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KAREN GORDON

REGISTER OF DEEDS
BY: BETTY C CAMPBELL
DPTY

BK: RE 2829

PG: 1092-1135



Drafted By: Raymond D. Thomas – Box 20

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
HEARTHSTONE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and published this the _____ day of April, 2008, by and between HIGHMARK PROPERTIES, LLC, a North Carolina Limited Liability Company, having its principal place of business in Forsyth County, North Carolina (hereinafter called “Declarant”), and any and all persons, firms and corporations hereafter acquiring any of the within described property.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located on Union Cross Road in Kernersville, North Carolina, and further described in a deed to Highmark Properties, LLC recorded in Book 2666, Page 1033 and further shown on a plat recorded in Plat Book 53 at page

43, all of Forsyth County Registry. The Declarant has caused the property described in said deed and shown of said plat to be subdivided into lots for a subdivision known as "HEARTHSTONE" recorded in Plat Book _____, Page _____, Forsyth County Registry (hereinafter called "Hearthstone" or the "Property").

WHEREAS, Declarant intends to develop the Property into a high quality, residential subdivision. All improvements in the subdivision will be constructed from the highest quality materials and with the highest quality of workmanship to create a unique community. The Declarant will form a Homeowner's Association to enforce and maintain the high quality of Hearthstone and to maintain certain amenities, which may include, but Declarant is not required to provide, an entranceway, entranceway signage, decorative street lighting, bio-filtration areas, perimeter berms, recreational park, easements thereto and such other Open Spaces and amenities that the Declarant or the Homeowner's Association may provide for the general welfare and recreation of the owners; and

WHEREAS, it is in the best interest of the Declarant, as well as to benefit, interest and advantage of each and every person or other entity hereafter acquiring any of the said lots that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed, set forth and declared to be covenants running with the land; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the real property in the development, and to provide for the continued maintenance and operation of the Open Spaces as may be provided herein; and

WHEREAS, it is the Declarant's goal to develop Hearthstone to create an environment for a high quality neighborhood where the houses will maintain a high resale value, where the

neighborhood will be a desirable place to live, and where the landscaping of each lot will be partially maintained as a common expense of the Homeowner's Association. To accomplish this goal, all aspects of the development of the Property must be coordinated such that there will be harmony between the architectural design, the landscaping, signage, lighting, fencing, and all other aspects of the improvements as they fit into the landscape of the Property. The location, design, and exterior appearance of the houses, landscaping, and other improvements on each Lot will be made with the intention that the improvements will blend with and accent the image of Hearthstone. The harmony of the development and the requirement of the highest quality of materials and workmanship for all improvements on the Lots and Open Spaces will benefit all Owners and enhance the value of each Owner's Lot; and

WHEREAS, the Association shall be responsible for the maintenance and repair of a bio-filtration area pursuant to the Watershed Protection Ordinance (hereinafter "Ordinance") enacted by the Town of Kernersville (hereinafter "Town") for the purpose of storm water control which will benefit the Lots and the Open Space. Pursuant to the Ordinance, the Association shall be responsible for maintaining and repairing the bio-filtration area, or if the Association is dissolved, then all Owners shall be jointly and severally liable for such costs.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with any and all persons, firms, corporations or other entities hereafter acquiring any of the Property, which is a part of the development, that the same shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments, and liens (all hereinafter collectively referred to as "Restrictions") relating to the use and occupancy thereof, said Restrictions to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and which shall inure to

the benefit of each Owner thereof. Every person or other party hereafter acquiring any of the Property made subject to this Declaration, by acceptance of a deed or contract for deed or other conveyance of any interest in or to the Property, whether or not it shall be so expressed in any such deed, contract for deed, or other conveyance, and regardless of whether the same shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take such property interest subject to this Declaration and to the terms and conditions hereof and shall be deemed to have consented to same.

ARTICLE I

Definitions

The following words when used in this Declaration or any supplemental declaration hereto (unless the context clearly prohibits such a meaning) shall have the following meaning:

Section 1. “Amenities” shall mean the facilities constructed, erected, installed or set aside on the Open Space for the use, benefit and enjoyment of the Members.

Section 2. “Association” shall mean and refer to the Hearthstone Homeowner’s Association, Inc., a nonprofit corporation, organized and existing under the laws of the State of North Carolina, its successors and assigns.

Section 3. “Bio-filtration cell easements” shall be those areas set aside as shown on the Plat in which devices are constructed and maintained to meet the Kernersville Watershed Ordinance.

Section 4. “Board of Directors” or “Board” shall mean those persons elected or appointed to act collectively as the Directors of the Association.

Section 5. “By-Laws” shall mean the By-Laws of the Association as they now or hereafter exist.

Section 6. “Committee” shall mean and refer to the Architectural Committee as described in Article VI.

Section 7. “Open Space” shall mean and refer to any and all real property subject to this Declaration which is defined and bounded by properly referenced and recorded plat(s) designated thereon as “Open Space(s)”, “Open Space”, “Common Open Space”, “Common Elements”, “Landscape Easement(s)”, “Sign Easements,” “Access Easement”, and “Drainage Easements”, created by the Declarant to provide landscaping of certain areas contained within a Lot(s) and access to enter such Lot(s) for care and maintenance of the landscaping, bio-retention cell easement, storm water drainage utilities, signage, or any area that is set aside for the general use of the Members. Open Space(s) and Open Space shall include all real property and easement interest owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association, which may include but is not limited to, entranceway, decorative street lights, bio-retention cell easements, perimeter berms, recreational park, entranceway signage, and easements thereto. (It is understood that this list of possible amenities is only for descriptive purposes and the Declarant is not obligated to construct any of said amenities.)

Section 8. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to Hearthstone and which is recorded in the Forsyth County Registry.

Section 9. “Declarant” shall mean and refer to Highmark Properties, L.L.C., a North Carolina Limited Liability Company, its successors and assigns.

Section 10. "Lot" or Lots" shall mean and refer to any plot of land within Hearthstone whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on a plat or plats for Hearthstone, or amendments thereto, recorded in the Forsyth County Registry. The Open Space or Common Area is not a Lot.

Section 11. "Member" shall mean and refer to any person or other entity that holds membership in the Association.

Section 12. "Ordinance -2006-07" shall mean that Ordinance passed and Special Use District Permit issued by the Board of Alderman of the Town of Kernersville on March 7, 2006 relating to the development of Hearthstone in Zoning Docket K-652 and any amendments thereto.

Section 13. "Owner" shall mean and refer to the Record Owner, whether one or more persons or entities, of the fee interest in any Lot in the development, excluding however, those parties having such interest merely as a security interest for the performance of an obligation.

Section 14. "Person" shall mean and refer to a natural person, as well as a corporation, partnership, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

Section 15. "Plat" shall mean the Final Plat – Hearthstone as recorded in Plat Book _____ at page _____ in the Office of the Register of Deeds for Forsyth County, North Carolina.

Section 16. “Residence”, “dwelling”, or “building” shall mean and refer to any building or portion of a building situated on any Lot which is designed and intended for use and occupancy as a residence by a single family unit.

Section 17. “Ordinance” shall mean the Watershed Protection Ordinance of the Town of Kernersville as the same shall exist as of this date and amendments thereto.

ARTICLE II

Properties Subject to This Declaration

The property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Kernersville, Kernersville Township, Forsyth County, North Carolina, and is more particularly described as the Hearthstone subdivision as shown on the aforesaid plat.

ARTICLE III

Association Membership and Voting Rights

Section 1. Membership.

(a) Every person or entity who is a Record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, subject to and bound by the Association’s Articles of Incorporation, By-laws, rules and regulations. The foregoing is not intended to include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation. Ownership of record of such Lot shall be the sole qualification for membership. When any Lot is owned of record in tenancy by the entirety, joint tenancy, or tenancy in

common or by some other legal form of multiple ownerships, the membership (including the voting power arising therefrom) shall be exercised only as stipulated in Section 2 herein below.

(b) During any period in which a Member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights and right to the use of the Open Spaces or any other facilities which the Association may provide may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any rules or regulations established by the Board of Directors, such Member's voting and use rights may be suspended by the Board of Directors after a hearing at which the general requirements of due process shall be observed. Such hearing shall only be held by the Board of Directors (or a committee thereof) after giving the Member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of violation shall be made by a simple majority vote of the Board of Directors or a committee thereof.

(c) No membership fee shall be charged, nor shall Members be required to pay at any time any amount to carry on the business of the Association except to pay when due the charges, assessments and special assessments levied upon each Member's Lot as specified in the Declaration or as the Members of the Association may from time to time hereafter adopt.

Section 2. Voting and Voting Rights.

(a) The voting rights of the membership shall be appurtenant to the ownership of Lots. The ownership of each Lot by a person other than Declarant shall entitle its Owner to one vote. The Association shall have two classes of voting membership:

(1) Class A. Class A Members shall be all Owners, other than Declarant; however, Declarant shall be a Class A Member to the extent provided in subparagraph (2) hereinafter. Class A Members shall be entitled to one vote for each Lot owned.

(2) Class B. The Class B Member shall be the Declarant, and it shall be entitled to two (2) votes for each Lot in which it holds a fee or undivided fee interest; provided that 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) Four (4) months after the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, except as provided in sub-paragraph (b) of Section 2 below; or

(ii) On July 15, 2011.

(b) Notwithstanding anything in sub-paragraph (a) of Section 2 above to contrary, the Declarant shall retain all voting rights for all Lots for a period of one (1) year from date of closing of the first sale of a Lot by the Declarant to the first Owner or the first Owner's builder. It is the intent of this paragraph that the Declarant will retain complete control of the Association for the said one (1) year period.

If, at the end of the first year from the date of the closing of the first sale of a Lot by the Declarant to the first Owner or the first Owner's builder, two-thirds (2/3) of the Lots have not been sold to Owners or to Builder(s), then, and in that event, the two classes of voting membership and the voting rights shall be as set forth in sub-paragraph (a) of Section 2 above.

Regardless of whether or not the Declarant still controls the Association as provided above, the Association dues from the Owner shall still begin to accrue from the date of closing the purchase of the Lot by the Owner as provided in Section 1 of Article V.

(c) When two or more persons hold an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by one of such persons as proxy and nominee for all persons holding an interest in a Lot and in no event shall more than one (1) vote be cast with respect to any Lot (except with respect to Lots owned by Declarant), nor shall any fractional vote be cast.

(d) Any Member who is delinquent in the payment of any charges duly levied by the Association against a Lot owned by such Member shall not be entitled to vote until all such charges, together with such reasonable penalties as the Board of Directors may impose, have been paid.

(e) Members shall vote in person or by proxy, executed in writing by the member. No proxy shall be valid after eleven (11) months from the date of its execution or upon conveyance by the Member of such Member's Lot. A corporate Member's vote shall be cast by the President of the Member Corporation or by any other officer or proxy appointed by the President or designated by the Board of Directors of such corporation, which designation must, if requested by the Association, be in writing.

(f) Voting on all matters except the election of Directors shall be by voice vote or by show of hands unless a majority of the Members present at the meeting shall, prior to voting on any matter, demand a ballot vote on that particular matter. Where Directors or officers are to be elected by the Members, the solicitation of proxies for such elections may be conducted by mail.

ARTICLE IV

Open Space Property Rights

Section 1. Use of Open Space. Every Owner (by virtue of membership in the Association) shall have a nonexclusive right and easement of enjoyment in and to the Open Space which shall be appurtenant to and shall pass with the title for every Lot, subject to the provisions of this Declaration, the Charter and the By-laws of the Association, and the encumbrances referred to in Section 3 hereof, and the following:

(a) The right of the Association to limit the use of the Open Space to Owners, their families and guests.

(b) The right of the Association to suspend the voting and enjoyment rights of an Owner for any period during which any dues, charges, assessments (regular or special) against the Owner's Lot remains unpaid, or for any infraction of the Association's published rules and regulations.

(c) The right of the Association to mortgage, to dedicate or to transfer any part of the Open Space to any public agency, authority, utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members of this Association as applicable in accordance with the terms and provisions of this Declaration. No such mortgage, dedication or transfer shall be effective unless approved by Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance of the vote. The instrument effecting such dedication, transfer or conveyance shall be sufficient if it is executed by appropriate officers of the Association and contains a recital of the approval of the Members.

(d) The right of the Association to formulate, publish and enforce rules and regulations as provided in Article VI, and to formulate, publish and enforce rules and regulations governing the use and activities permitted on or around any areas designated as Open Space.

Section 2. Delegation of Use. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family, and an Owner may delegate his rights of enjoyment in the Open Space to his or her tenants or contract purchasers who occupy the dwelling of the Owner within the Property.

Section 3. Title to the Open Space. The Declarant hereby covenants that it will convey fee simple title to the Open Space shown on the aforementioned recorded Plat to the Association, free and clear of all encumbrances and liens, except utility, and drainage easements and easements to governmental authorities and maintenance lien as required by the Ordinance.

Section 4. Parking and Use Regulations for Boats. Trailers. etc. The Association will not permit parking on the Open Space, except for authorized maintenance vehicles. No boats, trailers, motor homes, recreational vehicles, or trucks shall be parked within the right-of-way of any public or private street in or adjacent to this development.

Section 5. Antennas and Satellite Dishes. The Association may regulate or prohibit the erection of any type of antennas, including but not limited to, CB, TV, Video, and Short Wave, on any Open Space or Common Area. Any such various antenna installations on any Lot must be approved by the Association and must not be visible from the street or from any other lot as provided in Paragraph (o) of Section 3, Article VI.

Section 6. Repair and Maintenance of Open Space and Bio-Retention Cells.

The management, replacement, maintenance, repair, alteration, and improvement of the Open Space shall be the responsibility of the Association, and the cost thereof shall be a common

expense. In addition, the Association shall be responsible for the maintenance of bio-retention cells and devices pursuant to the Watershed Protection Ordinance (hereinafter "Ordinance") enacted by the Town of Kernersville (hereinafter "Town") for the purpose of storm water control which will benefit the Lots. Pursuant to the Ordinance, the Association shall be responsible for maintaining the completed permanent bio-filtration devices as directed by the Watershed Administrator for the Town of Kernersville. In the event that the Association should be dissolved, or cease to exist, then in that event, all Owners at the time of the required maintenance shall be jointly and severally liable for any and all costs attended thereto. .

Section 7. Landscaping Requirements. It is acknowledged that any trees planted with the right of way of a public street within Hearthstone shall be subject to the terms and conditions of Ordinance -2006-07 which is incorporated by reference and is on file in the Office of the Clerk of the Board of Alderman of the Town of Kernersville. It shall be the primary responsibility of the Association to abide by Ordinance 2006-07. In the event that the Association should be dissolved, or cease to exist, then in that event, all Owners shall be jointly and severally liable for abiding by said Ordinance 2006-07.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Annual Assessment for Maintenance Fund. For each Lot owned within Hearthstone, the Owner covenants and agrees, and each subsequent Owner of any such Lot covenants and agrees, that by acceptance of a deed therefore, whether or not it is so expressed in such deed, the Owner will pay to the Association the assessments and charges provided for in this Declaration, as follows:

- (a) Annual assessments or charges in the amount hereinafter set forth.
- (b) Special assessments as approved by the Association to be established and collected as hereinafter provided.

The annual assessment provided for herein for the Association shall be payable in advance on an annual basis by every Owner of each Lot, unless the Association decides by a majority vote to have the assessment payable monthly. The annual assessment shall be due on January 1 of each year, except for the first year of ownership by an Owner. At the closing of the purchase of a Lot by an Owner, the assessment shall begin to accrue and the Owner shall pay to the Association the Owner's pro rata share of the annual assessment for the remainder of the calendar year.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to provide funds for such purposes and common expenses as are for the benefit of the Owners of Lots within the areas overseen and administered by the Association, which purposes may include, but are not limited to, maintenance, replacement, repair, insurance, landscaping and beautification of the bio-retention cells and devices, other landscaping areas and the Open Space, which shall specifically include the payment of electric bills for decorative street lighting whether or not such lighting is installed in the Open Space or along or in the public or private streets. Funds may also be used to provide other services to promote the health, safety and welfare of the residents of the community and in particular for the acquisition, improvement and maintenance of the properties, services and facilities related to the use and enjoyment of the Open Space, 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 against all Open Space; the procurement and maintenance of insurance; the

employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the employment of security personnel to provide any service which is not readily available from any governmental authority; and such other needs as may arise. Any additional uses and purposes for assessments may be adopted by an amendment to this Declaration, as provided in Article X herein.

Section 3. Creation of the Lien and Personal Obligation of Assessment. In accordance with the terms and provisions hereof, and in order to secure payment at and after the due date, as each assessment becomes due, there shall arise a continuing lien and charge against each Lot, the amount of which shall include costs and reasonable Attorneys' fees to the extent permissible by law. Each such assessment, together with such interest, cost and reasonable Attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 4. Exempt Property. The assessments, charges and liens created under this Article V shall not apply to the Open Spaces, nor shall they apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure; provided, however, that upon the resale of such Lot by such first mortgagee, the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the conveyance to any subsequent Owner. Such exemption shall further apply to any Lot which Declarant may hereafter designate for common use, either temporarily or permanently, as part of the Open Space or otherwise shall be exempt from the assessments and charges created herein. In addition, other than land and improvements devoted to dwelling use, all property dedicated to and accepted by a local public authority shall be exempt from the assessments, charges and liens created hereby.

Section 5. Annual Maintenance Assessments and Maximums.

(a) The annual maintenance assessment imposed by the Association shall be set each year by the Association as set forth herein.

(b) In establishing the annual assessment for any year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(c) Notwithstanding anything in this Article V to the contrary, Declarant shall not be required to pay any dues or assessments, special or otherwise, for a period of five (5) years from the date of the closing of the sale of the first Lot in the subdivision to an Owner other than the Declarant.

Section 6. Special Assessments.

In addition to the annual assessment imposed by the Association set forth above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any capital improvement, for repairs or replacement of any capital improvement, for repairs or replacement of any improvement on the Open Spaces, including the repair or replacement of the sidewalks, and private easements created by the Declarant to provide access to more than one Lot. Provided that any such assessment shall have the consent of two-thirds (2/3's) of the votes of all Owners of Lots not owned by the Declarant, at a meeting duly called for this purpose, written notice of which shall be sent to all Members in accordance with the provisions of the By-Laws for special meetings of the Association. Any special assessment passed by the Members shall not apply to the Declarant.

Section 7. Date of Commencement of Annual Assessment Due Dates; Certificate of Payment.

(a) The annual assessments provided for herein for the Association shall be payable on January 1 of each year. The assessment shall begin to accrue as to a Lot at the time of closing and conveyance of a Lot to an Owner other than the Declarant. At least thirty (30) days before January 1 of each year, the Board of Directors shall establish the amount of the annual assessment imposed by the Association against each Lot and in the event the Board of Directors elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed assessment rate shall be sent to every Owner by the Association.

(b) 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 (either annual or special or imposed by the Association) on a specified Lot have been paid to date.

Section 8. Effect of Nonpayment of Assessment: 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 maximum legal rate and to the extent allowed by law. The Association or its agents or representatives, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of any of the Open Space or abandonment of his or her Lot.

Section 9. Subordination of the Lien to Ad Valorem Taxes and Mortgages. The liens provided for herein on any Lot shall be subordinate to the lien of ad valorem taxes and subordinate to the lien of any first or second lien deed of trust (sometimes hereinafter called “mortgage” and the holder thereof being sometimes hereinafter referred to as a “mortgagee”). Sale or transfer of any Lot shall not affect any assessment lien; provided however, the sale or transfer of any Lot which is subject to any mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding in lieu of foreclosure thereof shall extinguish the lien of such assessment, fees, fines, or other charges, as to payments which became due prior to such sale or transfer, but the Association shall have a lien upon the proceeds from the foreclosure sale, junior only to the said foreclosed mortgage. No foreclosure sale or transfer in lieu of foreclosure shall relieve such Lot from liability for any assessment, fees, fines, or other charges thereafter becoming due or from the lien thereof, except as provided in Section 4 of this Article V.

Section 10. Collection of Assessments. The Association shall promptly collect all assessments due from Owners pursuant to the terms and provisions hereof.

ARTICLE VI

Architectural Control, Inspection and Use Restrictions

Declarant shall have the responsibility of enforcing the restrictions set forth in this Article prior to the formation of the Committee which, upon election by the Members, shall assume and be responsible for enforcement of these restrictions. References in this Article to “Committee” shall mean “Declarant” until the Committee is elected and references to “Declarant” shall mean “Committee” once it is appointed. The following architectural restrictions shall apply to each and every Lot now or hereafter subject to this Declaration.

Section 1. Approval of Plans and Architectural Committee.

(a) No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, dwellings, landscaping, fences, walls, signs, antennas, mailboxes, post lamps, and other structures, shall be undertaken upon the Lots unless the plans and specifications therefore, showing the nature, kind, shape, height, materials, color and location of the proposed improvements on the Lot, including but not limited to, the house, decks, garage, driveway, parking areas, plants, shrubs, trees (including trees to be removed), and any other permanent structures or changes to be made to the Lot, shall have been submitted to the Committee and expressly approved by the Committee in writing. No outbuildings will be permitted on any lot. Mailboxes and fencing will be uniform and of a type and design specified by the Committee. No fencing or other structure shall be erected on any Lot in a manner or location which impedes the engineered Storm Water Drainage Paths to the Bio-Retention cells. Fencing alongside Union Cross Road shall be of uniform type in design and architecture. Planters, yard art and any other non-permanent exterior structure will require prior written approval by the Committee. No subsequent alteration or modification which will result in an exterior structural change to the dwelling or significant change to the landscaping may be undertaken on any of the Lots without the prior review and express written approval of the Committee.

(b) In the event that the Committee fails to approve or disapprove the site or design of any proposed improvements within sixty (60) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted, shall not be deemed to have been received by the Committee if they

contain erroneous data or fail to present adequate information upon which the Committee can arrive at a decision.

(c) For purposes of Section 1, subparagraph (b) above, and for so long as the Declarant constitutes the Committee, the plans and specifications will not be deemed to have been "received" unless the Declarant acknowledges in writing such receipt or, in the alternative, the plans and specifications are sent by certified or registered mail to the Declarant, and a return receipt is received acknowledging the receipt thereof.

(d) The Committee shall have the right, at its election, to enter upon the Lots during site preparation or construction, erection or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing standard industry methods and good quality materials.

(e) The approval of any such plans, specifications or other items submitted to the Committee pursuant to this Article VI shall not impose any liability or responsibility on the Committee or the Association with respect to either the compliance or non-compliance of any such plans, specifications or other items (including any improvements or structures erected in accordance therewith) with applicable zoning ordinances, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations from defects in or arising from such plans, specifications or other items (including, without limitation, defects relating to engineering matters, structural and design matters and the quality or suitability of materials).

(f) For so long as Declarant owns a Lot in Hearthstone, or until such time as the Declarant notifies the Board of Directors in writing of its desire to have the Association elect the members of the Committee, the Declarant shall serve as the Committee, and shall exercise

the authority to approve plans and other matters set forth in this Article. After Declarant divests itself of all Lots within the Property, or so notifies the Association, the Committee shall be elected by a majority of the votes of the Members, cast in person or by proxy, at a meeting duly called for this purpose.

(g) The Declarant may develop certain architectural plans for houses in Hearthstone, and if an Owner selects one of the Declarant's plans for construction on the Lot, then the Owner will not have to have the plans and specifications approved by the Declarant, and the Owner will submit only a site plan showing the location of the improvements and the landscaping plan, and other matters required by paragraph (a) above.

(h) Because of the limited amount of street access and the anticipated number of residences which will be constructed within a relatively short period of time and to insure a high quality of construction of improvements on all Lots, and at the same time, control the disruption caused by the construction of residences to the rest of the subdivision as much as possible, the Owner's contractor or builder must be specifically approved in writing by the Declarant, which approval or disapproval may be made by the Declarant in its sole discretion. Once the initial residence and improvements are completed and occupied by the Owner, future re-modeling and/or additions, which have been approved by the Committee, can be constructed by a qualified contractor or builder of the Owner's own choosing.

(i) To insure that all of the construction of the first time residences within Hearthstone are completed, as nearly as possible, within the same time frame and to prevent the nuisance to neighbors of the dust, mud, noise and other problems associated with construction of houses within a neighborhood, once a Lot is purchased from the Declarant, the Owner must commence construction of the dwelling on the Lot within twelve (12) months of the Lot closing,

unless permission for time extension is granted in writing by the Declarant. "Commence construction", as used in this subparagraph, shall mean obtaining a building permit for the construction of improvements on the Lot and having construction activity occur on the Lot. Construction of the dwelling must be completed within twelve (12) months of commencement of construction, and "completed construction", as used in this subparagraph, shall mean the dwelling is ready for occupancy, all construction debris has been removed from the Lot, the certificate of occupancy has been issued, shrubs, trees and grass sod planted, grass seed sowed, and straw, pine straw, mulch or other covering applied to all disturbed areas.

(i) The exterior maintenance of the dwellings located on a Lot and other improvements constructed thereon, if any, shall be the duty and responsibility of the Owner of such Lot and shall not be the responsibility of the Association. If, however, in the opinion of the Board of Directors, any Owner fails to discharge his or her repair, maintenance or upkeep responsibilities in a reasonable and prudent manner to a standard that is harmonious with that of the other Lots in Hearthstone, the Board of Directors, at its discretion and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made maintenance work or repairs as may be deemed reasonably required by the Board of Directors. The Association, or its agents, shall have an easement for the purpose of accomplishing the foregoing. The costs incurred by the Association in rendering such services, plus a charge of twenty percent (20%) of such costs, shall be added to and become a part of the assessments to which such Lot is subject.

(k) The Declarant shall be solely responsible for the initial installation of the landscaping of the Open Space. Once said landscaping is installed, the care and maintenance of the landscaping of the Open Space shall be a common expense and the responsibility of the

unless permission for time extension is granted in writing by the Declarant. "Commence construction", as used in this subparagraph, shall mean obtaining a building permit for the construction of improvements on the Lot and having construction activity occur on the Lot. Construction of the dwelling must be completed within twelve (12) months of commencement of construction, and "completed construction", as used in this subparagraph, shall mean the dwelling is ready for occupancy, all construction debris has been removed from the Lot, the certificate of occupancy has been issued, shrubs, trees and grass sod planted, grass seed sowed, and straw, pine straw, mulch or other covering applied to all disturbed areas.

(i) The exterior maintenance of the dwellings located on a Lot and other improvements constructed thereon, if any, shall be the duty and responsibility of the Owner of such Lot and shall not be the responsibility of the Association. If, however, in the opinion of the Board of Directors, any Owner fails to discharge his or her repair, maintenance or upkeep responsibilities in a reasonable and prudent manner to a standard that is harmonious with that of the other Lots in Hearthstone, the Board of Directors, at its discretion and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made maintenance work or repairs as may be deemed reasonably required by the Board of Directors. The Association, or its agents, shall have an easement for the purpose of accomplishing the foregoing. The costs incurred by the Association in rendering such services, plus a charge of twenty percent (20%) of such costs, shall be added to and become a part of the assessments to which such Lot is subject.

(k) The Declarant shall be solely responsible for the initial installation of the landscaping of the Open Space. Once said landscaping is installed, the care and maintenance of the landscaping of the Open Space shall be a common expense and the responsibility of the

Association. The Declarant will install an irrigation system for the Open Space that contains any landscaping. The maintenance, repair and expense of the irrigation system for the Open Space, including the payment of the municipal water bill for the irrigation system, shall be a common expense of the Association. It shall be a requirement for approval of the Lot Owner's architectural plan that the front, rear and side yards of each Lot shall contain a water irrigation system capable of irrigating the front, rear and side yards to keep the grass from turning brown or dying during dry weather periods. The maintenance, repair and expense of the irrigation system for the front, rear and side yards of the Lot, including the payment for the municipal water bill for the irrigation system on each Lot shall be the sole expense of the Lot Owner. This requirement shall be subject to Ordinance as such irrigation system may effect the required bio-retention cells.

(1) The cost of installation of the irrigation system on each Lot, the seeding or sodding of each Lot and the landscaping on each Lot, including front, side and rear yard, shall be the sole expense of the Owner, but the Association, as a common expense, shall mow all of the grass on each Lot, including the front, side and rear yards. For purposes of this paragraph, the "front of the dwelling" shall mean the space located between the front facade of the dwelling and the street, the "sides of the dwelling" shall mean the space located between the dwelling and the neighboring dwellings, "rear yard" shall mean the space located between the rear facade of the dwelling and the rear property line and "maintain" shall mean the mowing of all grassy areas on the Lot. The cost of replacement of any trees, shrubs, flowers pine straw or mulch on the Lot shall be the cost of the Owner. If dead or diseased trees or shrubs are not promptly replaced to comply with the approved landscaping plan, the Association may contract to have the work done and charge the cost to the Owner. Any such unpaid charges shall be a lien

on the Lot and shall be a lien against the Lot in the same manner as the Association assessments and enforced as provided in Article V. Nothing contained in this paragraph shall change or remove the requirement for obtaining the approval of all landscaping and installation from the Committee. Because the mowing of the grass on each Lot is a common expense, the landscaping of the front, side and rear yards of all Lots will be as approved by the Committee, and the Owner will take no action or permit anything to exist in the front, side or rear yards of the dwelling which will hinder maintenance or increase the expense of mowing or maintaining the landscaping as required herein, or impede engineered storm drainage from the Lot.

Section 2. Rules and Regulations. The Board of Directors shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Open Space. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 3. Use Restrictions.

(a) All structures must be built to comply with ordinance and conditions as set forth on the recorded Plat, and to comply substantially with the plans and specifications as approved by the Committee, and before any house may be occupied it must be completely finished and a certificate of occupancy must have been issued by the local or state authority empowered to do so.

(b) All Lots shall be used for single-family residential use only. No building shall be erected, altered, placed or permitted to remain on any Lot, other than a detached, single family dwelling, not to exceed two (2) stories in height (exclusive of finished attic space or

basement) and a private garage for not more than three (3) automobiles which is contained within the single family dwelling. Any additional building such as attached garages, guest quarters, etc. of the same design and architecture as the primary dwelling and must be approved in writing by the Committee.

(c) No home shall be built on any Lot unless it contains livable floor space of at least 2,000 square feet for one-story homes, 2,200 square feet for one and a half story homes, and 2400 square feet for two story homes. The living area floor space herein referred to shall be exclusive of garages, porches, breezeways, terraces and basement areas. Said measurements are to be measured from the outside wall lines. In addition, the exterior of all homes shall be a minimum of seventy percent (70%) stucco, brick, stone or a combination thereof.

(d) It is intended that all garages, whether main level or basement level, shall have decorative architectural doors. All driveway and garage entries for lots twenty-three (23) through thirty (30), inclusive, must access from the 30' Public Right of Way as shown on the Plat.. Lots twenty-three (23) through thirty (30), inclusive, will not be permitted front driveway access from "Old Stone Lane". Garage doors shall remain closed at all times when not being immediately used for entry or exit from the garage. Garage doors must be habitually closed.

(e) In addition, the Owner of each lot shall be responsible for such grading and the completion of other requirements, including the removal of unauthorized plants, fences and other items as required by the Town of Kernersville or such other governmental agency which might take over the maintenance of said streets of that portion of each lot so owned bordering on any street including the area within the right-of-way of any such street in order that the street may be accepted as an addition to the street system of the Town of Kernersville or the street system of any governmental agency having jurisdiction of this subdivision. In the event, after having been given written notice of such requirements by certified mail, return receipt requested (the mailing of such

notice to the correct mailing address shall constitute notice hereunder), the Owner of any lot shall not complete or remedy the requirements of the Town of Kernersville or such other governmental agency within sixty (60) days of the date of mailing such notice, by the Declarant or the Association, then in that event, the Declarant or the Association may file a civil action against the lot Owner or Owners who have failed to act and shall be entitled to recover damages for the costs of such compliance with the requirements and further shall be entitled to the costs of such action, including attorney's fees charged. Any sums recovered shall constitute a lien upon the property of the lot Owner responsible hereunder for said compliance in the same manner as a lien for any assessment set forth in Article V, Section 3 and Section 8 as herein set forth.

(f) No permanent structures shall be erected having exposed exterior walls of concrete block, and all driveways must be at least twelve (12) feet wide and paved with either concrete slab or brick pavers.

(g) No Lot shall be used as a street or other type of access for any adjoining tracts of land which are not a part of the Property.

(h) All setback requirements shall be as required by applicable zoning unless otherwise designated on the recorded plat(s).

(i) No business, profession, professional clinic or other trade or business activity shall be carried on upon any Lot or in any building erected thereon except, a Lot Owner may use one room of the residence as a home office, provided there is nothing visible from outside the residence to indicate a room is being used as an office; there are no business clients or members of the general public coming to the residence because of the business being conducted in the residence; and there is nothing being be done in the residence which may be or become an annoyance or nuisance to the neighborhood.

(j) No trailer, recreational vehicle, tent, shack, garage, barn or other outbuilding erected on the Lots shall be used at any time as a residence, temporarily or permanently, or shall any other structure of temporary character be used as a residence. This restriction shall not apply to construction trailers used during the construction of improvements on the Lot.

(k) No stable, barn, or out building shall be erected or allowed to remain on any Lot for domestic animals. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any Lot, except standard household pets which may be kept thereon in reasonable number as pets for the sole pleasure and purpose of the occupants but not for any commercial use or breeding purpose. Any standard household pets which are permitted by this paragraph shall be kept primarily within the residence and shall not be housed outside of the dwelling. No housing, cages or enclosures shall be located on any Lot for purposes of housing or restraining such pets. No pets shall be permitted in or upon the Open Spaces unless restrained by a leash. The walking of any pets on streets, Open Space or Lots belonging to others for the purposes of allowing pets to relieve themselves of bodily wastes is prohibited and each pet owner is responsible for retrieving any excrement deposited by his or her pet in the event of unintentional depositing of such waste.

(l) No property in the subdivision shall be used for the sale of any items, other than typical garage sales, including motor vehicles, nor shall inoperable or unlicensed motor vehicles, motor vehicles which are not used on a regular basis, or other debris, trash or storage items be allowed to accumulate or to remain outside on any Lot of the subdivision, or shall any maintenance of any motor vehicle be permitted on the exterior of any property except

in the case of emergency repairs. Notwithstanding the foregoing, washing and vacuuming of personal operable vehicles of the residents of each Lot is allowed.

(m) Declarant reserves an easement for, and the right at any time in the future to grant, rights-of-way for the installation and maintenance of public utilities across, on or under any Lot along the front, rear and side property lines, but such rights-of-way must be used so as to interfere as little as possible with the use of the Lot by its Owner. Further, there is reserved on behalf of Declarant and the standard utility companies for electricity, telephone, cable, natural gas, water and sewer and any other standard utility company which has been approved by the Committee, an easement to enter upon the premises to maintain, repair, or modify existing or future underground facilities, and the Owners, or their successors in title to said Lots, shall in no way interfere with said facilities, or dig up, cut or tamper with said facilities except at their own peril and in violation of the rights of said utility companies. No public utility company or governmental entity or agency shall obtain any right in the easement reserved herein without an express written and recorded grant thereof by Declarant. The Property subject to this Declaration is served by various underground public utility facilities. Service to structures erected thereon shall be connected to the underground facilities at the pedestals, meter saddles or taps provided for this purpose.

(n) Decorative fencing of good quality and uniform design and color may be erected, but the quality, style, color, and location of said fencing must be as specified and approved by the Committee. Fencing must be maintained in a good state of repair and must not impede lawn maintenance by the Association nor interfere with engineered storm runoff across the Lots.

(o) No communications or television receiving dish, antenna or similar item may be erected or placed on any Lot or on any building on any Lot, except a satellite dish of no greater than twenty four inches (24") in diameter. Before installing a satellite dish of no greater than twenty four inches (24") in diameter, the Lot Owner must locate the dish in the rear yard area and screen the dish such that the dish is not visible from any Lot, the street or any Open Space. The screening for the dish must be approved by the Committee.

(p) Any and all equipment, coolers, woodpiles, garbage cans, refuse or storage piles placed on a Lot (whether temporary or permanent) shall be screened to conceal same from the view of adjoining Lots, roads, streets, or Open Spaces. Plans for all screens, walls and enclosures must be approved by the Committee prior to construction. Temporary dumpster type refuse containers are permitted during construction. Notwithstanding the foregoing, all roll out sanitation collection containers for use for Lots 1 through 24 shall be placed on the outside of Old Stone Lane for collection, and shall be removed therefrom within 24 hours after collection.

(q) No leaves, trash, garbage or other similar debris shall be burned on any Lot. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of the Lot, except as is temporary and incidental to the bona fide improvement of any portion of the Lot.

(r) No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot except for the purpose of construction on such Lot or for the purpose of staging materials for construction of improvements on other Lots if the Declarant designates the Lot as a staging area for such construction materials. In either event, such materials shall not be stored on

the Lot for longer than the length of time reasonably necessary for completion of the improvement(s) in which same is to be used.

(s) No exposed above-ground tanks will be permitted for storage of fuel or water or any other substance.

(t) No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

(u) No outside toilet facility may be constructed or maintained on any Lot except during construction of improvements on any Lot.

(v) Outside clotheslines and other such clothes-handling devices will not be permitted.

(w) Declarant must approve and will have installed, at the Owner's expense, the initial mailbox for each Lot, all such mailboxes being of uniform style, color, etc. All future mailboxes must be of the same design, construction and color and in the same location unless the changes in design or location are approved by the Committee.

(x) No sign of any kind whatsoever shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvement thereon, except for the Declarant's signage or the Declarant's agents', or Builders "for sale" signs (no subcontractor's signs or Lot lender's signs shall be allowed) for first time sales. Thereafter, only the usual and customary "for sale" signs will be allowed.

(y) No house trailer, boat, boat trailer, camper, trailer, vessel, motorcycle or other recreational vehicle shall be permitted on any Lot unless such trailer, boat, camper, motorcycle or other vehicle is kept within the garage with the garage door closed and not visible

from any adjoining Lot or Lots, streets and Open Spaces. It is the intention of this restriction to prevent the parking of any vehicles in the parking area of the Lot other than the Owner's or the Owner's invitees' passenger automobiles, SUV's and pickup trucks. No vehicle which contains any commercial printing or signs on the vehicle may be parked on a Lot unless it is either parked within a closed garage or is temporarily parked on the Lot by an invitee of the Owner.

(z) All motorized vehicles operating on any Lot, Open Spaces and streets of Hearthstone must have proper mufflers so as to eliminate noise which might be offensive to others. Minibikes and similar two, three, or four-wheeled recreational vehicles are prohibited from being used or operated on or within the Property, unless the prior written consent of the Committee is first secured.

(aa) No temporary structure or storage building shall be permitted on any Lot. No garage, outbuilding or other appurtenant structure shall be used for residential purposes, either temporary or permanently, except for a finished room or rooms which are a part of the attached garage, without the written consent of the Committee.

(bb) Trees may be removed, when necessary, for the construction of driveways and dwellings or if located within six (6) feet of the foundation of the house or garage or swimming pool. All other trees over four (4) inches in diameter measured eighteen (18) inches from the surface of the ground shall be retained unless their existence creates a hazard to the property.

(cc) The use restrictions set forth in this Section 3 listing those items which may not be maintained on a Lot shall not apply to Lots during the period of construction of the dwelling unit upon the Lots. As soon as a dwelling unit has been completed on a Lot, these use restrictions shall immediately apply to the Lot.

Section 4. Hobbies and Activities. The pursuit of hobbies or other inherently dangerous or unsightly activities including, but without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions, and the shooting of firearms, fireworks or pyrotechnic devices of any type or size. Any such activities shall not be pursued or undertaken on any part of any Lot or the Open Spaces without the consent of the Board of Directors.

Section 5. Nuisances and Unsightly Materials. Each Owner shall refrain from any act or use of their Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood at the discretion of the Board of Directors. No noxious, offensive or illegal activity shall be carried on upon any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever; nor shall any substance, thing or material be kept upon any Lot which will emit foul or noxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside an enclosed, covered structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for pickup by garbage and trash removal service units. Temporary trash receptacles must be retrieved from the street within twenty-four (24) hours following pickup by the disposal company. Each Owner shall maintain the improvements on the Lot in a neat and orderly manner. In the event any Owner of any Lot fails or refuses to maintain the improvements on the Lot in a neat and orderly manner or to keep the Lot from accumulating any of the foregoing unsightly items or weeds or underbrush, the Association may, at its option, ten (10) days after posting a notice thereon or mailing a notice to said Owner at his property address requesting Owner to comply with the requirements of this Section, enter and remove all

such unsightly items and growth at said Owner's expense, and Owner shall be personally liable to the Association for the costs of removal, and the said costs, until paid, shall be a permanent charge and lien upon such Lot, enforceable to the same extent and collectible as provided for in Article V, entitled "Covenants for Maintenance Assessments". By acquiring property subject to these restrictions, each and every Owner agrees to pay such costs promptly upon demand by the Association, or the Association's agents, assigns, or representatives. No such entry as provided in this Section shall be deemed a trespass. The provisions of this Section shall not apply to Lots upon which residences are under construction.

Section 6. Governmental Regulations. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions and other regulations applicable to their Lot. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 7. Other Prohibitions or Requirements.

(a) No vent or other pipes or appendages may extend from the front of any dwelling, unless screened from public view by a screening material or shrubbery approved by the Committee.

(b) Any exterior air-conditioning or heating equipment must be screened from public view by a screening material or shrubbery approved by the Committee.

(c) Downspouts and gutters must be so constructed so as not to promote the erosion of the soil of any Lot.

(d) Any outdoor lighting must be shielded so as to cast no direct light upon adjacent Lots, or into the street.

ARTICLE VII

Easements

Section 1. Walks, Drives, Parking Areas and Utilities. All of the properties, including Lots and Open Space, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the properties to this Declaration by the Declarant or its predecessors in title. The Association shall have the power and authority to grant and to establish in, over, upon, and across the Open Spaces conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the properties.

Section 2. Bio-Retention Cell Easements and Access Easement. The Declarant reserves for itself and designated assigns, the Association, four (4) bio-retention cell easements as set forth on the Plat and being designated as follows:

- Bio-Retention Cell Easement #1 located on Lots 17,18,19,20, and 21;
- Bio-Retention Cell Easement #2 located on Lot 12;
- Bio-Retention Cell Easement #3 located on Lot 7;
- Bio-Retention Cell Easement #4 located on Lots 1 and 2.

The Declarant reserves for itself, it's designated assigns, including the Association, and the Town of Kernersville access easements to and from the applicable Bio-Retention Cell Easement to and from a public road as shown on Lots 11 and 12 for access to Bio-Retention Cell #2 and Lots 6 and 7 for access to Bio-Retention Cell #3. Access to Bio-Retention Cell Easements #1 and #4 shall be from Union Cross Road, and for the sole use of the Declarant, it's designated assigns, the Association and the Town of Kernersville. All access easements are for the purpose of the installation, constructions, maintenance and repair of the bio-retention cells to comply with the Watershed Ordinance of the Town of Kernersville or such other governmental agency

responsible for the upkeep and maintenance of the bio-retention cells as required by said Ordinance. The maintenance, repair and replacement of any materials within the bio-retention cell easement shall be the sole expense of the Association. Lot Owners who's Lots are affected by any of the bio-retention cell easements and the access thereto will take no action to change, interfere with or prohibit the installation, repair, and maintenance of the bio-retention cells or the access thereto. In addition, no fencing or other structure shall be erected on any Lot in a manner or location which impedes the engineered Storm Water Drainage Paths to the Bio-Retention cells.

Section 3. Easement For Identification Sign.

The Declarant reserves unto itself and for the Association a non-exclusive access easement for the construction, maintenance, upkeep and beautification of the entrance identification sign on Lot 1 and Lot 22 as shown on the Plat.

Section 4. Utilities and Drainage. All utility lines of every type, including but not limited to water, electricity, natural gas, telephone, sewage and television cables, running from the main trunk line or service locations must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, across, over and under the ground to erect, maintain, replace and use water, sewer, electric and telephone systems, wires, cables, and conduits for the purpose of bringing public services, including television cable service, to the Lots and Open Space, said easement to be within (i) ten (10) feet of each lot line fronting on a street and (ii) twenty (20) feet along the rear line of each lot, (iii) the rights of way of any street or road shown on any recorded plat(s) of the Property, and (iv) such other areas as are shown on any recorded plats of the Property; provided further, that the Declarant or Association may cut, at its own expense, drain ways for surface water wherever

and whenever such action is reasonably required in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 5. Emergency. There is hereby reserved without further assent or permit, a general easement over the private streets and Open Space to all policemen and security guards employed by Declarant or the Association, firemen, ambulance personnel and all similar law enforcement and emergency personnel to enter upon the Property, or any property or portion thereof which is now or hereafter made subject to this Declaration, in the performance of their respective duties.

ARTICLE VIII

Insurance

Section 1. Fidelity Insurance Coverage. As a part of the common administration expense of the Association, the Association may provide for fidelity coverage against dishonest acts on the part of the officers, directors, management, contractor, employees or volunteers responsible for handling funds belonging to or administered by the Association at the discretion of the Board of Directors. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount set by the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any person or persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. If requested by an Owner or mortgagee, such policies shall additionally provide that the policies

cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice to all who have requested such notice.

Section 2. Other Insurance. The Board of Directors may purchase and maintain in force as a common expense, liability insurance, debris removal insurance, plate glass or other glass insurance, fidelity bonds and other insurance or bonds that it deems necessary. The Board of Directors shall purchase and maintain workmen's compensation insurance to the extent that the same shall be required by law respecting employees of the Association.

ARTICLE IX

Rights of Institutional Lenders

Section 1. Amendments. The prior written approval of each institutional holder of a first deed of trust on Lots will be required for any material amendment to the Declaration or to the By-laws of the Association which affects the rights of such holders.

Section 2. Professional Management. As a part of the common administration expense of the Association, the Declarant reserves the right to select professional management of the Association for the period during which Declarant maintains voting control of the Association. Declarant is not required to engage professional management, but may, if Declarant so desires. Following the transfer of voting control to the Owners pursuant to Article III, the Owners may vote either to engage professional management for the Association or to self manage the Association. Any contract for professional management shall provide that the Association may terminate said contract on the giving of not less than ninety (90) days notice.

Section 3. Inspection and Notice. Upon written request, any institution holder of a first lien on a Lot will be entitled to:

- (a) Inspect the books and records of the Association during normal business hours; and
- (b) Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year; and
- (c) Written notice of all meetings of the Association and shall be permitted to designate a representative to attend all such meetings; and
- (d) Written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (e) Written notice of any proposed action that requires the consent of a specified percentage of mortgage holders; and
- (f) Written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

Section 4. Condemnation or Default.

- (a) If any Lot or portion thereof or the Open Space or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any mortgage on a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition.
- (b) The holder of a mortgage on any Lot shall be given prompt written notice of any default in the mortgagor's obligations hereunder which are not cured within thirty (30) days of said default, provided that the holder shall have given written notice to the Association that it is a holder as to the Lot of such mortgagor and shall have requested the notice of default as herein set forth.

ARTICLE X

General Provisions

Section 1. Duration. The foregoing restrictions shall be construed to be covenants running with the land and shall be binding and effective for thirty (30) years from the date of recording, at which time they shall be automatically extended for successive periods of ten (10) years each unless it is agreed by the vote of a simple majority in interest of the then Owners of the above-described property to change, amend or revoke the restrictions in whole or in part. Every purchaser, owner or subsequent grantee of any interest in any property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that the covenants and restrictions of this Declaration may be extended as provided in this Article.

Section 2. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; or (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any

such Lot Owner shall consent thereto in writing. Further, so long as Declarant is a Class B member of the Association as provided in Article III, Declarant may unilaterally amend this Declaration for any other purpose so long as said amendment is not inconsistent with the common plan or scheme of development; provided, however, any such amendment shall not materially or adversely affect the substantive rights of any Lot Owner hereunder, nor shall it materially or adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least seventy percent (70%) of the Owners during the first thirty (30) year period and of at least sixty percent (60%) of the Owners thereafter, and with the consent of the Declarant, so long as Declarant is a Class B member of the Association as provided in Article III.

Every purchaser or subsequent grantee of any interest in any property now or hereafter made subject to this Declaration by acceptance of a deed or other conveyance therefore, hereby agrees that the covenants and restrictions of this Declaration may be amended as provided in this Article.

Section 3. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than a permitted unilateral amendment by the Declarant or an amendment by the Board of Directors to correct an error or inconsistency in drafting, typing or reproduction) shall be delivered, following approval by the Owners, to the Board of Directors. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been approved by the Owners of the required number of Lots as provided in Section 2 of this Article. (For this purpose,

the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed.

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be executed by the Association's officers in the same manner that deeds are executed, and recorded in the Forsyth County Registry.

All amendments shall be effective from the date of recordation in the Forsyth County Registry, unless a later effective date is specified therein. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots in this development.

Section 4. Enforcement. If any person, firm or corporation shall violate or attempt to violate any of these Restrictions, it shall be lawful for the Association or for any other person, firm or corporation owning any property within Hearthstone to bring an action against the violating party at law or in equity for any claim which these restrictions may create in such other Owner or interested party either to prevent said person, firm or corporation from so doing such acts or to recover damages for such violation. The violating party shall be responsible for all costs and attorneys' fees incurred by the Association or such other Owner in such action. Any failure by the Association or any Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one or more of these Restrictions by judgment or court order shall neither affect any of the

provisions not expressly held to be void nor the provisions so voided in circumstances or application other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

Section 5. Delegation and Assignability. Declarant shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest (whether real or personal) in and to Open Spaces; provided, however, that any transferee, grantee or assignee shall be deemed to have assumed the same, in the event of any such sale, transfer or conveyance, subject to the terms and conditions of this Declaration. Declarant shall not, however, be liable to any person for any injury or loss resulting from failure of performance or negligent performance of Declarant's obligations under these covenants arising after such sale, transfer or conveyance.

Section 6. Conflicts. In the event of any irreconcilable conflict between the Declaration and the By-laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-laws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

Section 7. Headings and Binding Effect. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying the particular sections to which they refer. The covenants, agreements and rights set forth herein

shall be binding upon and inure to the benefit of the respective heirs, executors, successors and assigns of the Declarant and all persons claiming by, through and or under Declarant.

Section 8. Unintentional Violation of Restrictions. In the event of an unintentional or minor violation of any of the foregoing restrictions with respect to any Lot, the Declarant or its successors reserves the right (by and with the mutual written consent of the Owner or Owners of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

ARTICLE XI

Dissolution or Insolvency of the Association

In the event that the Association becomes insolvent or for any reason whatsoever loses the ownership of any of the private streets, if any, or Open Space, the Owners of Lots having an interest in such Open Space and private streets may, at their election as determined by majority vote of those affected, form a nonprofit corporation as provided in the Articles and Bylaws of the Association and assign to it the duty and authority to assess on a per Lot basis all Lots having an interest in such Open Space and private streets whereupon such corporation shall maintain such Open Space and private streets in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions to be duly signed, the day and year first above written.

HIGHMARK PROPERTIES, LLC

A North Carolina Limited Liability Company

 _____ (Seal)

Mitchell J. Blevins, Manager

North Carolina, Forsyth County

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Mitchell J. Blevins, Manager of Highmark Properties, LLC**

April 30, 2008.

Place notary seal below this line:



Notary Public

Print/Type Name: Shannon Bostic-Griffith

My Commission Expires: 10-23-12

