateboard ramps or other temporary or permanent recreational structures may be erected. This provisions shall not include a basketball goal.

27. No satellite dish or comparable communication device, except a small dish no larger than 18 inches in diameter to be placed in the rear of the lot, and no transmitting tower or antenna exceeding a height of twenty (20) feet from ground level, shall be placed, used or erected on any lot within the property, either temporarily or permanently, and same shall not be permitted to exist on the property.

28. The agreements contained herein shall not be construed as imposing any covenants and restrictions on any property of the owners of the subdivision other than those lots to which these protective and restrictive covenants specifically apply.

#### ARTICLE VII

##### WAIVER

No provision contained in these Restrictions, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

#### ARTICLE VIII

##### VARIANCES

The Board of Directors and the Committee in their sole discretion may allow reasonable variances and adjustments to these Restrictions in order to alleviate practical difficulties and hardships in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lot owned in fee by various persons with each such Owner having an easement upon areas owned by the Corporation. To be effective, a variance hereunder shall be recorded in the Pitt County Register of Deeds Office; shall be executed on behalf of the Corporation; and shall refer specifically to this Declaration.

#### ARTICLE IX

##### ~~AMENDMENT AND TERMINATION~~

Section 1: The Covenants and Restrictions contained in this Declaration shall run with and bind the land for the initial term set forth in Article VI, Paragraph 1, after which shall automatically extended for successive periods of ten (10) years. Declarant may amend this declaration in full or in part within the two year period after the date this instrument is filed without the required signatures required in the following sentence. This Declaration may be amended in full or part during the initial term by an instrument signed by not less than ninety percent (90%) of Lot Owners, and thereafter by an instrument signed by not less than seventy five percent (75%) of the Lot Owners, provided that no amendment shall alter any obligation to pay Community Expenses to benefit the Community Use Areas, as herein provided, affect any lien for the payment of same or alter any rights reserved herein by Developer. To be effective any amendment must be recorded in the Office of the Register of Deed of Pitt County, North Carolina and a marginal entry of same must be signified on the face of this document.

Section 2: Invalidation of any one of these covenants or Restrictions by judgement of court order shall in no way affect any other provisions which shall remain in full force and effect.

## ARTICLE X

### CAPTIONS

The captions preceding the various Article of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and the feminine.

## ARTICLE XI

### ASSIGNABILITY OF RIGHTS AND LIABILITIES

Developer shall have the right to sell, lease, transfer, assign, license, and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be liable or responsible to any party with respect to this Declaration.

## ARTICLE XII

### EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, 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 flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

## ARTICLE XIII

### GENERAL PROVISIONS

**Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Annexation.** Additional residential property and Common Area may be annexed to the Properties within fifteen years from the recordation of this instrument in the Pitt County Registry. The annexation shall be an instrument or amendment executed by the Declarant and recorded in the Office of the Register of Deeds of Pitt County, North Carolina.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands and seals, this the 14<sup>th</sup> day of August, 2007.

D AND I PROPERTIES OF NC, LLC

Clifford D. Dunn, Jr. (SEAL)  
Clifford D. Dunn, Jr., Manager

NORTH CAROLINA  
COUNTY OF PITT

I, Stephen F. Horne III, a Notary Public of the aforesaid County and State do hereby certify that Clifford D. Dunn, Jr., Manager, personally appeared before me this day and acknowledged that they are Managers of D and I Properties of NC, LLC and further acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial Seal this the 14<sup>th</sup> day of August, 2007.

STEPHEN F. HORNE, III  
NOTARY PUBLIC-PITT COUNTY, NC  
MY COMMISSION EXPIRES:

Stephen F. Horne III  
NOTARY PUBLIC  
Print Name Stephen F. Horne III  
My Commission Expires: 4-4-10

JOINDER AND CONSENT OF NOTEHOLDER, TRUSTEE AND BENEFICIARY  
KNOW ALL MEN BY THESE PRESENTS: THAT, WHEREAS,

(1) Branch Banking & Trust Company, hereinafter called the "Mortgagee" is the beneficiary under the hereinafter described Deed of Trust which encumbers the property subject to this Declaration and of which this Joinder and Consent is a part.

(2) The said Deed of Trust in which Mortgagee is beneficiary are more fully described and delivered by D and I Properties of NC, Inc. to BB&T - Virginia Collateral Service Corporation, Trustee for Branch Banking and Trust Company in the original amount of \$2,960,000.00 and recorded in Book 2372 Page 566 of the Pitt County Registry securing a first lien on the property therein.

(3) Mortgagee is requesting that BB&T - Virginia Collateral Service Corporation, Trustee, join with them in executing this Joinder and Consent in order to consent to the recordation of the Restrictive Covenants.

NOW THEREFORE, FOR AND IN CONSIDERATION of the premises, the submission of the property described herein to this Declaration, and other good and valuable consideration, the receipt and sufficiency of all of which consideration is herewith and hereby acknowledged, the said Mortgagee and their Trustee, BB&T - Virginia Collateral Service Corporation, hereby consent to the execution, delivery and recording of the foregoing Declaration and join in the said execution, delivery and recording of said Declaration without representation or warranty of any type as to the matters and things therein contained.

BRANCH BANKING AND TRUST COMPANY,  
A Virginia State banking corporation

By [Signature]

Name: David W. Williams

Title: Senior Vice President

BB&T - Virginia Collateral Service Corporation.,  
A Virginia corporation

By [Signature]

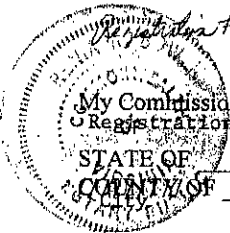
Name: Mark Smith

Title: Senior Vice President

STATE OF Virginia  
COUNTY OF Portsmouth  
City

I, a Notary Public of the aforesaid County and State do hereby certify that David W. Williams personally appeared before me this day and acknowledged that he is Senior Vice President of BB&T - Virginia Collateral Service Corporation, a Virginia corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Senior Vice President.

Witness my hand and Notarial Seal, this 14th day of August, 2007.



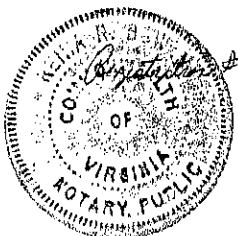
[Signature]  
NOTARY PUBLIC

My Commission Expires: 12/31/08  
Registration # 286870

STATE OF Virginia  
COUNTY OF Portsmouth

I, Renia R. Bowen a Notary Public of the aforesaid County and State do hereby certify that Mark Smith personally came before me this day and acknowledged that he/she is Senior Vice President of BRANCH BANKING AND TRUST COMPANY, A Virginia State banking corporation, and that he/she, as sr. Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and Notarial Seal, this 14th day of August, 2007.



[Signature]  
NOTARY PUBLIC

My Commission Expires: 12/31/08  
Registration # 286870