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BRWD 238  
TPG 4-5-88  
247.38 Acres, Westlake  
Mecklenburg County, North Carolina  
BRWD Project #351

MOORE & VAN ALLEN

WHEN RECORDED, RETURN TO:

Terry P. Gorman, Esquire  
Leonard Marsh Hurt & Terry  
A Professional Corporation  
2001 Bryan Tower, Suite 700  
Dallas, Texas 75201

PRESENTED  
FOR  
REGISTRATION  
APR 8 4 07 PM '88  
OFFICE OF THE REGISTER  
OF DEEDS  
MECKLENBURG CO. N.C.

INITIAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

— FEE 84.00  
◇ 84.00  
CASH 84.00

STATE OF NORTH CAROLINA §  
§  
COUNTY OF MECKLENBURG §

KNOW ALL MEN BY THESE PRESENTS:

04/08/88

THIS INITIAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the "Declaration") is made to be effective the 5th day of April, 1988, by BRAEWOOD DEVELOPMENT CORP., a Texas corporation, hereinafter known as "Declarant."

WITNESSETH

WHEREAS, Declarant is the sole owner of all those certain tracts of land containing approximately 242 acres situated in Mecklenburg County, North Carolina being further described in Exhibit "A," attached hereto and incorporated herein; and

WHEREAS, Declarant and its successors and assigns desire to create thereon a mixture of office, commercial, retail, light industrial, and related uses in accordance with a general scheme or plan of development (the "Development"), to provide for the preservation of the values therein, and for the preservation of the quality of the Development by the continuing maintenance of certain common areas and facilities; and, to this end, does declare and publish its intent to subject the Property to the covenants, restrictions, easements, conditions, charges, and liens hereinafter set forth; it being intended that the easements, covenants, restrictions and conditions shall run with the land and shall be binding on all persons or entities having or acquiring any right, title, or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values of the Development to create an agency which shall be delegated and assigned the powers of maintaining, owning, and administering the common areas; administering and enforcing certain covenants and restrictions; collecting and disbursing the assessments and charges hereinafter created; and preserving and protecting the architectural integrity and uniformity of the Development; and

WHEREAS, Declarant intends to incorporate under the laws of the State of North Carolina, as a non-profit corporation to be called the Westlake Owners Association, for the purposes of exercising the functions aforesaid.

NOW, THEREFORE, Declarant, for and in consideration of the premises and the covenants contained herein, does hereby declare that all those certain tracts of land described on Exhibit "A", shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, conditions, charges and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of the Property, and shall run with the land and be binding on all parties having any right, title or interest in the land or any part thereof, their successors and assigns, and shall inure to the benefit of each owner thereof, provided, however, that any and all rights, powers and reservations of Declarant including but not limited to those relating to issuances of approval, enforcement, curing of defaults and rights of regulation according to this Declaration are personal to Declarant in its corporate capacity and may be transferred to its successor and assigns as contemplated in Section 10.3 hereof.

## ARTICLE I

### DEFINITIONS

As used herein all capitalized terms shall have the respective meanings and definitions specified in this Article I or as may be otherwise specifically defined. All definitions shall be applicable equally to the singular and plural forms of such defined terms.

1.1. "Applicable Authorities" shall mean the federal, state, county, and municipal authorities having jurisdiction on the use, development and servicing of the Property, including all rules, regulations, requirements, and zoning ordinances promulgated by such authorities.

1.2. "Association" shall mean and refer to the Westlake Owners Association, its successors and assigns. The purposes of the Association shall include, but not be limited to the providing for the care, repair, restoration, replacement,

improvement, renovation and maintenance of all Common Areas (as hereafter defined) and enforcement of this Declaration and any other Supplemental Declarations imposed by the Declarant upon all or any portion of the Property. The Association will own or hold easements for the Common Areas or may own Common Areas in fee. Members (as hereafter defined) of the Association shall pay assessments to cover the costs of operating the Association, which operation shall include the execution of the duties and responsibilities granted to the Association by this Declaration. The Association shall adopt, and be governed by, its articles of incorporation and by-laws. However, the articles of incorporation and by-laws shall be consistent with the terms and conditions of this Declaration, and this Declaration shall rule over any inconsistencies between the Declaration and the articles of incorporation and by-laws.

1.3. "Common Areas" shall mean any land, Improvement (as hereafter defined), or easement, designated by Declarant for the use of all Owners (as hereinafter defined) of Sites (as hereinafter defined) in the Development including, without limitation the following improvements which may be so designated by Declarant: (i) all storm water management facilities and ponds serving the Property, constructed by or on behalf of the Declarant, (ii) the landscaping constructed by or on behalf of the Declarant, along the frontage of, or within any medians on, the roadways within or adjacent to the Development, (iii) fencing or berms constructed by or on behalf of the Declarant along the frontage of any roadways within or adjacent to the Development, (iv) any entry signs to the Property, constructed by or on behalf of the Declarant, and (v) any pedestrian walks constructed by or on behalf of the Declarant, adjacent to any Common Areas; provided, however, Declarant shall only have the right to designate a Common Area on property owned by Declarant at the time of such designation or within an area previously designated as a Common Area. Any designation of Common Areas by Declarant shall be in favor of the Association and be recorded by easement, deed, or plat among the Land Records of Mecklenburg County, North Carolina. For purposes of this Declaration, Common Areas shall not include any portion of a Site that the Owner thereof may designate as a common area for any purpose or in any other document unless such other document specifically declares such common area to be a Common Area within the scope of this Declaration, and Declarant accepts such area as a Common Area by instrument signed by Declarant and recorded among the Land Records of Mecklenburg County, North Carolina. Further, nothing stated in this subsection or in this Declaration shall be construed in any manner as creating any obligation, duty or responsibility on Declarant to designate or create any specific Common Areas.

1.4. "Declarant" shall mean and refer to Braewood Development Corp. and its successors and assigns pursuant to Section 10.3 hereof.

1.5. "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) Petroleum products and polychlorinated biphenyls; (v) any substance and presence of which on the Property (as hereinafter defined) is prohibited by any government requirement; and (vi) any other substance which by any government requirement requires special handling in its collection, storage, treatment or disposal.

1.6. "Improvements" shall mean and include, but not be limited to, buildings, of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements), outbuildings, underground installations, slope alterations, dams, spillways, ponds, lakes, surface water drainage facilities, islands in the ponds and lakes, swimming pools, sediment control devices, roads, berms, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, utilities, water lines, sewer, electrical and gas distribution facilities, heating, cooling and air circulation equipment and facilities, loading areas, roofed structures, railroad trackage, hedges, tennis courts, exterior illumination, changes in exterior color or shape and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Site (as hereinafter defined).

1.7. "Member" shall mean and refer to every Owner as defined below.

1.8. "Mortgage" shall mean and include a mortgage, a deed of trust, a sale-leaseback, a sale repurchase or other bona fide financing transaction. "Mortgagee" shall mean and refer to the holder and owner of a Mortgage.

1.9. "Occupant" shall mean any person, corporation, partnership, or organization who or which has purchased, leased, rented, or is otherwise legally entitled to occupy and use any Site (as hereinafter defined) or portion thereof.

1.10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Site (as hereinafter defined) or real property interest therein if developed under any form of common ownership (as described below in this Section 1.10), but excluding trustees under deeds of trust, Mortgagees, and all others holding title merely as security for the performance of an obligation; provided, however, that any such fee simple owner may delegate to a lessee of its Site (as hereinafter defined) all of its rights and obligations under this Declaration for the term of such lease and for purposes hereof upon such delegation such lessee shall be bound by the obligations and shall be entitled to exercise the rights of the fee simple owner during the term of such lease, but no such delegation shall relieve such fee simple owner from liability for the performance of such fee simple owner's obligations hereunder. In the event any Site (as hereinafter defined) is jointly owned by two or more persons or entities, then each shall be fully liable hereunder as an Owner. As to any Site (as hereinafter defined) that is subjected to, organized, formed, created or converted into a condominium project, time-share project, real estate cooperative project or similar project, the unit owners association or similar governing or ownership organization or entity shall be deemed the Owner, with the Association or ownership organization designating one representative to act as the Member in the Association.

1.11. "Property" shall mean and refer to all those certain tracts of land described in Exhibit "A." As used herein "Westlake" shall also be deemed to mean the Property.

1.12. "Site" shall mean all contiguous land owned by an Owner in Westlake (which shall include all of any parcel subjected to common use or common ownership by more than one person or entity), but shall not include any street right-of-way, easement or other part of the Property at any time owned by Declarant for public roads or utility facilities, or by any public utility or any governmental entity for roads, or utility facilities or other facilities related to development of the Property. As to any contiguous lot, piece or parcel of land in Westlake that is subjected to, formed, created or converted into a condominium project, then, the entirety of such lot, piece or parcel of land shall be deemed one Site regardless of the number of individual units or unit owners within such project.

1.13. "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions subsequently imposed by Declarant upon all or any portion of the Property by Declarant (but only as to Declarant's Site or Sites). Certain conditions and provisions applicable to Supplemental Declarations are set forth in Section 12.9 hereof.

ARTICLE II

ARCHITECTURAL CONTROL

2.1. Committee. Immediately after the recording of this Declaration, Declarant shall establish an architectural review and control committee (hereinafter referred to as the "Committee"), to be made up of five members. Declarant hereby appoints Alexander L. Buck, J. Stephen Crim, James A. Butz, F. Charles Emery, and Steve Garbarino as the initial members of the Committee. All members of the Committee shall be appointed by Declarant until such time as Declarant owns less than 60% of the land in Westlake exclusive of Common Areas and street rights-of-way. While Declarant owns less than 60% of such land but more than 5%, Declarant shall appoint four members of the Committee and the fifth shall be appointed by the Board of Directors of the Association. If Declarant owns less than 5% of such land, then the Board of Directors of the Association shall appoint the entire Committee. Declarant, at its sole option, shall have the right at any time to replace or remove any members of the Committee appointed by it.

The Committee will select its own chairman and may adopt its own rules of order, and the chairman himself or upon the request of any member thereof may call a meeting of the Committee with not less than twenty-four (24) hours prior written notice thereof to each member. A quorum of the Committee shall consist of three of its members. A majority of members voting may act at a meeting which a quorum is present. The Committee may engage and seek advice from professional persons including without limitation, attorneys, architects, engineers, surveyors, landscape architects and land planners in connection with the review of submitted plans and specifications in which event the fees of such professional persons may be charged to and paid by any Owner or Occupant who has submitted such plans as a condition to approval. Other organizational and operational matters shall be determined by the Committee at its meetings. The Committee may, but shall not be required to, adopt such written design criteria as it may deem appropriate from time to time and may amend and terminate prior written design criteria from time to time as it may deem appropriate. The initial mailing address of the Committee is: Westlake Architectural Review and Control Committee, c/o Braewood Development Corp., 2001 Bryan Tower, Suite 3500, Dallas, Texas 75201 to the attention of Alexander L. Buck. The Committee may change its address at any time without notice. Each member of the Committee shall be responsible for the costs or expenses resulting from the member's serving on the Committee.

2.2. Submission of Plans. Before commencing the construction or alteration of all initial or any subsequent buildings, enclosures, fences, loading docks, parking facilities, storage yards, signs, storage tanks, landscaping or any other structures or any other Improvements which create, impact, or affect the exterior or physical appearance of the structures, the Improvements, the Site, or any part thereof, the Owner or applicable Occupant of every such Site or part thereof shall first submit to the Committee preliminary plans and specifications (the "Plans") for all of the foregoing, as well as all the data, drawings and information specifically required by this Section 2.2) all in duplicate. The Plans must be submitted in a manner and form such that the Committee can adequately review the physical appearance of the proposed structures and Improvements. One such copy of the Plans shall become the sole property of the Committee. No structure or Improvement (which creates, impacts, or affects the exterior or physical appearance of any structures, Improvements, or Site, or part thereof) shall be constructed, erected, placed or materially altered on any Site or part thereof until the Plans have been submitted to and approved in writing by the Committee. The Plans shall include but not be limited to the following:

- (a) Topographical plat showing contour grades (with 2-foot contour intervals) and showing the location of all Improvements, structures, walks, patios, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed Improvements. Site drainage provisions shall be included as well as cut and fill details if any appreciable change in the lot contours is contemplated.
- (b) Exterior elevations of all proposed buildings and structures.
- (c) Exterior materials, colors, textures and shapes, which, if required by the Committee, shall also be identified by manufacturer's name, product name and identifying number where appropriate.
- (d) Landscaping plan, including walkways, berms, fences and walls, elevation changes, watering systems, vegetation and ground cover.
- (e) Parking area and driveway plan.
- (f) Screening, including site, location and method.
- (g) Utility connections, including routing of electrical, gas and telephone cables.

- (h) Exterior illumination, including location, and if required by the Committee, the manufacturer's fixture number and supporting illumination test data.
- (i) Signs, flags and other horizontal or vertical advertising or identification not necessary for structural purposes, including size, height, shape, color, location and materials.
- (j) Trash container storage locations and related screening.
- (k) Ingress and egress design and plan.
- (l) Curbing including curb cuts and gutters.
- (m) Storm water retention facilities.
- (n) Proposed use of Site and such matters as may be required by the Applicable Authorities.

2.3. Basis of Approval. Approval of the Plans shall be based on general adequacy of site dimensions, structural design, conformity and harmony of the exterior design, location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, compatibility with premier, first class commercial, retail and light industrial developments in the area, and conformity to both the specific and general restrictions and covenants set forth herein. The Committee shall have the right to disapprove any submitted Plans of any Site if such Plans are not in conformity with the provisions of this Declaration or the Applicable Authorities, or if the Committee, acting pursuant to Section 2.1 hereof in its sole discretion, (which shall be exercised in a reasonable manner) determines that such Plans are not in the best interest of the contemplated development of the Property as a premier, first class commercial, retail, and light industrial development as described by this Declaration and as may exist in the geographical area of the Property.

2.4. Procedure for Approval. At such time as the Plans meet the approval of the Committee, acting pursuant to Section 2.1 hereof, one complete set of Plans (the "Approved Plans") will be retained by the Committee and the other complete set of Plans shall be marked "Approved," signed by the chairman on behalf of the Committee and returned to the party submitting the Plans. If disapproved by the Committee, acting pursuant to Section 2.1 hereof, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by the chairman on behalf of the Committee. Any



material modifications of the Approved Plans must again be submitted to the Committee for its approval. The Committee's approval or disapproval, as required herein, shall be in writing. In no event shall the Committee give verbal approval of any Plans. Prior to or upon completion of the Improvements, a final set of the Plans used to complete the Improvements shall also be submitted to the Committee, and any substantial and material differences, between the final Plans and the Approved Plans, shall be subject to the Committee, and any substantial and material differences, between the final Plans and the Approved Plans, shall be subject to the Committee's approval process as set forth in this Article II.

2.5. Failure to Act. If the Committee fails to approve or disapprove the Plans within thirty (30) days after the receipt by the Committee (such receipt date being shown in writing by the Committee), then the Plans shall be deemed to be Approved Plans as submitted and the Improvements shown thereon shall be constructed in accordance with such Approved Plans.

2.6. Reconstruction. Nothing contained in this Declaration shall prohibit the reconstruction of Improvements on the Site, in the event the existing Improvements are destroyed by fire or other such hazard; provided, however, that the covenants and conditions contained herein shall continue to apply to the Site. Any repair or reconstruction of Improvements shall be performed in accordance with the Approved Plans for the Site. Additional Plans and approvals shall be required only when the repair or reconstruction materially differs from the Approved Plans. In the event any Improvements are partly destroyed or damaged, the Owner or applicable Occupant of the Site on which such damage or destruction occurs shall repair (including any applicable rebuilding) such Improvements within six (6) months thereafter, subject in all events to the terms and conditions of this Declaration; provided, however, that if any such Improvements are totally damaged or destroyed and the Owner or Occupant does not desire to so repair and rebuild such Improvements, then such damaged or destroyed Improvements shall be completely razed, dismantled and removed completely from the Site, and the Site shall be completely cleared of any and all debris and the Site shall then be landscaped by the Owner pursuant to Plans submitted to the Committee and subsequently approved pursuant to this Article II. The dismantling and removal of the destroyed Improvements shall begin within 120 days after the damage was incurred and be completed no later than 180 days after the damage was incurred. For purposes of this Declaration, total damage or destruction shall mean that the Improvement is damaged or destroyed to such an extent that the Owner in the reasonable exercise of his or its judgment can no longer use or occupy such Improvement for its intended purpose. If, in the opinion of the Committee or the Association, any such Owner or Occupant has

failed in any of the foregoing duties or responsibilities of this Section 2.6, then the Committee or the Association may give such person written notice of such failure and such person must, within thirty (30) days after receiving such notice, perform the repairs required or remove such Improvements. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repairs or remove such Improvements without any liability for damages for wrongful entry, trespass or otherwise to any person and without any liability for damages allegedly caused to the Property or any Improvements thereon. The Owners and Occupants of any part of the Property on which such work is performed shall be liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner or Occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of all of said persons, and shall constitute a lien against that portion of the Property on which said work has performed. Any such lien created by this Section 2.6 shall be subordinate only to any Mortgages existing on the Property at the time the work is performed.

2.7. Limitation of the Committee's Liability. Neither the Declarant, Committee nor any member thereof, or its or their successors or assigns, shall be liable in damages to anyone submitting Plans to them for approval, or to any Owner or Occupant of land affected by this Declaration, by reason of a mistake in judgment, negligence, variance, inconsistency or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such Plans. In the event the Declarant or any member of the Committee is named as a party in any actual or threatened legal action on account of his membership in the Committee or of any action or non-action which he has taken or not taken in good faith as a member of the Committee, or as the Declarant, then the Association shall pay such member's reasonable attorney's fees and costs and all damages incurred as a result of any such action.

The Committee's approval of any building Plans, specifications, site or landscape plans or elevations or any other approvals or consents given or requirements imposed or suggested in connection therewith by the Committee pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant as to the adequacy or accuracy of the design or structure of such buildings, landscaping or other Improvements, or that other action taken pursuant thereto or in reliance thereon complies with, or is not in violation of, any applicable laws, rules or regulations, and by taking title to or leasing any part of the Property, the Owner and/or Occupant, for

themselves and their heirs, successors and assigns, do hereby expressly release and relieve Declarant, the Committee and all other members of the Committee of any and all liability in connection therewith.

2.8. Waiver. Every person, corporation, partnership or organization who submits Plans to the Committee for approval agrees, by submission of such Plans, and every Owner or Occupant of any of the Property agrees by acquiring title thereto or an interest therein, that he or it will not bring any action, proceeding or suit against the Committee or any member thereof to recover for damages caused or allegedly caused by the Committee.

2.9. Easements and Common Area Dedications. As a prerequisite of approval of Plans, the Committee shall have the power to require the Owner who has submitted Plans to grant any reasonable utility and drainage easements as may be required for Westlake for the enjoyment and benefit of the Owners and Occupants of Westlake. Where possible, the Committee shall attempt to locate any such required easements along the perimeter of the Site, within existing or proposed rights-of-way, within other existing or proposed easements, or in such a manner as to not materially impair the proposed use of the Site.

2.10. Time Limitation. All approvals issued by the Committee as provided for in this Article II shall be effective for a period of one year from the date approval is given or deemed to have been given as provided in Section 2.5 of this Article II. In the event construction of the work called for by the Approved Plans has not substantially commenced within said one year period then approval shall be deemed expired and no construction shall thereafter commence unless a written renewal is granted by the Committee.

### ARTICLE III

#### DEVELOPMENT STANDARDS AND PROTECTIVE COVENANTS

3.1. Uses of the Property. The following provisions shall be applicable to any and all construction, improvement, alteration, addition or use of the Property:

(a) Prohibited Uses. The following uses of the Property are not permitted:

- (1) Warehousing and manufacturing of products, materials or other items where such activity takes place outside of a screened or enclosed structure or facility.

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- (2) Any use which involves the raising, breeding or keeping of any animals, insects, fish or poultry where said activity takes place outside of an enclosed structure or facility.
  - (3) Objectionable or nuisance uses, as reasonably determined by the Committee, by reason of odor, dust, fumes, smoke, noise, vibration, refuse matter or water-carried waste.
  - (4) Uses reasonably considered objectionable, such as junk or salvage yards.
  - (5) Uses in violation of the laws of the Applicable Authorities.
  - (6) Any residential use unless such use receives specific approval by the Applicable Authorities and the Committee.
  - (7) Unless specifically approved in writing by the Committee, the placement, holding, locating, disposal, manufacture, storage or dumping of Hazardous Materials. Hazardous Materials existing on the Property at the time this Declaration is recorded are excluded from this prohibition. With specific written approval by the Committee, which may be withheld, petroleum products may be placed, held, located, stored, and disbursed on the Property where such petroleum products are handled, stored and disbursed within the rules, regulations and requirements of all applicable governmental authorities.
  - (8) Unless specifically approved in writing by the Committee (which approval may be withheld for any reason), the use of explosives or any other dangerous or unsafe materials.
- (b) Permissible Uses. All building sites within Westlake shall be used only for office, retail sales, commercial processing, research, servicing, light industrial, light manufacturing, distribution purposes and services, and any other uses which the Committee, acting within its discretion (which must be exercised in a reasonable manner) determines are in the best interest of the contemplated development of the Property as a premier, first class commercial, retail, and light industrial development; subject to, the conditions set forth in this Declaration and subject to the requirements of the Applicable Authorities. In the

event that a use is permitted by this Declaration but not permitted by the Applicable Authorities, such use shall be permitted by this Declaration only if the Applicable Authorities specifically approve a variance for such use.

3.2. Site Plans.

- (a) Grading and Drainage. All structures will be equipped with gutters, downspouts and/or other drainage conveyances. All surface drainage, including roof drainage of buildings, shall be designed to conform to the overall drainage of the Property. The Committee and the Association, their successors and assigns, shall not be liable for any losses or damages caused by any water levels, rising waters, or drainage waters.
- (b) Setback Lines. All structures shall comply with the requirements of the Applicable Authorities with respect to setback lines. In addition, no structures of any kind and no part thereof shall be placed within twenty (20) feet of any adjacent property; within fifty (50) feet of the border of any roadways or streets; or within thirty (30) feet of any other structure (unless approved by the Committee). Each Owner or Occupant shall fully maintain any setback areas on his Site. The following improvements are expressly excluded from this setback restriction:
- (1) Structures below and covered by the ground where such structures will not interfere with provisions for underground utilities.
  - (2) Steps, walks, driveways, curbing, and parking (as allowed by the Applicable Authorities).
  - (3) Planters, walls, fences, hedges, retaining walls, and signs when specifically approved by the Committee which are also within the limits set by the Applicable Authorities, items constructed pursuant to a landscaping of the frontage of the Property, and other items approved by the Committee.
  - (4) Approved landscaping, including landscaped earthen berms.

(c) Parking.

- (1) No parking areas may be located within 10 feet of the border of any roadway, street, lake, or any other dedicated thoroughfare and no parking shall be permitted on any such roadways, streets, or other dedicated thoroughfares.
- (2) Except for any temporary parking areas utilized by Declarant, parking areas shall be paved with either asphalt or concrete.
- (3) All Plans submitted to the Committee shall include specific information as to construction materials, construction methods to be used and diagrams of the number, type and configuration of parking spaces required by the Committee or the Applicable Authorities.

(d) Driveways.

- (1) Driveways shall be paved with concrete or asphalt.
- (2) No driveway approach shall be permitted within thirty (30) feet of a street intersection or so close to a property line that an adjoining property Owner would be unable to have reasonable access to his Site.
- (3) Driveway width shall be a minimum of ten (10) feet.

(e) Landscape Treatment.

- (1) Plans. No Plans for any building, structure or other Improvement to be erected, placed or altered in or upon any Site shall be approved by the Committee unless the Plans include separate landscape plans satisfactory to the Committee, such landscape plans to include plant material and landscape construction to be installed on the site.
- (2) Landscaped Area. Landscaping, as a minimum, shall occur in an area forward of the building and adjacent to the street rights-of-way.
- (3) Installation. Approved landscaping must be installed within thirty (30) days following the granting of a certificate of occupancy for the

building except as delays may be approved by the Committee and subject to any delays caused by weather conditions.

- (4) Landscape Treatments. Landscape treatment of the site shall be in the form of grass lawns and ground covers, shade trees in parking areas, street trees, plantings in areas used as dividers and in any areas of limited use. Landscaping shall be used to mark entrance points and parking areas. Irrigation watering systems shall be installed as may be required by the Committee.
  - (5) Ground Cover. All Sites shall contain ground cover, preferably properly maintained grass along the front of each Site between the street curb and the building area.
  - (6) Undeveloped Areas. For undeveloped areas, the only landscaping obligations shall be that on property cleared of shrubs and trees and held for future development, the Owner must install and maintain grass cover adjacent to the street for a minimum of thirty (30) feet in from the curb.
  - (7) Sight Lines. Landscape treatment shall not be in violation of sight line requirements set by the Applicable Authorities for street or driveway intersections.
  - (8) Maintenance. All landscaping shall be designed for reasonable maintenance and all landscaped areas shall be maintained in a high quality manner at all times, including all necessary watering. Paving or terracing may be used in areas where excessive maintenance would otherwise be required.
- (f) Screening.
- (1) Storage areas, incinerators, storage tanks, trucks based on the premises, roof objects (including fans, vents, cooling towers, and skylights shall either be housed in closed buildings or be screened for sound and sight from public view and exposure from the street level on adjoining sites and from any dedicated roadways and streets. Such screening shall normally include landscaping or permanent fences (excluding chain link), or approved solid materials and shall be located as far from property lines as reasonably possible.

(2) All antenna shall be screened pursuant to subsection (f) above and antenna towers shall be erected on the Property only if approved by the Committee.

(g) Loading Docks and Areas.

(1) Loading docks and areas shall not be located on the street side of any building or structure unless they are approved by the Committee.

(2) Loading areas may not encroach on setback areas, except in connection with the approval of street side loading areas for corner buildings.

(3) Loading docks and areas shall be screened from dedicated roadways and streets in a manner approved by the Committee.

(h) Exterior Illumination. All exterior lighting shall be designed, erected, altered and maintained in accordance with the Plans submitted to and approved in writing by the Committee. Lighting shall be compatible and harmonious throughout the entire Development and shall be in keeping with the specific function and building type served. Illumination will be encouraged on all exterior walls facing public streets and for all parking areas. The preferred form of exterior illumination shall be sodium vapor lighting from a structure or design which has a nonapparent light source, that is, a structure or design which screens, covers, or shades the light bulb or globe. No exterior lighting shall be directed toward any areas adjacent to the Site.

3.3. Building Design. The objective in building standards is to obtain consistency and quality in architectural design to protect and enhance values of the adjacent property. In order to maintain consistency, yet permit interest and variety and the use of new materials as they may develop, all architectural designs, including those for alterations, additions or remodeling, are subject to review and reasonable approval of the Committee pursuant to the terms of this Declaration. Buildings should be considered as three-dimensional objects, and attention should be given to the compatible treatment of all exterior surfaces.

(a) Construction: Unless specifically approved by the Committee, no building may be covered with or have an exterior of sheet or corrugated metal of any kind, wood (with the exception of trim areas), asbestos, iron, steel or plastic. The slope shall be at least the



minimum recommended by the manufacturer of the proposed roofing system in order to achieve proper drainage. In addition to being screened as required by Section 3.2(f)(1) hereof, roof top equipment, piping, flashing and other items exposed to any view from adjoining property shall be painted to match the roof surfacing color, or otherwise blended with the roof surface. Built-up roofs and roof top items which include equipment, piping, flashing and other items shall be maintained for continuity of the roof appearance and shall be screened as provided by Section 3.2(f). Stand fans, skylights, cooling towers, communication towers, vents and any other structures or equipment, whether located on the roof or elsewhere, shall be architecturally compatible or effectively shielded from view from any public or private dedicated street by an architecturally sound method and shall be screened as provided by Section 3.2(f). The sorting, handling, moving, storing, removing and disposing of all waste materials must be housed or screened from public view. All facilities and plans for the disposal of wastes other than by public sewerage methods (such as shredding, compaction, incineration, reclamation or chemical dissolution) must be approved in writing by the Committee.

- (b) Signs: As required in Section 2.2 hereof, all signs must be approved in writing by the Committee prior to fabrication or installation, and the Committee's approval or disapproval of such signs must be exercised in a reasonable manner. The location, size and construction of signs will be in keeping with the character of a premier first class retail and commercial development in the area. Flashing or moving character signs shall not be installed. Illuminated signs shall be rear lighted or lighted from nonapparent light sources. No billboards or advertising signs other than those identifying the occupant, nature of the business and/or products shall be allowed. The only other allowed signs shall be either signs of a directional nature or temporary signs indicating "for sale" or "for lease", the size of which must be approved by the Committee. All permitted signs shall be of a design and material consistent with the building itself. The Committee shall not object to logos or trademarks of regional or national entities or retail organizations (provided, however, the Committee may review the size, location, materials, graphic composition and colors of such signs). In order to enhance the appearance and architectural harmony of the Property, an Owner may present to the Committee (as to signs thereafter constructed) from time to time an

integrated signage program to apply to the property owned by said Owner, with criteria as to sign design, location, materials and graphic composition. If the integrated signage program is approved by the Committee, all signs erected on the affected property shall merely conform to such signage program and criteria and need not require specific Committee approval.

- (c) Excavation: No excavation shall be made except in conjunction with construction of an Improvement and only after having received approval by the Committee. When such Improvement is completed, all exposed openings shall be back-filled, compacted, graded and returned to landscaped conditions approved by the Committee.
- (d) Construction Completion: Once commenced, construction shall be diligently pursued to the end. Such construction may not be left in a partly finished condition any longer than four (4) months. If construction is not diligently pursued for a period of time greater than four (4) months, then such existing construction already begun shall be immediately and completely razed, dismantled and removed from the Site by the Owner, the Site shall be completely cleared of any and all debris and the Site shall then be landscaped by the Owner pursuant to the Approved Plans.

3.4. Utilities. Transformers, electric, gas or other meters of any type, or other apparatus shall be screened as such term is defined in Section 3.2(f) of this Declaration. All utility lines, placed on the Property after the recordation of this Declaration, except for temporary utility lines utilized during construction of the respective Improvement, shall be underground, unless otherwise approved by the Committee.

#### ARTICLE IV

##### MAINTENANCE

4.1. Duty of Maintenance. Owners and Occupants of any portion of the Property or Improvements thereon shall have the duty and responsibility, at their sole cost and expense, to keep their part of the Property so owned or occupied, including buildings, Improvements, grounds or drainage easements or other rights-of-way incident thereto, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Removal of all litter, trash, refuse and waste at least once a week;
- (b) Lawn mowing on a regular basis such that the grass level on undeveloped land is not higher than 18" and the grass level on developed land is not higher than 9".
- (c) Tree and shrub pruning;
- (d) Keeping exterior lighting and mechanical facilities in working order;
- (e) Keeping lawn and garden areas alive, and any adjoining rights-of-way or drainage ditches attractive and free of trash and debris;
- (f) Promptly removing and replacing any dead plant material;
- (g) Keeping parking areas, driveways and roads in good repair;
- (h) Striping of parking areas and repainting of Improvements; and
- (i) Repair of exterior damage to Improvements, subject to the provisions of Section 2.6 hereof.

Notwithstanding any other provisions of this Section 4.01, the only maintenance obligation for undeveloped land is that it be well maintained for a depth of thirty (30) feet from any street and the entire site be kept free of trash and tall weeds.

#### ARTICLE V

##### ENFORCEMENT OF DECLARATION AND COVENANTS

5.1. Reciprocal Rights; Covenants Run With Land. Except as otherwise provided for herein, all restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Site or part thereof in favor of every other Site or part thereof; shall create reciprocal rights and obligations between the respective Owners of all Sites and privity of contract and estate between all Owners of all Sites or parts thereof, their heirs, successors and assigns; and shall as to the Owner of each Site, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Sites or parts thereof.

5.2. Attorney's Fees. In any legal or equitable proceeding for the enforcement of or to remedy the violation of these covenants or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties, in such amount as may be fixed by the court in such proceeding. Such fees upon appropriate docketing of a judgment to such effect shall become a lien against the Site (if any) of the losing party. All remedies provided herein and/or otherwise available, at law or in equity, shall be cumulative and not exclusive.

5.3. Inspection. Declarant, the Committee and authorized agents of the Association may from time to time at any reasonable hour or hours and upon prior reasonable notice to the Owner, enter upon and inspect any Property subject to these Protective Covenants to ascertain compliance therewith, without any liability for damages for wrongful entry, trespass or otherwise to any such person inspecting and without any liability for damages allegedly caused.

5.4. By Whom Enforceable. Subject to the limitations set forth herein these covenants may be enforced by Declarant, by the Committee, by any Owner, and by the Association, but none of them shall have any obligation to do so nor be liable to any one in the event of their failure so to do.

5.5. Specific Enforcement. All provisions of these covenants may be specifically enforced by any Court of competent jurisdiction upon petition by any party entitled to enforce them as herein provided.

5.6. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Committee, any Owner, or the Association to enforce any covenants herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision of this Declaration.

5.7. Right To Correct. In the event the Owner of any Site or part thereof fails to remedy any default, deficiency or violation of this Declaration (including but not limited to the construction or installation of Improvements not within the Approved Plans, improper uses, noncomplying uses, or failures to maintain) within thirty (30) days after the mailing of written notice thereof by the Committee or the Association to the Owner, then, the Association (and not any Owner, Occupant or any other person or entity) shall, in addition to all other remedies provided for herein, have the right, privilege and license to cure such default, deficiency or violation and perform any and all reasonable correction including without limitation, the performance of any required maintenance and destruction and

removal of any Improvements constructed without approval of the Committee as provided in Article II hereof. In pursuing the correction remedies granted by this Section 5.7, the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform any such correction action without any liability for damages for wrongful entry, trespass or otherwise to any person and without any liability for damages allegedly caused. The Owners and Occupants of any part of the Property on which such work is performed shall be liable for the cost of such acts including reasonable attorney's fees and shall promptly reimburse the Association for such costs. If such Owner or Occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for the cost of such acts from the Association, then said indebtedness shall be a debt of all of said persons and shall constitute a lien against the Site on which said acts were performed. Any such lien created pursuant to this Section 5.7 shall bear penalty and interest from the date of delinquency at the rate then imposed by Mecklenburg County for delinquent real estate taxes. Any such liens may also be enforced by the Association pursuing any of the remedies outlined in Section 7.7 hereof. Any such lien created by this Section 5.7 shall be subordinate only to real estate taxes and to any Mortgages existing on the Property at the time such acts are performed.

## ARTICLE VI

### OWNERS ASSOCIATION

6.1. Creation. The Declarant may, at such time as it deems appropriate, cause to be incorporated under the laws of the State of North Carolina, the Association. In connection with the execution of the Association's duties and responsibilities, the Association may provide for capital reserves, employ employees, engage professional persons and engage professional management to assist in the operation of the Association and borrow funds as it deems prudent and necessary to run the affairs of the Association.

6.2. Members. Upon organization of the Association, all Owners of Sites in Westlake shall, upon becoming Owners, automatically become Members of the Association. Membership in the Association shall be appurtenant to and may not be severed from record title to a Site. Ownership of a Site shall be the sole qualification for membership in the Association. There will be two classes of membership, Class A and Class B, with Declarant constituting Class B and Declarant (so long as it is an Owner) and all other Owners constituting Class A (including Declarant if Declarant is an Owner as defined herein.) At such time as Declarant owns less than 1 acre of the Property exclusive of

Common Areas and street rights-of-way, Class B shall cease to exist and Class A shall be the only class of members of the Association. The Association may suspend the voting rights of any Member for any period during which the assessment against the Member's Site remains unpaid for a consecutive sixty (60) day period.

6.3. Board of Directors. (a) All decisions and acts of the Association shall be made or performed by the "Board of Directors". Any function or duty assigned to the Association through this Declaration shall be performed by the Board of Directors. The Board of Directors will consist of no more than nine (9) but no less than three (3) directors, with the initial directors being named by Declarant and set forth in the Articles of Incorporation. The terms of all directors shall be one year unless otherwise provided in the Articles of Incorporation or Bylaws of the Association or any amendments thereto. A chairman of the board may also be elected by the board.

(b) Upon expiration of the term of the initial Board of Directors and thereafter Declarant, as long as it is a Class B member, will elect or designate a majority of the members of the Board of Directors. All directors which Declarant is not entitled to elect or designate shall be elected as provided hereinafter. The minimum and maximum limits and the terms of office of directors will not be changed so long as Declarant is entitled to designate any directors and in all events the above referenced ratio between directors elected or designated by the Declarant and those elected by the Association will not be changed so long as Class B membership continues to exist.

(c) Subject to the above, each Class A Member of the Association shall be entitled to vote for election of directors as follows: Each Owner of a Site shall be entitled to one vote per acre of land owned within the Site, with portions of an acre being entitled to the respective proportional share of one vote. As to any Site which is owned by Declarant, Declarant shall be entitled to fifty votes per acre of land owned within the Site, with portions of an acre being entitled to the respective proportional share of fifty votes. Owners entitled to vote may give a written proxy to any other Owner entitling such Owner to cast votes by proxy. Election of directors by Class A Members may occur only at meetings where at least a majority of the Class A Members are present. The membership books will be closed and adjustments in each Member's voting rights will be made on the above basis by the Board of Directors ninety (90) days prior to each annual meeting of the Members. A quorum of the Board of Directors shall consist of a majority of the directors. Unless otherwise stated in this Declaration, all decisions and acts of the Board of Directors shall be determined by a majority of the members of the Board of Directors voting.

ARTICLE VII

COVENANT FOR ASSOCIATION ASSESSMENTS

7.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Site owned within the Property, hereby covenants, and each Owner or Occupant of any Site by acceptance of a deed therefrom, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges for the obtaining of funds to operate the Association;
- (b) Special assessments for capital improvements, or other specified items, such assessments to be fixed, established and collected from time to time as hereinafter provided; and
- (c) Any costs incurred by the Association pursuant to the terms and conditions of Sections 2.6 and 5.7 of this Declaration.

No annual or special assessments shall be assessed prior to June, 1988.

The annual and special assessments, together with such interest thereon and costs of collections as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Site against which each such assessment is made. Each such assessment or cost together with such interest, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person or persons who is the Owner or Owners of such Site at the time when the assessment fell due. A suit to recover a money judgment (together with reasonable attorneys' fees and costs as aforesaid) for unpaid assessments or costs may be maintainable without filing or foreclosing a lien securing the same.

7.2. Purpose of Annual Assessments. Annual assessments shall be levied by the Board of Directors and be used exclusively for the purpose of maintenance of the Common Areas, enforcement of this Declaration, enforcement of any Supplemental Declarations, and for any other purposes of the Association. The cost of maintenance of the Common Areas shall include all public liability and hazard insurance premiums, water, landscaping maintenance, storm water drainage maintenance, cleaning, repair, and replacement, and all other costs and expenses necessary for the proper maintenance and administration of the Common Areas. The cost of maintenance shall also include, without limitation, any accounting costs, attorneys fees, court costs and similar

management or overhead expenses in the operation or management of the Common Areas, the operation of the Association, and the administration and enforcement of the provisions of this Declaration. The assessments imposed by the Association may include an adequate reserve fund for maintenance, repairs, and replacements for that portion of the Common Areas which may be replaced or require maintenance on a periodic basis. Such reserves shall be maintained from the annual assessments.

7.3. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of (i) defraying, in whole or in part, the cost of any reconstruction, repair, or replacement of a capital improvement constituting a portion of the Common Areas, or (ii) any other specified purpose, provided that any such special assessment may be adopted only at a special meeting of the Association, written notice of which shall be sent to all Members not less than twenty-five (25) days nor more than sixty (60) days in advance, with the specific purpose of the proposed special assessment being set forth therein. Seventy percent (70%) of the votes of Class A Members of the Association, in person or by proxy, must approve any proposed special assessment with each Class A Member being entitled to one vote per acre of land owned within each Site, with portions of an acre being entitled to the respective proportional share of one vote.

7.4. Rate of Assessment. Both annual and special assessments shall be fixed at a rate for each Site determined by multiplying the total assessment for the Property by a fraction, the numerator of which is the number of acres of land within such Site, less any land in such Site dedicated and accepted for public use, and the denominator of which is the then total sum of all numerators for the Sites within the Property. The initial annual assessment rate shall not be greater than \$350.00 per acre and the assessment rate for subsequent years shall not increase beyond 10% of the prior year's annual assessment rate. 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 assessment per Site at least sixty (60) days in advance of each annual assessment period. The annual assessment period shall be from January 1 to December 31 of any given year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates for such assessments shall be established by the Board of Directors.

7.5. Remedies of the Association in the Event of Default. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear penalty and interest from the date of delinquency at the rate then imposed by Mecklenburg



County for delinquent real estate taxes. The Board of Directors in its discretion may also:

- (a) Accelerate the required payment date of the entire remaining annual assessment;
- (b) Bring an action at law against the Owner or Owners personally obligated to pay the same, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such judgment; and/or
- (c) File a "Notice" against the Site as provided herein. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Site.

7.6. Subordination of the Lien to Mortgages. The liens for assessments provided for in this Article VII shall be subordinate only to real estate taxes and to the lien of any Mortgage existing on the Site prior to the assessment. Sale or transfer of any Site shall not affect the assessment lien. The sale or transfer of any Site pursuant to a foreclosure of a Mortgage or any proceeding in lieu thereof shall not extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Site or Owner from liability for any assessments which thereafter become due or from the lien thereof.

7.7. Notice. To evidence its lien, the Association may prepare a written notice (the "Notice") setting forth the amount of such unpaid assessment, the name of the Owner or the reputed Owner of the Site, and a legal description of such Site. The Notice shall be signed by a director of the Association and shall be recorded among the Land Records of Mecklenburg County, North Carolina, after having been mailed not less than ten (10) days prior to such recording to the Owner or reputed Owner of the Site in default. Any such lien may be enforced by the foreclosure upon the Site with respect to which the assessment has not been paid, in like manner as a mortgage on real property is foreclosed under the laws of the State of North Carolina. In any such foreclosure, the Owner or Owners of the Site which is being foreclosed shall be required to pay the cost, expenses, and reasonable attorneys' fees in connection with the preparation and filing of the Notice as provided herein and all costs and reasonable attorneys' fee incurred in connection with the foreclosure. The Association, Declarant, and any Member shall have the power to bid in the Site being foreclosed upon. At least twenty-five (25) days prior to any such foreclosure, the Association shall notify any Mortgagee with a prior lien on the Site being foreclosed, if such Mortgagee has its address of

record in the Mortgage document recorded in the Land Records of Mecklenburg County or otherwise furnishes its address in writing to the Association.

7.8. Certificate of Compliance. Upon payment of a reasonable fee and upon written request of any Owner, Mortgagee, or prospective Owner of a Site, the Association shall issue an acknowledged certificate in recordable form setting forth the amounts of any unpaid assessments, if any, and setting forth generally whether or not said Owner is in violation of any of the items and conditions of this Declaration. Said written statement shall be conclusive upon the Association in favor of the persons who rely thereon in good faith. Such statement shall be furnished by the Association within a reasonable time, but not to exceed twenty (20) business days from the receipt of a written request for such written statement, accompanied by the required fee, mailed to the registered agent or registered office of the Association with the Association's registered agent or registered office being listed with the appropriate office of the State of North Carolina, having jurisdiction over the formation of the Association. In the event the Association fails to furnish such statement within said twenty (20) business days, it shall be conclusively presumed that there are no unpaid assessments relating to the Site as to which the request was made, and that the Site is in conformance with all of the terms and conditions of this Declaration.

7.9. Notice of Ownership. Attached hereto as Exhibit "B" and incorporated herein by reference is a "Notice of Ownership" which must be filed with the Association upon any transfer or conveyance of any portion of the Property. The Association shall be entitled to rely on the correctness of any Notices of Ownership filed with it, and such notice may be used for all assessment notices and any other notices to be given by the Association. The failure of an Owner to provide the Association with an updated and current Notice of Ownership shall be considered a default of this Declaration and a waiver by said Owner of receiving any such notices. If the filed Notice of Ownership is not accurate and the Association undertakes the task of obtaining accurate information, the Association's costs in obtaining the correct information shall be considered an additional assessment and lien against the respective Site.

ARTICLE VIII

POWERS AND DUTIES OF THE ASSOCIATION

8.1. The Association shall have the following powers and duties (subject to the terms and conditions set forth in this Declaration) which may be exercised within its reasonable discretion:

- (a) To mow and resow the grass and to care for, spray, irrigate, trim, protect, plant and replant trees and shrubs within the Common Areas and to pick up and remove from Common Areas all loose material, rubbish, filth, and accumulations of debris, and to do any other thing necessary or desirable in the judgment of the Association to keep the Common Areas in neat appearance and in good order;
- (b) To employ counsel and institute and prosecute such suits as the Association may deem necessary or advisable, and to defend suits brought against the Association;
- (c) To employ from time to time such agents, servants and laborers as the Association may deem necessary in order to exercise the powers, rights, and privileges granted to it, and to make contracts;
- (d) To maintain Insurance on the Common Areas and for the Association;
- (e) To maintain, repair, or replace, or pay for the maintenance, repair, or replacement of the Common Areas;
- (f) To fix, levy, and collect assessments pursuant to Article VII hereof;
- (g) To enforce the provisions of this Declaration and any Supplemental Declarations;
- (h) To make and enforce rules and regulations governing the use of the Common Areas; and
- (i) To conduct any other activity within the terms and conditions set forth in this Declaration and approved by at least a majority of the directors present and voting at a meeting containing at least a quorum of the board.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.1. A Mortgagee, upon written request to the Association, will be given written notification from the Association of any default in the performance by the Owner of a Site, relating to the Mortgage owned by the Mortgagee, of any obligation under this Declaration or related Association documents, which is not cured within sixty (60) days. The Mortgagee will be given thirty (30) days to cure such default should it so elect. However, the Association shall bear no liability or responsibility for the accuracy of the information contained in any such notice.

ARTICLE X

TERM, MODIFICATION AND ASSIGNMENT OF  
DECLARANT'S RIGHTS AND DUTIES

10.1. Term. Unless extended, modified, amended or terminated as provided in Section 10.2 hereof this Declaration, every provision hereof and every covenant, condition and restriction contained herein shall continue in full force and effect until April 12, 2017; provided, however, that unless terminated at the conclusion of the present or any extension term by a majority vote of the total votes available to be voted by the Class A Members, this Declaration shall continue thereafter for successive extension terms of five (5) years each. The vote to terminate shall be in writing, be recorded among the Land Records of Mecklenburg County, North Carolina, and be certified to be correct by the Board of Directors of the Association which shall be prima facie evidence of the truth of the matter certified.

10.2. Modification. This Declaration, or any provision hereof, may be extended, modified or amended (but not terminated completely except as provided for in Section 10.1 or this Section 10.2), as to the whole of the Property or any portion thereof. Any such extension, modification or amendment must receive the vote of 67% of the total votes available to be voted by the Class A Members and as to the termination hereof, the vote of 80% of the total votes available to be voted by the Class A Members is required. However, in no event shall a modification adopted pursuant to this provision materially alter the obligations or rights of an Owner with respect to its Site, without the consent of such Owner. For the extension, modification or termination of this Declaration, each Class A Member shall be entitled to one vote per acre of land owned within each Site. with portions of an acre being entitled to the respective proportional share of one vote. The vote shall be in

writing or shall be certified to be correct by Declarant or by the Board of Directors of the Association which certification shall be prima facie evidence of the truth of the matter certified. Notwithstanding the foregoing (i) for so long as Declarant, or its assignee under Section 10.3 owns at least one (1) acre of the Property, no such extension, modification, amendment or termination shall be effective without the written approval of Declarant, and (ii) Declarant may at any time, at Declarant's sole and absolute discretion, extend, modify, amend or terminate this Declaration as to any Site or portion of the Property owned by Declarant. In no event will any amendment or modification of this Declaration affect adversely the access to, ingress to or egress from any Site. No such extension, modification, amendment or termination shall be effective until an appropriate instrument in writing has been executed, acknowledged and recorded in the Land Records of Mecklenburg County, North Carolina.

10.3. Assignment of Declarant's Rights and Duties. Any and all rights, powers, easements and reservations of Declarant herein contained or hereafter granted to Declarant pursuant to the terms and provisions of this Declaration may be assigned, in whole or in part, to any person, corporation, partnership or organization (including, but not limited to, the Committee or the Association) which will assume the position of Declarant pertaining to the particular rights, powers, easements and reservations assigned, and upon any such person, corporation, partnership or organization's evidencing its consent in writing to accept such assignment and assume such position, he or it shall, to the extent of such assignment, have the same rights, powers, easements and reservations as Declarant and be subject to the same obligations, if any, which then exist by reason of this Declaration; provided, however, Declarant shall not assign such rights, powers, easements and reservations to any person or entity other than the Association or the Committee who is not an Owner of a portion of the Property. Upon the occurrence of such assignment, Declarant will serve written notice thereof on all then Owners in accordance with Section 11.4 hereof, or if such assignment has occurred prior to the conveyance of any Site from Declarant to another Owner such notice will be given to such Owner by Declarant either contemporaneously with the delivery of the deed to such Site by Declarant or by record notice by recording a notice of such assignment in the Land Records of Mecklenburg County, North Carolina. Upon the occurrence of such assignment and the giving of such notice, Declarant, its employees, officers, directors and agents, and corporate parent, shall be released and relieved from any and all liability and obligations imposed upon it as Declarant by this Declaration occurring subsequent to the date of such assignment.

ARTICLE XI

EASEMENTS AND COMMON AREAS

11.1. Maintenance, Construction, Utility and Drainage Easements. The Owners of all Sites recognize and agree that temporary construction and permanent and perpetual maintenance easements and all rights of access reasonably necessary to permit construction and maintenance of the Common Areas including reasonable permanent easements to permit utility installation and maintenance and storm water drainage on the Property are hereby granted to and retained by Declarant for the benefit of Declarant and of the Association and their respective Mortgagees, contractors, independent contractors, agents and assigns. Such easements must be granted and conveyed hereafter by each Owner to Declarant and the Association for the benefit of Declarant and of the Association and their respective Mortgagees, contractors, independent contractors agents and assigns. Each Owner, by taking title to his or its respective Site, hereby grants and conveys and shall be deemed to have consented and agreed to hereafter grant and convey such easements when requested to do so by Declarant or the Association. Each Owner, by taking title to his or its respective Site, shall also be deemed to have agreed to obtain from all appropriate parties, including his or its Mortgagees and trustees under deeds of trust, the written subordination of any and all Mortgages, deeds of trust, security interests and all other liens that encumber or in any way affect his or its respective Site to such easements and to all other easements, rights of way and rights of ingress, egress, access and passage now set forth in or otherwise provided for in or contemplated by this Article XI and such written subordination instruments shall be provided promptly and without delay to Declarant and the Association when requested by Declarant or the Association. Each Mortgagee, noteholder under a deed of trust, trustee under a deed of trust and other holders of any security interest in any Site by accepting a security interest in or legal or equitable title to a Site, shall be deemed to have consented to and agreed that its security interest or legal or equitable title is subject to said easements and agrees to execute any instrument reasonably required to subordinate its debt and security instruments to such easements, rights-of-way and rights of ingress, egress, access and passage subject to the same not materially adversely affecting the Site serving as the security for the obligations owed to such Mortgagee or noteholder. Such easements will contain terms and conditions reasonably requested by Declarant or the Association, as the case may be, but such easements will not unreasonably interfere with the development, use and occupancy of any Site or unreasonably affect access to, or operation of, any such Site. All temporary construction easements, and temporary access rights in connection therewith, of Declarant shall terminate automatically when construction of

the Common Area for which such easement is granted or retained is completed, but the permanent and perpetual maintenance easements, and access rights in connection therewith, of Declarant and the Association shall continue in full force and effect except as hereinafter provided. Prior to the Declarant's or the Association's exercise of any easement rights created by this Section 11.1, a written instrument defining the location of the respective easement shall be recorded among the Land Records of Mecklenburg County, North Carolina.

11.2. Conveyance of Common Areas. Declarant shall convey the Common Areas to the Association by easement, deed, or by plat recorded among the Land Records of Mecklenburg County, North Carolina at such time and from time to time as Declarant deems appropriate. Upon conveyance the Association shall accept and maintain such Common Areas pursuant to its powers and duties as set forth in Article VIII hereof.

11.3. Additional Easements. If it becomes clear that additional utility or drainage easements, whether or not contemplated or mentioned in this Declaration, between or across portions of the Property are reasonable, necessary, and desirable to effectuate the purposes of this Declaration, then, upon the request of Declarant, and provided said proposed additional easements will not unreasonably interfere with the development, use and occupancy of any Site, unreasonably affect access to, or operation of, any such Site, or materially increase the operating costs of any such Site, each Owner agrees to grant such additional easements across its Site, without charge therefor, subject to such reasonable terms and conditions as shall be agreed upon between Declarant and such Owner. Any such new easement or easements shall be signed by Declarant and/or all Owners of portions of the Property which compose the land within such new easements and shall be recorded in the Land Records of Mecklenburg County, North Carolina.

11.4. Use of and Limitations on Easements. The Owners of Sites benefited by the easements specified in Sections 11.1 and 11.3 (if any and to the extent additional easements under Section 11.3 are for the benefit of Site Owners) of this Declaration and those other persons granted rights herein shall be entitled to use and enjoy said easements in common with others entitled to use same and shall take no action in or with respect to any of said easements which would interfere with the rights of other persons to use said easements or to enjoy the benefits therefrom.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. Constructive Notice and Acceptance. Each Owner, Mortgagee, and every person, corporation, partnership or organization, who or which now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person, corporation, partnership or organization acquired such right, title or interest. The provisions of this Section 12.1 will not apply to any Mortgagee of an Owner until such time as it becomes a Mortgagee in possession of the Site of the Owner or becomes the Owner by foreclosure or otherwise of such Site in which case it and its successors and assigns (including, but not limited to, the successful bidder at a foreclosure sale of a Site) as Owner of such Site will be so bound only as long as they are the Owner of such Site. All Occupants as defined in Section 1.9 hereof who are not Owners are and shall be conclusively deemed to have notice of and to have agreed to and be bound by all terms and provisions of this Declaration, and each Owner of a Site will provide for all such Occupants to so agree to and to be so bound in arrangements, written or otherwise, with such Occupants.

12.2. Subdivision. Other than by the Declarant, no Site may be subdivided or sold in Sites of less than three (3) acres without the consent of the Committee. Except in accordance with the Applicable Authorities, no dedication of any part of a Site for a public road shall be made and no private right-of-way shall be granted; provided, however, that Declarant reserves the right at any time and from time to time to dedicate any portions of the Property owned by it as a public right of way and upon such dedication this Declaration will thereafter no longer affect or apply to the portions of the Property so dedicated and accepted except that median strips shall be maintained as Common Areas as hereinafter described.

12.3. Rezoning. No Owner or any other person or entity may apply or join in an application to amend, vary or modify the applicable zoning ordinances or rezone or apply for any zoning variance or waiver as to all or any portion of the Property without the prior written consent of Declarant where such amendment, variance or modification will materially affect the development or uses of a Site or Sites within the Property. Declarant may apply for such rezoning as to any portion of the Property owned by it at anytime.

12.4. Force Majeure. Declarant, the Committee or the Association, as the case may be, shall be excused for the period



of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Declaration when prevented from so doing by cause or causes beyond its reasonable control, which shall include, without limitation, all labor strikes, riots, or warlike operations, invasions, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, weather, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within its or their reasonable control.

12.5. Paragraph Headings. Paragraph, Article and Section headings, where used herein, are inserted for convenience of reference only, are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer, and accordingly shall not be deemed or construed to affect the meaning of any provision hereof.

12.6. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

12.7. Written Notice. Whenever written notice is required or specified herein, such written notice shall be deemed given only when delivered in person or deposited in the United States mail, postage paid and addressed to the address shown on the most recent Notice of Ownership filed with the Association. All such notices shall be sent certified mail, return receipt requested. Whenever actual receipt is specified or required herein, then such actual receipt shall be deemed obtained when notice is given in writing and delivered in person or otherwise actually received by the designated recipient, or three (3) days after the certified mailing where such notice is sent to the Owner at the address shown on the most recent Notice of Ownership filed with the Association.

12.8. Exceptions and Waivers. Declarant reserves the right to grant exceptions to and waive any of the provisions contained in this Declaration. Such exceptions and waivers shall be granted by Declarant only when, in its sole and absolute discretion, the exception or waiver is harmonious with the general intent or purpose of this Declaration. Every exception and waiver granted by Declarant shall be made in writing in recordable form and may be recorded. The granting of any exception or waiver with respect to any Site or part thereof shall not be deemed an amendment of this Declaration except to the extent specifically set forth in such exception or waiver, shall not entitle any Owner or Occupant to similar rights or privileges and shall create no negative reciprocal easements in favor of any other party.

12.9. Other Covenants and Restrictions. Nothing contained in this Declaration is to be construed as preventing or inhibiting Declarant or any Owner or Owners of any Site from imposing further covenants or restrictions on his or its Site or from providing for cross-easement agreements or an owner's association in connection with the development thereof; provided, however, that any additional covenants or restrictions recorded by any party other than Declarant, may not be less restrictive than the terms and conditions of this Declaration. Subsequent or further covenants and restrictions imposed upon any Site or portion thereof may specifically provide that they are supplemental to this Declaration in which event they shall be Supplemental Declarations as defined in Section 1.13 hereof and they shall be a part of this Declaration but only as to the Site or portion thereof against which such Supplemental Declarations are recorded, and in such event all terms, provisions, covenants, rights and remedies set forth herein shall be a part of and incorporated by reference into such Supplemental Declarations. However, Supplemental Declarations recorded by the Declarant may selectively designate which terms, provisions, covenants, rights and remedies of this Declaration are to be incorporated by reference. Such Supplemental Declarations may contain provisions limiting the ability of Owners and Occupants, but not of Declarant or the Association, from enforcing the provisions of Supplemental Declarations against Owners or Occupants of all or any portion of the Site subjected to such Supplemental Declarations. The Owners and Occupants of Sites subjected to Supplemental Declarations may not enforce the provisions of such Supplemental Declarations against any Owner or Occupant hereunder or against Declarant or the Association except to the extent any such Owner or Occupant or Declarant or the Association owns or occupies real property subject to such Supplemental Declaration or has consented to be bound by the terms of such Supplemental Declarations.

12.10. Cumulative Remedies. The various rights, options, elections, powers and remedies contained in this Declaration shall be construed as cumulative, and no one of them shall be exclusive of any of the others or of any other legal or equitable remedy which Declarant, the Association or any Owner might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy of any such party shall not impair its right to any other right or remedy until all obligations imposed upon any other party, person or entity have been fully performed.

12.11. Time is of the Essence. In regard to the acts, duties, obligations or responsibilities to be performed by any Member, Occupant or Owner pursuant to this Declaration, time is of the essence as to such performance.

IN WITNESS WHEREOF, BRAEWOOD DEVELOPMENT CORP. has caused this Declaration to be executed by its duly authorized Vice President.

ATTEST:

Declarant:

BRAEWOOD DEVELOPMENT CORP.  
a Texas corporation

Fred W. Marsh, Jr.  
Fred W. Marsh, Jr.  
Braewood Development Corp.  
Assistant Secretary

By: [Signature]  
F. Charles Emery  
Vice President

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

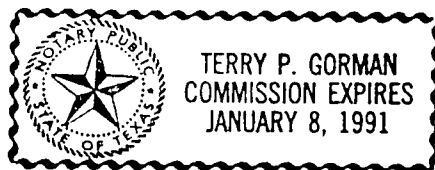
I, Terry P. Gorman, a notary public in and for the State of Texas, do hereby certify that F. Charles Emery, Vice President of Braewood Development Corp., a Texas corporation personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS MY HAND and official seal, this the 5th day of April, 1988.



[Notarial Seal]

Terry P. Gorman  
NOTARY PUBLIC, STATE OF TEXAS



(Notary's Name Typed or Printed)

My Commission Expires:

STATE OF TEXAS §  
                                  §  
COUNTY OF DALLAS §

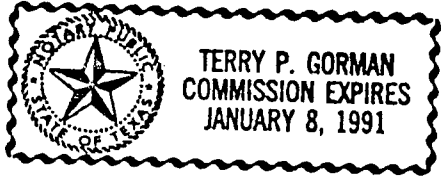
Seal-  
Stamp

I, Terry P. Gorman, a Notary Public of the County and State aforesaid, further certify that Fred W. Marsh, Jr. personally came before me this day and acknowledged that he is an Assistant Secretary of Braewood Development Corp., a Texas corporation authorized to transact business in North Carolina, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, F. Charles Emery, sealed with its corporate seal and attested by Fred W. Marsh, Jr. as its Assistant Secretary.



WITNESS MY HAND and official seal, this the 5th day of April, 1988.

My Commission Expires: 1-8-91 Terry P. Gorman  
Notary Public



Terry P. Gorman  
(Notary's Name Typed or Printed)

REAL ESTATE  
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5737 0391

BRWD 238  
TPG 4-5-88  
247.38 Acres, Westlake  
Mecklenburg County, North Carolina  
BRWD Project #351

PROPERTY DESCRIPTION

All that tract or parcel of land lying and being in the Steele Creek Township of Mecklenburg County, North Carolina and being more particularly described as follows:

BEGINNING at a p.k. nail at the point of intersection of the centerline of Westinghouse Boulevard (150-foot right-of-way) with the centerline of Steele Creek Road (60-foot right-of-way) and from said point of beginning running thence with the centerline of Steele Creek Road. North 23-48-55 East, 257.11 feet to p.k. nail in the corner of property of Smith-Regal (now or formerly) as described in instrument recorded in Book 4016, Page 967, Mecklenburg Public Registry; run thence with the said Smith-Regal line, three courses and distances as follows: (1) South 63-52-30 East, 411.65 feet to an old iron (passing an old iron at 92.73 feet); thence (2) North 28-53-10 East, 353.90 feet to an old iron; and thence (3) North 72-55-52 West, 410.99 feet to a p.k. nail in the centerline of Steele Creek Road; run thence with the centerline of Steele Creek Road, eight courses and distances as follows: (1) North 39-57-51 East, 178.98 feet to a p.k. nail, thence (2) North 39-57-51 East, 343.92 feet to a p.k. nail, thence (3) North 40-18-59 East, 380.58 feet to a p.k. nail, thence (4) North 38-01-13 East, 196.11 feet to a p.k. nail, thence (5) North 37-17-39 East, 209.94 feet to p.k. nail, thence (6) North 36-51-37 East, 323.12 feet to a p.k. nail, thence (7) North 36-22-37 East, 144.66 feet to a p.k. nail, and thence (8) North 37-01-55 East, 151.04 feet to a p.k. nail in the corner of property of Frank J. Upchurch (now or formerly) as described in instrument recorded in Book 1445, Page 386, Mecklenburg Public Registry; run thence with the Upchurch line, North 72-16-07 East, 1529.00 feet to an old iron (passing an old iron at 99.97 feet); thence continuing with the Upchurch line, North 73-20-19 East, 176.64 feet to an old iron in the corner of property of J. L. Caudell (now or formerly) as described in Book 3400, Page 505, Mecklenburg Public Registry; run thence with the said Caudell line, two courses and distances as follows: (1) North 74-18-43 East, 318.05 feet to an old iron; thence (2) North 87-01-12 East, 518.66 feet to a concrete monument in the line of property of Richard I. McHenry (now or formerly) as described in instrument recorded in Book 4954, Page 491, Mecklenburg Public Registry; run thence with the McHenry line, three courses and distances as follows: (1) South 5-02-39 East, 297.04 feet to an old iron; thence (2) South 10-57-11 East, 1226.01 feet to an old iron in

stream; thence (3) South 16-38-02 West, 952.99 feet to an old iron in the corner of property in Diamond Shamrock Corp. (now or formerly) as described in instrument recorded in Book 3144, Page 325, Mecklenburg Public Registry; run thence with the said Diamond Shamrock line, South 18-53-08 West, 350.05 feet to an old iron; continuing with the Diamond Shamrock line, South 37-16-08 West, 228.37 feet to an old iron in the centerline of a proposed railroad, also in the corner of property of American Color & Chemical Corp. (now or formerly) as described in instrument recorded in Book 3326, Page 327, Mecklenburg Public Registry; run thence with the line of American Color & Chemical Corp., South 37-14-05 West, Westinghouse Boulevard (passing an old iron at 1789.71 feet); run thence within the right-of-way of Westinghouse Boulevard, North 78-03-25 West, 124.34 feet to p.k. nail in the centerline of Westinghouse Boulevard, in an arc with a circular curve to the right, having a radius of 3819.72 feet, an arc distance of 532.04 feet (said arc being subtended by a chord with a bearing of North 59-39-45 West, a chord distance of 531.61 feet) to a p.k. nail in the corner of property of Fashion Print Transfer, Inc. (now or formerly) as described in instrument recorded in Book 4101, Page 773, Mecklenburg Public Registry; run thence with the Fashion Print line, three courses and distances as follows: (1) North 37-15-25 East, 675.00 feet to an old iron (passing an old iron in the northerly right-of-way line of Westinghouse Boulevard at 75.00 feet); thence (2) North 53-12-50 West, 600.12 feet to an old iron; and thence (3) South 37-13-59 West, 674.88 feet to a railroad spike in the centerline of Westinghouse Boulevard (passing an old iron in the northerly line of Westinghouse Boulevard at 599.89 feet); run thence with the centerline of Westinghouse Boulevard, North 52-05-19 West, 1847.53 feet to the Point and Place of Beginning; containing 245.331 acres, all as shown on survey entitled "239 Tract" dated June 23, 1986 by Power Engineering Company, Inc., being the same property conveyed to Braewood Development Corp. by deed recorded in Book 5266, Page 838, Mecklenburg County Registry.

Together with the property conveyed to Braewood Development Corp. by Smith-Regal of Carolina by deed recorded in Book 5316 at Page 388, Mecklenburg Public Registry, and being described as follows:

BEGINNING at a p.k. nail lying North 23-48-55 East 257.11 feet from the intersection of the centerline of Westinghouse Boulevard (150 foot right-of-way) with the centerline of Steele Creek Road (60 foot right-of-way) and running North 23-48-55 East 44.80 feet to a p.k. nail in the centerline of Steele Creek Road, running thence along the centerline of Steele Creek Road, in an arc with a circular curve to the right, having a radius of 873.12 feet, an arc distance of 246.09 feet (said arc being subtended by a chord bearing of North 31-53-23 East, a chord distance of 245.28 feet) to a p.k. nail in the centerline of Steele Creek Road, running

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thence along property of Braewood Development Corp. three courses and distances: (1) South 72-55-52 East 410.99 feet to an old iron; (2) South 28-53-10 West 353.90 feet to an old iron; (3) North 63-52-30 West 411.65 feet to the POINT AND PLACE OF BEGINNING, and containing 2.049 acres, all as shown on survey entitled "Plat Prepared by Braewood Development Corporation" dated August 8, 1986 by Power Engineering Company, Inc.

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5737 0394

BRWD 238  
TPG 4-5-88  
247.38 Acres, Westlake  
Mecklenburg County, North Carolina  
BRWD Project #351

NOTICE OF OWNERSHIP

TO: Westlake Owners Association

Pursuant to Section 7.9 of the Initial Declaration of Covenants, Conditions and Restrictions recorded against the 247.38 acres of real property known as the "Westlake Development", situated in Mecklenburg County, North Carolina, this Notice of Ownership is hereby filed with the above referenced Association.

1. The "Property" affected by this Notice contains \_\_\_\_\_ acres, is located at \_\_\_\_\_ and is further described by metes and bounds as set forth in Exhibit "A" attached hereto and incorporated herein for all purposes.
2. The Property was transferred or conveyed on \_\_\_\_\_, by instrument recorded on \_\_\_\_\_ at Book \_\_\_\_\_, Page \_\_\_\_\_ of the Land Records of Mecklenburg County, North Carolina.
3. The prior owner of the Property was \_\_\_\_\_.
4. The current owner of the Property is \_\_\_\_\_ a \_\_\_\_\_ with a mailing address of:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Any notices to be sent by the Association, Committee or Declarant, as those terms are defined in the above described covenants, should be directed to the current owner at:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. The current owner of the Property understands and acknowledges that this Notice must be updated and filed with



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the Association and the failure to do so could result in the waiver of rights to receive certain notifications.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Current Owner:

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

State of North Carolina, County of Mecklenburg

The foregoing certificate(s) of Terry P. Gorman

a Notar(y) (ies) Public (is) (are) certified to be correct.

This 8th day of April 19 88.

Charles E. Crowder, Register of Deeds

By: Mary A. DeWay Deputy