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Alamance, NC
DAVID J.P. BARBER REGISTER OF DEEDS

BK **2260** PG **457-486**

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

THIS DECLARATION is made this the 17 day of June, 2005, by **W M W DEVELOPMENT, LLC**, a North Carolina limited liability company having an office in Alamance County, North Carolina, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Burlington, Boone Station Township, Alamance County, North Carolina, which is more particularly described as follows:

- a) The real property shown on the plat entitled "FINAL PLAT-SHEET 1 OF 5 WATERFORD SUBDIVISION-PHASE 1, LOTS 1-2, 6-10, 35-49, AND, 63-66, FORMERLY KNOWN AS LAKE McEWEN SUBDIVISION" recorded in Plat Book 69, Page 465 in the office of the Register of Deeds of Alamance County, North Carolina AND NOT INCLUDING LOT ONE (1) CONTAINING 1.970 ACRES, MORE OR LESS, and LOT THIRTY-SEVEN (37) as shown upon said plat IT BEING THE EXPRESS INTENT OF DECLARANT THAT SUCH EXCLUDED LOTS NOT BE MADE SUBJECT TO THIS DECLARATION.

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- b) The real property on that plat entitled "FINAL PLAT –SHEET 2 OF 5 WATERFORD SUBDIVISION-PHASE 1, LOTS 24-34, 51-63 AND 71-74, FORMERLY KNOWN AS LAKE McEWEN SUBDIVISION" recorded in Plat Book 69, Page 466 in the office of the Register of Deeds of Alamance County, North Carolina.
- c) The real property on that plat entitled "FINAL PLAT – SHEET 3 OF 5 WATERFORD AT THE LAKE SUBDIVISION-PHASE 1, LOTS 11-23, 50 AND 67-70, FORMERLY KNOWN AS LAKE McEWEN SUBDIVISION" recorded in Plat Book 69, Page 467 in the office of the Register of Deeds of Alamance County, North Carolina.
- d) Reference is also made to those curve and line tables set forth on that plat entitled "FINAL PLAT – SHEET 4 OF 5 WATERFORD AT THE LAKE SUBDIVISION-PHASE 1, CURVE AND LINE TABLES, FORMERLY KNOWN AS LAKE McEWEN SUBDIVISION" recorded in Plat Book 69, Page 468 in the office of the Register of Deeds of Alamance County, North Carolina.
- e) Reference is further made to those property corner coordinate tables set forth on that Plat entitled "FINAL PLAT – SHEET 5 OF 5 WATERFORD AT THE LAKE SUBDIVISION-PHASE 1, PROPERTY CORNER COORDINATE TABLES, FORMERLY KNOWN AS LAKE MCEWEN SUBDIVISION" recorded in Plat Book 69, Page 469 in the office of the Register of Deeds of Alamance County, North Carolina.

WHEREAS, it is the intent of the Declarant to develop Waterford as a residential community consisting of single family detached residences and hereby to cause the above-described property and future phases of Waterford to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. It is the intent of Declarant that the provisions of this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act. To the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the Act shall control.

ARTICLE I

DEFINITIONS

SECTION 1. "Additional Property" shall mean and refer to the property described in **Schedule "A,"** attached hereto and incorporated herein by this reference, together with any other property located adjacent to the Properties. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property.

SECTION 2. "Appropriate Local Governmental Authority" shall mean and refer to the City of Burlington or other appropriate local governmental authority having jurisdiction over the Properties.

SECTION 3. "Association" shall mean and refer to Waterford Community Association, Inc., its successors and assigns.

SECTION 4. "Common Elements" or "Common Area" shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

Recreation Facility Lot

That certain tract or parcel of land lying and being in the City of Burlington, Boone Station Township, Alamance County, North Carolina, adjoining the 120 foot right of way of the Highway 70 Western Loop Bypass (University Drive), the lands now or formerly of Frank M. Rich, Jr. as described in Deed Book 522, Page 667, Lot 36 as shown upon the plat hereinafter referenced, the 50 foot right of way of Tremore Club Drive, the 78 foot right of way of Dunleigh Drive, and being LOT TWO (2) as shown upon the plat hereinafter referenced and also being labeled "RECREATION FACILITY LOT" upon that plat entitled "FINAL PLAT-SHEET 1 OF 5 WATERFORD SUBDIVISION-PHASE 1, LOTS 1-2, 6-10, 35-49, AND, 63-66, FORMERLY KNOWN AS LAKE McEWEN SUBDIVISION" recorded in Plat Book 69, Page 465 in the office of the Register of Deeds of Alamance County, North Carolina.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its Members, additional property to the Association, which property may include any portion of the Properties, including any Additional Property annexed by Declarant pursuant to Article XI, Section 4 hereof. The Association shall accept any such conveyance of property and thereafter such property shall be held and maintained by the Association as Common Elements. Declarant may construct or cause to be constructed **(BUT SHALL NOT BE OBLIGATED TO CONSTRUCT)** walkways and recreational facilities on any such Common Elements. Other improvements, which may include, but shall not be limited to, roadways, retention or detention

ponds or erosion control devices, may be located on any such Common Elements. Declarant presently contemplates the construction of recreational improvements and amenities within the above-described Common Elements lying within Phase 1 of Waterford. Except as otherwise provided in Section 47F-3-113 of the Planned Community Act, the Association shall be required to promptly repair and replace any portion of the Common Elements for which the Association is required to maintain casualty insurance pursuant to the Bylaws of the Association which is damaged or destroyed. All Common Elements shall be conveyed to the Association in their "as is" condition without any express or implied warranty. DECLARANT HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE COMMON ELEMENTS.

The Association also may acquire additional Common Elements with the consent of the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of each class of Members of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during Declarant's Development Period no such action shall be effective without Declarant's consent and approval. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Elements must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite owner and Declarant approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and if required, Declarant, and that such acknowledgments are made a part of the minute book of the Association; and (3) be properly recorded in the Alamance County Registry.

SECTION 5. "Conservation Area" shall mean and refer to those tracts or areas designated as "Delineated Wetland Areas", "Stream Conservation Areas" or with words of similar import any plat or map of the Properties.

SECTION 6. "Declarant" shall mean and refer to W M W Development, LLC, as well as its successors and assigns, pursuant to an express assignment or conveyance of any special declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, architectural review, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 7. "Declarant's Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Alamance County, North Carolina, and continuing for so long as Declarant shall have the right to annex any portion of the Additional Property pursuant to the provisions of Article XI, Section 4 hereof or Declarant or any affiliate of Declarant shall own any portion of the Properties.

SECTION 8. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision plat of the Properties intended for single family detached residential purposes and shall include any improvements constructed thereon and "Lots" shall refer to all such lots collectively. The term "Lot" shall exclude any real property designated as Common Area. Those Lots adjoining Waterford Lake are "Waterfront Lots" and those Lots not adjoining Waterford Lake are "Standard Lots". Declarant hereby reserves the right

to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority, nor shall any Lot within the Properties contain fewer square feet than the minimum number of square feet from time to time required by the Appropriate Local Governmental Authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration. Any easements reserved pursuant to the provisions of Article VIII, Section 1 hereof shall apply to the Lots as reconfigured provided that no previously existing easements areas are in actual use for the purposes stated in said section.

SECTION 9. "Master Plan" shall mean and refer to the plan(s) for the Properties and the Additional Property now or hereafter approved by the Appropriate Local Governmental Authority, as such plan(s) may be from time to time amended and approved.

SECTION 10. "Member" shall mean and refer to every person or entity who holds Membership with voting rights in the Association.

SECTION 11. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 12. "Period of Declarant Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Alamance County, North Carolina, and continuing until the earlier of: (i) twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds, Alamance County, North Carolina; or (ii) such time as seventy-five percent (75%) of the lots shown on the Master Plan have been conveyed by Declarant or an affiliate of Declarant to an Owner other than Declarant or an affiliate of Declarant; provided, however, if after the expiration of such period of time, the Master Plan is amended to add additional lots and fewer than seventy-five percent (75%) of the lots shown on the Master Plan have been conveyed by Declarant or an affiliate of Declarant to an Owner other than Declarant or an affiliate of Declarant, such period of time shall be reinstated and shall continue until the earlier of: (i) twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds, Alamance County, North Carolina; or (ii) such time as seventy-five percent (75%) of the lots shown on the Master Plan have been conveyed by Declarant or an affiliate of Declarant to an Owner other than Declarant or an affiliate of Declarant.

SECTION 13. "Planned Community Act" shall mean and refer to the provisions of Chapter 47F of the General Statutes of North Carolina.

SECTION 14. "Properties" shall mean and refer to all of the real property hereby or hereafter made subject to the terms, covenants and conditions of this Declaration, as amended from time to time.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. RECREATIONAL AMENITIES WHICH MAY BE LOCATED IN THE COMMON ELEMENTS. Declarant hereafter may construct or cause to be constructed (**BUT SHALL NOT BE OBLIGATED TO CONSTRUCT**) walkways and other recreational facilities on a portion of the Common Elements.

During Declarant's Development Period, Declarant or its affiliate shall have the right to require the exclusive (or, at the discretion of Declarant or its affiliate, non-exclusive) use of all or certain portions of any Common Elements for events promoting the sale of lots or homes in Waterford; provided, however, no such use by Declarant or its affiliate shall unreasonably interfere with or obstruct ingress, egress and regress to or from the Lots.

Pursuant to rules and regulations from time to time promulgated by the Association, upon request and after such notice as the rules and regulations may require, the Association, in the sole discretion of the Association's Executive Board or its designee, may allow a Member of the Association exclusive use of all or certain portions of any Common Elements for private events for a period not to exceed twenty-four (24) hours. Such rules and regulations may require that fees and/or deposits be paid to the Association in connection with such exclusive private use. Any damage to the Common Elements or any improvements located thereon during any such private event and any liability incurred by the Association as a result thereof not covered by insurance maintained by the Association (including any deductible) shall be the personal obligation of the Member or Members (joint and several) reserving the Common Elements and if not paid within thirty (30) days of written demand therefore shall be deemed to be assessments as set forth in Article IV hereof.

SECTION 2. MAINTENANCE OF WATERSHED IMPROVEMENTS. The Association shall maintain any lake and any retention or detention ponds, rip rap and other drainage or erosion control devices located on the Common Elements now or hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such drainage or erosion control device, Declarant, for each Lot owned within the Properties, hereby covenants and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of such pond or erosion control device.

SECTION 3. MAINTENANCE OF CONSERVATION AREAS. Those Conservation Areas located upon the Common Elements shall be maintained in perpetuity by the Master Association in their natural or mitigated condition. In the event the Master Association is

dissolved or otherwise defaults on its obligation to maintain the Conservation Areas located upon the Common Elements, Declarant, for each Lot owned within the Properties, hereby covenants and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of such Conservation Areas. Those Conservation Areas located upon a Lot shall be maintained in perpetuity by the Lot Owner in their natural or mitigated condition. This Section, the provisions of Article VI, Section 13, as well as the amendment provisions in Article XI, Section 3 are intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID, and therefore may be enforced by the United States of America. In the event of a conflict between this Section 3 relating to conservation areas and Article II, Section 2 hereof relating to watershed improvements, this Section 3 shall control.

SECTION 4. RULES AND REGULATIONS. The Executive Board of the Association may establish reasonable rules and regulations concerning the use of the Common Elements and improvements located thereon. The Association may impose reasonable monetary fines and other sanctions for the violation established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines and sanctions shall be assessed and collected pursuant to the provisions of Articles IV and XI hereof. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all owners prior to the effective date thereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Executive Board of the Association or by the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

SECTION 5. OWNERS EASEMENTS OF ENJOYMENT OF COMMON ELEMENTS. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the easements herein reserved by Declarant or created in favor of the Association, including, without limitation the easements set forth in Article VIII hereof;
- (b) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements;
- (c) the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid and for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

(d) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(e) the right of the Association, pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association (including two-thirds of the votes of the Members present at a meeting of the Members held in accordance with the Bylaws of the Association, such vote including at least a majority of the votes of the Members present other than Declarant), to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

(f) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to make permanent and temporary assignments of parking spaces and to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Properties which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

(g) the right of the Association to borrow money for the purpose of improving the Common Elements and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association (including two-thirds of the votes of the Members present at a meeting of the Members held in accordance with the Bylaws of the Association, such vote including at least a majority of the votes of the Members present other than Declarant), mortgage, pledge, deed in trust, or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, during Declarant's Development Period, Declarant must also consent to such action, and further provided that no such mortgage, encumbrance or hypothecation or foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances; and

(h) the right of the Association to convey to Declarant portions of the Common Elements for the purpose of correcting erroneous conveyances of Common Elements or eliminating unintentional encroachments of dwellings or other improvements onto portions of the Common Elements or for the purpose of enhancing the utility of the Common Elements to be retained by the Association; provided, however, no such conveyance shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances.

SECTION 6. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Elements and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 7. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall have a term of not less than six (6) months. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

SECTION 1. MEMBERSHIP. Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant and any affiliated entity shall be a voting Member of the Association. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Except as otherwise provided in Section 2 below, on all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

SECTION 2. CLASSES OF MEMBERSHIP. The Association shall have two classes of voting membership:

Class A: The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any affiliated entity during any Period of Declarant Control. In the event that a Lot is owned by more than one Class A Member, the Owners of such Lot, collectively,

