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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HEARTLAND GROVE

Prepared by and return to: Dorrestein & Crane, P.C.  
141 Providence Road, Suite 160  
Chapel Hill, NC 27514

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

THIS DECLARATION is made and entered into this the 30th day of April, 2004, by TIMBERLYNE HOLDINGS, LLC, a North Carolina limited liability company, its successors and assigns (hereinafter referred to as "Declarant"); H. EUGENE TATUM, III, Trustee, and SOUTHBANK (for the limited purposes set forth hereinbelow); and Southland Associates, Inc., Trustee, and CENTRAL CAROLINA BANK, a Division of National Bank of Commerce (hereinafter "Central Carolina Bank") (for the limited purposes set forth hereinbelow). The Declarant states as follows:

WHEREAS, Declarant is the owner of certain property (the "Property") in Chatham County, North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein; and

WHEREAS, Declarant has subdivided the Property by recording a subdivision plat entitled "Heartland Grove Subdivision", said plat being recorded on Plat Slide 2003-433, Chatham County Registry.

WHEREAS, Declarant desires and intends to convert the Property into a planned community pursuant to the provisions of the North Carolina Planned Community Act, N.C.G.S. Chapter 47F ("the Act"); to sell and convey the same to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and by filing this Declaration, to submit the above-described property and the buildings to be located thereon and all other improvements to be constructed, together with all appurtenances thereto, to the provisions of the Act; and

WHEREAS, Declarant desires to establish a general plan and uniform scheme of development and improvement of the Property and to impose certain covenants, conditions and restrictions upon the Property.

NOW THEREFORE, the Declarant hereby declares that all of the Property shall hereafter be held, sold and conveyed subject to the terms, restrictions, covenants and conditions set forth in Articles 1 through 12 below, for the purpose of enhancing and protecting the value and desirability of the Property in order to contribute to the personal and general health, safety and welfare of the Property owners and residents therein, and to maintain the land and improvements therein. The terms, covenants, conditions and restrictions contained herein shall run with the Property and be binding upon all parties having any right, title or interest in the Property or any part thereof at any time, their heirs, successors and assigns.

ARTICLE 1 – DEFINITIONS

The following terms, as used or referred to in this Declaration, shall be defined as follows:

- (a) “Allocated Interests” shall mean and refer to the common expense liability and votes in the Association allocated to each Lot.
- (b) “Architectural Review Committee” or “the Committee” shall mean and refer to the permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the appearance and maintenance of all land, buildings, structures, and improvements on the Property.
- (c) “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time.
- (d) “Assessment” shall mean and refer to those charges made by the Association from time to time against Lots for the purposes, and subject to the terms, set forth herein.
- (e) “Association”, “Owners’ Association” or “Homeowners’ Association” shall mean and refer to Heartland Grove Homeowners’ Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.
- (f) “Bylaws” shall mean the Bylaws of the Association, as they now or hereafter exist.
- (g) “Common Area” shall mean any portion of the Property (including the improvements thereto) owned at any time by the Association for the common use and enjoyment of the Owners, including any recreational facility or area, open space, roadway, street area, landscaped area, parks or trails, drainage systems and retention ponds, and any tracts or areas outside of the Property over which the Association holds easements or licenses (including but not limited to access easements), regardless of whether or not the same is identified and/or dedicated on any recorded subdivision plats of the Property.
- (h) “Common Expenses” shall mean expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- (i) “Common Expense Liability” shall mean the liability for Common Expenses allocated to each Lot as permitted by The North Carolina Planned Community Act (N.C.G.S. Chapter 47F), this Declaration, or otherwise by law.
- (j) “Community-Wide Standard” shall mean the standard prevailing throughout the Property (which may be more specifically prescribed, determined or defined by an Architectural Review Committee, created pursuant to Article 8 below) of appearance and maintenance of all land, buildings, structures and improvements of any nature located on the Property.
- (k) “County” shall mean and refer to Chatham County, North Carolina.
- (l) “Declarant” shall mean and refer to Timberlyne Holdings, LLC, as well as its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose.
- (m) “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Heartland Grove, and all exhibits attached hereto, as the same may be amended from time to time as herein provided.
- (n) “Dwelling Unit” shall mean and refer to a residence constructed on a Lot.
- (o) “Entry Features” shall mean any permanent identification signs or monuments installed and erected by Declarant or the Association on portions of the Common Area at the various entrances of Heartland Grove, which shall be maintained by the Association in accordance with this Declaration.

- (p) “Executive Board” shall mean the body, regardless of name, designated in this Declaration to act on behalf of the Association.
- (q) “Improvement(s)” shall mean and refer to all structures of any kind, including but not limited to, any building, fence, wall, sign, paving, grading, parking and building addition, pool, alteration, screen enclosure, sewer, drainage, disposal system, satellite dishes, antennas, electronic and other signaling devices, decorative or storage buildings, landscaping or landscape device (including existing and planted trees and shrubbery) or object.
- (r) “Institutional Mortgagee” shall mean and refer to a bank, bank holding company, trust company or subsidiary thereof, savings and loan association, insurance company, union pension fund, mortgage company, an agency of the United States Government, Federal National Mortgage Association, or Declarant, which holds a first mortgage of public record on a Lot, and the holder of any mortgage of public record given or assumed by Declarant, whether a first mortgage or otherwise, and their successors and assigns.
- (s) “Landscaped Easement” or “Maintenance Easement” shall mean any areas within street rights-of-way, within the Property or within areas covered by easements or licenses held by the Association outside the Property, which are initially to be improved and maintained by the Declarant and thereafter maintained by the Association in accordance with this Declaration.
- (t) “Lessee” shall mean the party entitled to present possession of a leased Lot whether lessee, sublessee, or assignee.
- (u) “Limited Common Area” means a portion of the Common Areas allocated by this Declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots, which may include but are not limited to, walkways serving Dwelling Units, other areas serving only specified Lots, privacy fences and other such similar areas as may be designated.
- (v) “Lot” shall mean and refer to any numbered or lettered plot of land designated for Dwelling Units as shown upon any recorded subdivision map of any portion of the Property which is designated for separate ownership or occupancy by a Lot Owner.
- (w) “Lot in Use” shall mean and refer to any Lot on which a residential structure is located, for which a Certificate of Occupancy has been issued by the County and which is occupied for residential purposes.
- (x) “Lot Owner” or “Owner” shall mean the Declarant or any other record owner, whether one or more persons or entities, of a fee or undivided fee interest in any Lot which is a part of the Property, including contract sellers, but excluding those having an interest in a Lot solely as security for an obligation.
- (y) “Member” shall mean and refer to every person or entity that holds membership in the Association. Declarant shall be a Member of the Association from and after the date of recordation of this Declaration in the public records of the County.
- (z) “Planned Community” means real estate with respect to which any person or entity, by virtue of that person or entity’s ownership of a Lot, is expressly obligated by the Declaration pertaining to said Planned Community to pay real property taxes, insurance premiums or other expenses to maintain, improve or benefit real estate described in the declaration.
- (aa) “Property” shall mean and refer to that real property legally described in Exhibit A, attached hereto and incorporated herein by reference and, such additional property as may be submitted to this Declaration from time to time, pursuant to Article 3 of this Declaration.

- (bb) “Special Declarant Rights” means rights reserved for the benefit of the Declarant, including, without limitation, any right (i) to complete improvements indicated on plats and plans filed in association with the Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising Heartland Grove and models; (iv) to use easements through the Common Areas for the purpose of making improvements within Heartland Grove or within real estate which may be added to Heartland Grove; (v) to make Heartland Grove part of a larger Planned Community or group of Planned Communities; (vi) to make Heartland Grove subject to an association; or (vii) to appoint or remove any officer or Executive Board member of the Association during any period of declarant control.
- (cc) “Street” shall mean and refer to any street, highway or other thoroughfare which is constructed by Declaration within the Property, whether the same is designated as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, or other similar designation, and shall also include drives that are designated as “driveway common area” on any recorded plats of the Property.
- (dd) “Supplemental Declaration” shall mean and refer to any supplementary declaration of covenants, conditions and restrictions that Declarant or the Association may file at the Chatham County Registry subsequent to filing this Declaration and which may supplement, change, amend or supersede the terms and provisions of this Declaration as necessary.
- (ee) “Surface Water Management System” shall mean and refer to those lakes, canals, drainage swales, collection facilities, storm drainage culverts and other facilities created and used for drainage of the Property.

ARTICLE 2 – HEARTLAND GROVE HOMEOWNERS’ ASSOCIATION, INC

Every person or entity who is an Owner of a fee or undivided fee interest in any of the Lots shall be a member of Heartland Grove Homeowners’ Association, Inc. (hereinafter “the Association”), a North Carolina nonprofit corporation. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The basic operating principles of the Association shall be as follows:

- (a) Purposes. The purposes of the Association shall be:
  - (i) To enforce the provisions of this Declaration, as may be supplemented or amended, and of any Bylaws, rules and regulations promulgated by the Association;
  - (ii) To perform and discharge its duties, responsibilities and obligations as stated in this Declaration, as may be supplemented or amended, and in any Bylaws, rules and regulations promulgated by the Association; and
  - (iii) To promote and to protect the enjoyment and beneficial use and ownership of the Lots.

(b) Powers of the Association. The Association shall, subject to the provisions of the Articles of Incorporation or anything contrary herein, have those powers set forth in N.C.G.S. §47F-3-102, as may be amended, and any powers described therein may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of one or more other Planned Communities or for the benefit of the Lot Owners of one or more other Planned Communities.

(c) Bylaws, Rules and Regulations. The initial directors and/or Members of the Association shall enact and adopt any and all Bylaws, rules and regulations that they deem necessary for the operation of the Association, which Bylaws, rules and regulations shall be binding upon all Members of the Association, their mortgagees, lessees, agents, guests and invitees. Any adopted rules

and regulations, along with all policy resolutions and actions taken by the Executive Board, shall be documented, and such records shall be maintained in a place reasonably convenient to the Members and available to them for inspection during reasonable hours.

(d) Association Member Classes, Voting Rights and Meetings. The Association shall have one (1) class of voting members. Members shall be entitled to one (1) vote per Lot owned, regardless of the number of Owners of a Lot and no fractional votes may be cast with respect to the same. In the event there is more than one (1) Owner of a Lot, the vote cast shall be as determined by said Owners. When there are multiple Owners of a Lot and (i) only one of the Owners is present at a meeting of the Association, the Owner present shall be entitled to cast the vote allocated to that Lot or (ii) if more than one (1) of the multiple Owners is present, the votes allocated to that Lot shall be cast in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one (1) of the multiple Owners casts the vote allocated to that Lot without protest being made promptly by any of the other Owners of the Unit to the person presiding over the meeting.

Unless otherwise provided in this Declaration, as may be supplemented or amended, or in the bylaws of the Association, all voting matters shall be decided by a simple majority vote of the aggregate votes entitled to be cast by all Members of the Association present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present. Meetings shall be conducted and requirements for a quorum shall be as set forth in Article XIV of the Bylaws of the Association.

(e) Executive Board of the Association. Except as provided in N.C.G.S. §47F-3-103, the Executive Board may act in all instances on behalf of the Association. The Executive Board shall be determined and conducted in accordance with said statute and the Bylaws. Notwithstanding anything contained herein to the contrary, until three (3) years after the first Lot is sold to a Lot Owner other than Declarant or until ninety percent (90%) of the total number of permitted Lots to be contained within Heartland Grove have been conveyed to Lot Owners other than Declarant, whichever is last to occur, Declarant or its express assignee shall have the right to designate a two-thirds (2/3) majority of the Executive Board of the Association. During said time period, Declarant shall have the right to remove any person so elected by it and to replace such person so removed with another person selected as herein provided. Any Director of the Executive Board designated by Declarant need not be a Lot Owner. Declarant, as a member of the Association, or any representative of Declarant serving on the Executive Board, shall not be required to disqualify himself from the vote upon, or entrance into any contract or matter between Declarant and the Association in which Declarant may have a pecuniary or other interest. Not later than the later of (i) three (3) years after the first Lot is sold to a Lot Owner other than Declarant or (ii) ninety percent (90%) of the total number of permitted Lots within Heartland Grove have been conveyed to Lot Owners other than Declarant, the Lot Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Members.

(f) Suspension of Voting Rights. The Association may, upon providing written notice to any Member, suspend said Member's voting rights for any period during which any assessment against that Member remains unpaid, and, for a period not to exceed sixty (60) days for any violation of this Declaration or infraction of its published rules and regulations by said Member.

(g) Termination of the Association. Except in the case of taking of all the Lots by eminent domain, the Association may be dissolved or terminated only with the assent given in writing and signed by Lot Owners to which at least eighty percent (80%) of the votes in the Association are allocated. Any such termination of the Association shall be conducted in accordance with N.C.G.S. §47F-2-118 and Chapter 55A, as may be amended, and the termination agreement shall indicate whether there shall be a sale of the Common Areas and if so, the minimum terms of the sale and the manner of distribution of proceeds from any sale.

### ARTICLE 3 – PROPERTY SUBJECT TO THIS DECLARATION

(a) Existing Property. The initial property which shall be subject to this Declaration upon the recordation hereof in the public records of the County is the Property.

(b) Additional Property. Declarant may, at any time and from time to time, subject additional property to this Declaration by recording in the public records of the County, and any other county in which the additional property is located, an amendment to this Declaration, describing such additional property; provided, however, that all such additional property is adjacent to the Property and the Executive Board approves, which approval shall not be unreasonably withheld, delayed or conditioned. Except as otherwise provided herein, such amendments may be made by Declarant in its sole and absolute discretion without the approval of any other Owners or the joinder of any entity or individual.

#### ARTICLE 4 -- COMMON AREAS

(a) Title to Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Areas, or portions thereof, to the Association, free and clear of all liens and encumbrances except rights-of-way for public and private streets and roads, utility easements and any use restrictions of record (including this Declaration), upon completion by Declarant of the initial improvements thereto. Although the Association, on behalf of the Lot Owners, may contract to convey the Common Areas, it shall not convey or transfer title to the Common Area, or any portion thereof unless authorized in writing by at least eighty percent (80%) of the votes in the Association; provided that all the Lot Owners to which any Limited Common Area is allocated shall agree in order to convey that Limited Common Area. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance, free and clear of any interest of a Lot Owner or the Association in or to the Common Area conveyed, including the power to execute deeds or other instruments. No conveyance of Common Areas shall be made which deprives any Lot Owner of its rights of access and support. Proceeds from the sale of a Common Area shall be an asset of the Association, and for Limited Common Areas as provided by agreement between the Lot Owners to which it is allocated and the Association. Proceeds of the sale of a Common Area shall be an asset of the Association.

(b) Mortgaging Common Areas. The Association, on behalf of the Lot Owners, may contract to subject Common Areas to a security interest, but the Contract is not enforceable against the Association unless authorized in writing by at least eighty percent (80%) of the votes in the Association; provided that all the Lot Owners to which any Limited Common Area is allocated shall agree in order to mortgage or encumber that Limited Common Area. Thereafter, the Association has all powers necessary and appropriate to effect the encumbrance, free and clear of any interest of a Lot Owner or the Association in or to the Common Area encumbered, including the power to execute deeds of trust or other instruments. If ingress or egress to any Lot is through any Common Area, any such encumbrance or lien is subject to the Lot Owner's easement.

(c) Dedication or Transferring Common Areas. The Association shall have the right to dedicate or transfer all of the Common Areas or any part thereof to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast at least eighty percent (80%) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action has been sent to every Member not less than thirty (30) days in advance. If ingress or egress to any Lot is through any Common Area, any such dedication or transfer of the Common Areas shall be subject to a perpetual easement to the Lot Owner.

(d) Restrictions on Use of Common Areas. All Common Areas shall be used, improved and devoted exclusively for the benefit of the Owners served thereby, their guests and invitees. No immoral, improper, offensive or unlawful use shall be made of Heartland Grove, and any ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. No Lot Owner shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area unless directed by and with the express written consent of the Association.

(e) Maintenance of Common Areas. The Association shall be responsible for the management, maintenance, repair and operation of the Common Areas, including the performance of obligations placed upon the Common Areas by applicable regulatory agencies, and for the payment of all property taxes and other assessments which are liens against the

Common Areas, from and after the date fee simple title of the same is conveyed to the Association pursuant to Article 4(a) above. The Association shall maintain and be responsible for property within Heartland Grove, including but not limited to the following:

- (i) Such privacy system(s), gatehouses(s) and other privacy facilities which shall be operated and maintained for the benefit of the Lots within Heartland Grove.
- (ii) All Streets within Heartland Grove which are dedicated as such on any plat of any portion of the Property and deemed complete by the Declarant.
- (iii) The Surface Water Management System, which shall be maintained as required by applicable regulatory agencies.
- (iv) All landscaping of the Common Areas, including but not limited to, sodding, irrigation systems and the planting and care of trees and shrubbery.
- (v) All signs located within the Common Areas.
- (vi) All maintenance buildings located, or to be located, within the Common Areas.
- (vii) All fencing located within the Common Areas and all perimeter fencing for which the Association holds an easement for construction and maintenance.

(f) Use of the Common Areas. The Association, through its Executive Board, shall regulate the use of the Common Areas and may from time to time promulgate such rules and regulations consistent with this Declaration governing the use thereof as it may deem to be in the best interest of its Members. A copy of all rules and regulations established hereunder, and any amendments thereto, shall be made available to all Members at the office of the Association. Such rules and regulations, and all provisions, restrictions and covenants contained in this Declaration covering any portion of the Property, including but not limited to all architectural and use restrictions contained therein, may be enforced by legal or equitable action by the Association.

#### ARTICLE 5 – ASSESSMENTS

The Declarant, for each portion or parcel of Heartland Grove owned by it, hereby covenants, and every other Owner of any Lot covered by this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed or other covenant, is deemed to covenant and agree to pay to the Association the following assessments:

(a) Regular Assessments. All Common Expenses and all other costs of the Association in fulfilling the purposes and exercising the powers stated in Article 2 above, including but not limited to the payment of insurance premiums pertaining to the Common Areas; payment of real estate and other taxes associated with Common Areas; maintenance of the Common Areas; and such other costs as may be the responsibility of the Association. The Association shall have the power, pursuant to the Bylaws of the Association, to charge each Lot, on an annual, quarterly or monthly basis, a Regular Assessment as its share of the aforesaid costs as determined by the Executive Board.

(b) Special Assessments. In addition to the Regular Assessments authorized in subsection (a) above, the Association may charge each Lot, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any purchase, construction, reconstruction, repair or replacement of a capital improvement upon any part of the Common Area, Landscape Easements or Maintenance Easements, including fixtures and personal property related thereto; provided that any such Special Assessment must be approved by the affirmative vote of at least two-thirds (2/3) of all the Lots at the time of the vote, cast in person or by proxy at a meeting duly held in accordance with the Bylaws of the Association. Once authorized by the Association, Special Assessments shall be paid by Lot Owners as determined by the Executive Board of the Association.

(c) Sharing and Rates of Regular and Special Assessments. Unless otherwise stated herein, Regular and Special Assessments shall be charged against all Lots, and shall be a lien against each Lot and the personal obligation of the Owners of each Lot. Any Common Expense, Special Assessment or portion thereof associated with the maintenance, repair or replacement of a Limited Common Area or benefiting fewer than all of the Lots shall be

exclusively and equally assessed against the Lots to which that Limited Common Area is assigned or that benefit from the Limited Common Area. The initial rates of the Regular Assessments shall be \$30.00 per Lot.

The rates of assessment shall be uniform as to those Lots falling within each of the above categories. In the event a Lot Owner owns two (2) or more Lots, whether or not the same are in Use, said Lot Owner shall be assessed and pay the then rate of assessment for each Lot owned. Beginning with the assessment year 2004 and thereafter, the maximum regular rates of assessment shall be established by the Executive Board and may be increased without approval of the Members by an amount not to exceed fifteen percent (15%) of the maximum Regular Assessments allowable in the year immediately preceding. The maximum Regular Assessments may be increased without limit by the affirmative vote of at least two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. The Executive Board may at any time fix the regular rates of assessment at amounts not exceeding the maximum regular rates of assessment.

(d) Commencement of Regular and Special Assessments. The Regular and Special Assessments shall commence with July 1, 20004. Each Lot Owner shall be liable for the payment of all Assessments, beginning with the Regular Assessment due for the month/quarter/year in which the closing of the purchase of his Unit occurs, which amount for the month/quarter/year of closing shall be pro-rated for any partial month/quarter/year from the date of such closing through the end of said month/quarter/year. Nothing contained herein shall prohibit any contract seller from arranging with his contract purchaser for the pro-rata reimbursement of any pre-paid assessments, but the Association shall not be liable to any party for such reimbursement.

(e) Reimbursement Assessments. The Association may also charge a Reimbursement Assessment against a particular Lot pursuant to subsections (a) and (b) of Article 9 below, for (i) repairs to any Lot, Common Area, Limited Common Area, Landscape Easement, Maintenance Easement or any improvements thereto which are occasioned by the willful or negligent acts of such Lot Owner and not the result of ordinary wear and tear; (ii) maintenance performed to a Lot due to the Lot Owner's failure to fulfill its duties pursuant to this Declaration, the Bylaws, or rules and regulations adopted by the Association; and (iii) demolition, removal and /or restoration of nonconforming or unapproved Improvements on a Lot pursuant to Article 8(e).

(f) Initial Contributions. In order to provide operating funds for the Association, each Lot Owner, upon the initial purchase of a Lot, shall be required to pay a capitalization fee equal to two (2) months of the Regular Assessment in effect at closing, due and payable upon the closing of the purchase of the Unit. Said sums shall be deposited into the Association's regular operating account. Such initial contribution shall not be considered to be advance payment of any Regular Assessment, Special Assessment, or Reimbursement Assessment.

(g) Certificates of Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether all assessments against a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot shall be binding upon the Association as of the date of its issuance.

(h) Payment and Collection of Assessments. Each of the applicable Assessments described above, together with late fees, interest thereon and the costs of collection thereof, including reasonable attorney's fees, shall be a lien upon each Lot and the personal obligation of all of the Owners of such Lot. Assessments shall be paid in such manner and on such dates as the Executive Board of the Association may establish, which may include discounts for early payment, reasonable late fees for late payment and special requirements for Owners with a history of late payments. No Lot Owner may exempt himself from any liability for Assessments by non-use of Common Areas, abandonment of his Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or



from any other action taken by the Association. Any Assessment against any Lot which remains unpaid for a period of thirty (30) days after delivery of a request for payment thereof shall be past due, shall be subject to a late charge of \$25.00, and shall accrue interest on any unpaid amount from the date that it became past due at the rate of twelve percent (12.00%) per annum, or such other amount determined by the Association, not to exceed eighteen percent (18%) per annum. The Executive Board shall have the power to take whatever action is necessary, at law or in equity, to collect any past due Assessment, together with interest, late fees and costs of collection, including reasonable attorneys' fees. When an Assessment becomes past due, the lien created hereunder may be filed by the Association against the delinquent Lot in the office of the Clerk of Superior Court of Chatham County and the Association may foreclose on the claim of lien as provided in N.C.G.S. §47F-3-116.

(i) Subordination of Lien to First Mortgage and Ad Valorem Taxes. The lien created by subsection (h) above shall be subordinate to such liens and encumbrances, including but not limited to a mortgage or deed of trust, recorded before the docketing of the claim of lien and any liens for ad valorem taxes and other governmental assessments and charges against the Lot. Sale or transfer of any Lot shall not affect the lien of any Assessment, except that where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure, said purchaser and its heirs, successors and assigns shall not be liable for the Assessment against such Lot which became due prior to the acquisition of title to the same by such purchaser. In the event of a foreclosure, such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Lot Owners, including such purchaser, its heirs, successors and assigns. No sale or transfer, whether by purchase or foreclosure, shall relieve a Lot Owner from liability or liens arising from Assessments which become due thereafter.

(j) Exempt Property. Any portion of Heartland Grove (i) dedicated to and accepted by a local public authority, (ii) dedicated to, or owned by the Association, (iii) exempted from *ad valorem* taxes by the laws of the State of North Carolina, or (iv) owned by the Declarant, shall be exempt from assessments herein created; provided, however, that no land or improvements devoted to any private use as permitted hereunder shall be exempt from assessments.

(k) Annual Budget. By majority vote of the Executive Board, the Association shall adopt an annual budget for the subsequent operational year which shall provide for the allocation of expenses in such manner that the obligations imposed by this Declaration, as may be supplemented or amended, will be met, subject, however, to the limitations on amounts of Assessments and provisions regarding the increase of the same as contained herein, in any supplementary declaration or amendment, and/or the Bylaws of the Association.

#### ARTICLE 6 – EASEMENTS

The Property and all portions thereof shall be held, sold and conveyed subject to those easements and restrictions recorded of public record, as well as the easements described below.

(a) Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to and right of ingress and egress over all of the Common Areas. The easements and rights granted hereunder shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(i) the right of the Declarant and/or Association to protect or improve the Common Areas and to encumber said Common Areas in order to borrow money for the purpose of protecting or making improvements to said Common Areas;

(ii) the right of the Declarant and/or Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Areas, which regulations may further restrict the use of the Common Areas;

(iii) the right of the Declarant and/or Association to properly maintain the Common Areas.

(iv) the right of the Declarant and/or Association to suspend any Lot Owner's right to use the Common Areas, or any person to whom that Member has delegated its

right of enjoyment, for any period during which any Assessment against that Lot Owner's Lot remains unpaid, and, for a period not to exceed sixty (60) days, for any infraction of the provisions of this Declaration or the Association's published rules and regulations, except that in no case shall the Executive Board suspend any right to use any Common Area so as to deny an Owner its rights of access or support;

(v) the right of the Declarant and the Association, on behalf of the Lot Owners, to enter into and execute easements and other agreements regarding the use of the Common Areas, including the relocating of existing easements;

(vi) the right of the Declarant to dedicate or transfer all, or any part, of the Common Areas to any governmental or quasi-governmental agency, authority, utility, water management or water control district;

(vii) the right of the Association to dedicate or transfer all, or any part, of the Common Areas to any governmental or quasi-governmental agency, authority, utility, water management or water control district as may be permitted in this Declaration;

(viii) all of the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all exhibits thereto, as well as any rules and regulations adopted by the Declarant and/or Association, as the same may be amended from time to time.

(b) Delegation of Use. Subject to subsection (a) above, any Lot Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Areas, to the members of his family, his lawful tenants or contract purchasers who reside on such Lot Owner's Lot, and to his guests and invitees.

(c) Temporary Construction Access and Disturbance Easement. An easement over, through and to each and any of the Common Areas is hereby reserved, conveyed and established in favor of Declarant, the Association and all Lot Owners, to be used for purposes of ingress, egress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any such Lot, and the installation and maintenance of roadways, sidewalks, surface water and underground drainage, and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant, the Association or an Owner (when permitted by the provisions of this Declaration) as well as the extension of sidewalks, surface water and underground drainage and utility conduit and hookups to any Dwelling Unit situated on a Lot. In using and taking the benefits of said easement, Declarant or its designee, the Association and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designee, or an Owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant, its designee or Owner, as the case may be, shall indemnify the Association for the reasonable expenses incurred in performing such restoration. Where an Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably proximate to his Lot and shall be as determined by the Association.

Easements for the installation and maintenance of utilities are reserved by the Declarant and may be granted by Declarant to the Association and to public and private utilities across the front, side and rear Lot lines of each Lot within Heartland Grove, as set forth below, for present and future utility services to Lots within Heartland Grove, including but not limited to water lines, sanitary sewer lines, storm drainage culverts, sprinkler lines, natural gas lines, electrical wires, television cables/wires, telephone cables/wires, irrigation lines, security wires, street lights, communication lines, communication devices, and other services:

- (i) front Lot lines – forty feet (40')
- (ii) rear Lot lines – twenty-five feet (25')
- (iii) side Lot lines – twenty-five feet (25')

Within these easement areas, no structure, planting or other material (other than sod), which may interfere with the installation and maintenance of utility facilities, shall be placed or permitted to remain unless such structure, planting or other material was installed by the Declarant. The Declarant, the Association, and their respective successors and assigns are hereby granted access to all easements within which such facilities are located for the purpose of operation, maintenance and replacement thereof.

In the event any Lots are recombined or reconfigured with the joinder of the Declarant or the Association, then the easements reserved herein shall run along the newly established Lot lines and the easements along the old Lot lines shall be abolished, unless an existing improvement, including but not limited to a utility line or drainage system, is in place or an easement is expressly reserved.

(d) The Common Areas shall be subject to a perpetual, non-exclusive easement in favor of the Declarant, the Association, and any management entity contracted by the Association, in order that its employees, agents, contractors, or management entity may carry out their duties.

(e) Landscape Easements and Maintenance Easements. Certain Common Areas of Heartland Grove may also be designated as Landscape Easements or Maintenance Easements, including without limitation all trees, grass and other landscaping contained within the trees or lawns behind the curbs, even though such trees or lawns lie within the public rights-of-way of the adjacent streets. Declarant hereby reserves for itself, its successors and assigns, and then, without further assignment required, for the Association, an easement over, under and across the Common Area, including those areas designated as Landscape Easements and Maintenance Easements, for the purposes of the installation, operation, maintenance and repair of the site, including but not limited to the mowing, removing, cleaning, cutting or pruning of brush, weeds or other unsightly vegetative growth, necessary grading, and trash removal, located or to be located thereon, including all personal property which may be associated with the same, except for any such improvements or personal property for which a public utility or other public authority shall be responsible.

(f) Buffer Areas. Certain areas within the Common Areas may be designated as buffer areas. The topography or any landscaping within any such buffer area shall not be disturbed or altered without the prior written consent of Declarant or the appropriate governmental authority having jurisdiction over said buffer area.

(g) For a period of twenty-five (25) years from the date of the first conveyance of a Lot, Declarant reserves a blanket easement on, over and under the ground within each Lot or parcel on the Property for the maintenance and correction of any drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Said easement reservation shall not obligate Declarant to maintain and correct any and all drainage or surface water on the Property. In the event Declarant exercises said easement, the same expressly includes the right but not the obligation to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action as may be reasonably necessary. After such action has been completed, Declarant shall restore the affected area to its original condition to the extent practicable. Declarant shall give reasonable notice of its intent to take such action to the affected Lot Owner. Any rights, easements and reservations contained herein are assignable by the Declarant.

(h) An easement is hereby granted to each Institutional Mortgagee of a Lot for the purpose of accessing the property subject to, and to the extent permitted by, its mortgage.

(i) Easement to Governmental Authorities. An easement is hereby established for municipal, state or other public utilities serving the Property and for their agents and employees, over all the Property hereby or hereafter established for setting, removing and reading utility meters, maintaining or replacing utility or drainage connections, collection of trash and recyclables, and acting with other purposes consistent with the public safety and welfare, including without limitation, police, fire and rescue protection.

(j) Signage Easement. Some portions of the Common Area may be subject to a sign easement for purposes of construction and maintenance of neighborhood identification sign(s).

Declarant hereby reserves unto itself, its successors and assigns, and thereafter to the Association, the free and full right of ingress, egress and regress over and across the Property, and the right from time to time to remove any and all obstructions that, in the opinion of Declarant, its successors and assigns, and thereafter the Association, may injure, endanger or interfere with the maintenance, visibility or appearance of the sign(s). Declarant, its successors and assigns, and thereafter the Association shall be solely responsible for any and all grassing, planting or other landscaping introduced in connection with the sign(s), including the regular maintenance thereof, and the Lot Owners shall at no time attempt to add to, remove or interfere in any manner whatsoever with such grassing, planting and/or landscaping, or locate any structure of any nature in proximity with the sign(s) so as to hinder any such sign's visibility or affect its appearance.

#### ARTICLE 7 – INSURANCE

(a) The Association is hereby authorized to purchase property and casualty insurance for the Common Area, as well as liability, indemnity and fidelity insurance, in such amounts and with such companies as the Executive Board shall deem appropriate. Lot Owners may, at their own expense, obtain insurance upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

(b) Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in the operating costs of the Association to be assessed against all Lots via the Regular Assessment.

(c) Proceeds. All contracts of property insurance purchased by the Association shall be for the benefit of the Owners(s) of the property insured (which may be the Association) and their mortgagee, if any, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Proceeds of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

- (i) the proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;
- (ii) proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and
- (iii) any remaining proceeds shall then be distributed to the beneficiary or beneficiaries of the trust, as their interests may appear.

(d) Repairs or replacement following damage or destruction. Any portion of Heartland Grove for which insurance is required under subsection (a) above which is damaged or destroyed shall be repaired or replaced promptly by the Association upon receipt of said insurance proceeds unless:

- (i) Heartland Grove Homeowners' Association, Inc. is terminated, or
- (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance;

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

If any portion of Heartland Grove is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of Heartland Grove, (ii) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Association and the Lot Owners to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be equally distributed to all Lot Owners or their lienholders.

## ARTICLE 8 – CONTROL OF DESIGN AND APPEARANCE

Notwithstanding any other provision of this Declaration, no tree removal, site preparation on any Lot, or change in grade or slope of any Lot, installation, planting or construction of any Improvements (as defined below), shall be commenced, undertaken or maintained on any Lot until an Architectural Review Committee (“the Committee”), appointed as hereinafter provided, has approved the plans and specifications therefore and the location of any such improvements. The Committee shall operate as follows:

(a) Composition. For so long as Declarant owns any Lots, Declarant shall annually appoint the members of the Committee, which shall be composed of three (3) individuals, each generally familiar with residential and community development design matters and knowledgeable about the Declarant’s concern for appearance standards in Heartland Grove. Except as provided for herein, the members of the Committee are not required to be Members of the Association. The Declarant or Executive Board, as appropriate, may elect at its option, to increase or decrease the number of members of the Committee from time to time. In the event of the death or resignation of any member of the Committee, Declarant, for so long as it has the authority to appoint the members of the Committee, shall have full authority to designate and appoint a successor. Also, Declarant may at any time assign its rights to appoint the members of the Committee to the Executive Board of the Association. Upon cessation of Declarant’s membership in the Association, the Executive Board of the Association shall appoint the members of the Committee, at least one (1) of whom shall be a Lot Owner, on an annual basis. Members of the Committee may be removed or replaced at any time, with or without cause and without prior notice, by the Declarant, during its period of control, or thereafter by the Executive Board, as appropriate. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration.

(b) Definition of “Improvement.” For purposes of this section, the term “Improvement” shall mean and include all buildings, outbuildings, garages, signs, flagpoles, awnings, antennae, satellite dishes, storage sheds or areas, roofed or unroofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, sidewalks, walls, ponds, tree removal, excavation, changes in grade or slope, site preparation, swimming pools, exterior illumination, changes to doors, windows and shutters, and new exterior construction or exterior improvement which may not be included in any of the foregoing. “Improvement” shall mean and include all changes, repairs or additions to original Improvements.

(c) Procedure. No Improvement of any kind or nature shall be commenced or undertaken on any Lot until all plans and specifications, showing all significant aspects of the requested improvement or construction, and a site plan therefore have been submitted to and approved in writing by the Committee, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the requested improvement, its exterior design and colors with the Community-Wide Standard as determined by the Committee;
- (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon, and drainage arrangements;
- (iv) the other standards set forth within this Declaration (and any amendments thereto) or as may be set forth within bulletins promulgated by the Committee and made available to all Owners.

The detail of the plans and specifications required for Improvements shall be as determined necessary by the Committee based on the circumstances of the proposed Improvements. Final plans and specifications for all Improvements proposed to be constructed

on a Lot shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. The plans and specifications retained by the Committee shall be kept and considered as strictly confidential and shall be utilized to monitor and insure compliance therewith and for no other purpose. If found not to be in compliance with these covenants, conditions and restrictions, or if found to be otherwise unacceptable to the Committee, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved," accompanied by a statement in reasonable detail of items found not to be in compliance with these covenants, conditions and restrictions, or found otherwise unacceptable. Any modification or change to the set of plans and specifications approved by the Committee must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required, herein, shall be in writing. The Committee may from time to time promulgate bulletins of architectural standards which shall be fair, reasonable and uniformly applied in regards to the Lots, and which shall carry forward the spirit and intention of these covenants, conditions and restrictions; however, the Committee shall not be required to publish such bulletins. Any rules, regulations, procedures, restrictions and standards promulgated by the Committee shall supplement this Declaration, as may be supplemented or amended, and are incorporated herein by reference. The Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and shall use its best efforts to balance the competing interests of maintenance of the Community-Wide Standard and each Owner's right to use of his/her/its private property. However, although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee's primary charge and responsibility shall be to maintain the Community-Wide Standard, as perceived and determined by the Committee, to the best of its ability.

Upon the Committee's approval of an Improvement request by a Lot Owner, said Lot Owner shall diligently proceed with completion of the Improvement in accordance with the approved plans and specifications, and said Improvement shall be completed within a reasonable time.

No approval shall be required to rebuild a destroyed building on the same location if rebuilt strictly pursuant to the original plans.

(d) Failure of Committee to Act. If the Committee fails to approve or disapprove any plans and specifications or other submittals within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Committee has approved such plans and specifications and other submittals. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Committee may reject them as being inadequate or may approve part, conditionally or unconditionally, and reject the remainder.

(e) Right of Inspection. The Committee shall have the right, at its election, to enter upon any of the Lots during preparation, construction, erection or installation of any Improvements in order to determine that such work is in accordance with the approved plans and specifications. The Committee is authorized and empowered to inspect and review any and all aspects of the construction of any Improvements on any Lot which may, in its reasonable opinion, adversely affect the living enjoyment of other Lot Owners or the general value and appearance of Heartland Grove. If any Improvement is found to be in violation of the provisions contained herein, the Committee may require that Lot Owner to restore such non-conforming or unapproved Improvements to the condition existing prior to such construction, including without limitation, the demolition and removal thereof. The Association, acting on its own or through the Committee, may undertake such demolition, removal and/or restoration itself and the Association shall then levy the cost thereof as a Reimbursement Assessment against the subject Lot.

(f) Limitation of Liability. Neither the Association, the Committee, their members, nor Declarant shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval, or to any Lot Owner by reason of mistake of judgment, negligence (except for gross negligence) or nonfeasance arising out of or in

connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

(g) Enforcement. The Declarant, any Lot Owner and/or the Association shall have the right (but not the obligation) to enforce the provisions contained in this section and/or to prevent any violation of the provisions contained in this section by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions, including but not limited to the right to an immediate injunction and all rights and remedies set forth in subsection (d) of Article 12 below.

(h) Compensation. No member of the Committee shall be entitled to compensation for services performed pursuant to this section; however, the Association shall reimburse members of the Committee for reasonable out-of-pocket expenses incurred in connection with their duties on the Committee.

#### ARTICLE 9 – MAINTENANCE

All areas within the Property and all areas covered by easements or licenses owned or held by the Association shall be maintained to the Community-Wide Standard, and to all other standards stated in this Declaration, as may be supplemented or amended, and the Bylaws, rules and regulations of the Association. The Association and the individual Lot Owners shall be responsible for such maintenance, subject to the covenant for the payment of maintenance assessments set forth in Article 5 above, as follows:

- (a) Association's Responsibility. The Association shall maintain the following:
- (i) All Landscaped Easements, Entry Features and Buffer Areas on the Property;
  - (ii) All streets and roadways within any easements or licenses owned or held by the Association, unless such streets or roadways are maintained by another person or entity, including the County, or some other governmental authority;
  - (iii) All Common Areas, Limited Common Areas, open space and all landscaping, paving, streets, structures and improvements of any nature located on the Property; and
  - (iv) All ponds, streams and culverts located on the Property which serve as part of any drainage and storm-water retention system.

In the event that the need for maintenance or repair by the Association pursuant to this subsection is caused through the willful or negligent act of any Lot Owner, his family, guest, invitees or delegates, the maintenance or repair costs incurred shall be assessed against the Lots of such Owner(s) as a Reimbursement Assessment pursuant to Article 5(c), and may be collected by the Association as provided in Article 5(h). The Association shall not be liable for maintenance, repair and all other expenses in connection with any real estate which has not been incorporated into the Planned Community of Heartland Grove.

(b) Owner's Responsibility. Except as otherwise provided herein, each Lot Owner shall maintain his/her/its Lot and all improvements of any nature whatsoever located thereon. Each Lot Owner's maintenance of his/her/its Lot shall include but not be limited to the following:

- (i) Keeping the Lot free and clear of all litter, trash, refuse and wastes;
- (ii) Removal and/or clean up of any tree damage, including downed trees or hazardous situations, resulting from inclement weather;
- (iii) Keeping exterior lighting and mechanical facilities in working order;
- (iv) Keeping lawn, flower and landscape areas alive and maintaining the same;

- (v) Maintaining any portion of the street right-of-way between their Lots and the street;
- (vi) Removing and replacing any dead plant material installed by Lot Owner;
- (vii) Keeping vacant land well-maintained and free of trash and weeds;
- (viii) Complying with all governmental health and police requirements;
- (ix) Repainting of Improvements;
- (x) Repair of exterior damage to Improvements;
- (xi) Maintenance, repair, replacement and/or cleaning of all of the doors, shutters, glass surfaces and window screens that are a part of the exterior of his/her/its Dwelling Unit or other Improvements located on his/her/its Lot.

If any Lot Owner or occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Executive Board of the Association or the Declarant, as applicable, may give the Lot Owner written notice of such failure and such person/entity must, within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addressed to the party to whom it is intended to be delivered at that party's current address as shown on the records of the Chatham County Tax Collector, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Lot Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association or Declarant, or their authorized agent(s) shall have the right and power to enter onto the Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. All Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12%) per annum from the date(s) such amounts are expended until repaid to the Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Lot Owner with his/her/its duties and responsibilities hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Lot Owner shall fail to reimburse the Association or Declarant within thirty (30) days after the mailing to such Lot Owner of a statement for such costs and expenses by the Association or Declarant, the Association or the Declarant may bring an action at law or in equity to recover such costs and expenses, and to recover any reasonable attorneys' fees and costs incurred in bringing such action. In addition, if the Association has performed the work on the Lot of the delinquent Owner(s), the Association may charge a Reimbursement Assessment for such amounts, as well as a service charge in the amount of twenty percent (20%) of such costs incurred, against the Lot of such Owners, and proceed to collect such Reimbursement Assessment as provided in Article 5(e).

(c) Costs of Maintenance. All costs of the Association in maintaining Common Areas and Limited Common Areas shall be Common Expenses.

(d) Utility Bills. Any bills for utilities servicing the Common Areas and the Limited Common Areas shall be the responsibility of the Association and considered a Common Expense, to be billed according to Article 5. All bills for utilities servicing the Lots shall be billed to and be the personal responsibility of each Lot Owner receiving such services.

#### ARTICLE 10 – LOT REQUIREMENTS AND USE RESTRICTIONS

All of the Property shall be subject to the following restrictions on use:

- (a) Clotheslines. Outside clotheslines shall not be permitted upon any Lot.



(b) Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of reasonable size (i) advertising the Lot for sale or rent; (ii) advertising the building and contractor constructing improvements on the Lot during the initial construction and sales period; (iii) identifying the sales office and/or model home; and (iv) signs of not more than one (1) square foot indicating the presence of home security devices; however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising Heartland Grove. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

(c) Boats, Trailers and Campers. Only boats and/or boat trailers shall be permitted on Lots provided the same are kept behind the residence and are located where they cannot be viewed from any street within the Heartland Grove Subdivision. No other trailers or campers shall be permitted to park on any Lot or Common Area, including parking areas, streets or roadways within the Heartland Grove Subdivision.

(d) Building Materials and Equipment. No lumber, steel, brick, stone, cinder block, concrete or any other building materials or equipment shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot, nor shall any such material or equipment be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used.

(e) Tanks. All fuel or water tanks shall be located underground, unless severe site conditions make this a hardship, in which case tanks may be placed above-ground provided they are kept behind a screened enclosure approved by the Architectural Review Committee. Lot Owners shall be permitted to use outdoor gas grills or propane tanks for gas fireplaces on their Lot in accordance with applicable governmental ordinances.

(f) Antennae and Dishes. No exterior antennae, earth satellite station or dish, microwave dish or other similar Improvement may be constructed, placed or maintained on any Lot without the prior written consent of the Architectural Review Committee. Small satellite dishes shall be permitted on Lots without prior written consent of the Committee provided the same are located behind the residence and concealed from view from any street within the Heartland Grove Subdivision.

(g) Home Occupations. A resident of any Dwelling Unit engaging in a home occupation therein shall comply with all of the provisions of Chatham County then applicable thereto; provided that no home occupation or business or professional activity shall be permitted which generates a significantly greater volume of vehicular traffic or on-street parking than would normally occur within a residential neighborhood.

(h) Leases. No Lot or structures thereon may be used for hotel or other transient residential purposes. Each lease relating to any Lot must be for a term of at least twelve (12) consecutive months and must provide that the tenant is obligated to observe and perform all of the terms and provisions of this Declaration, as may be supplemented or amended, applicable to such Lot.

(i) General Use. Each Lot shall be used only for residential purposes. Only one (1) single-family residential dwelling, of new construction, shall be erected upon any Lot. It is provided, however, that Declarant or its assigns, during the development stage, may maintain a Dwelling Unit for use as a model home to aid home sales in Heartland Grove. After development has been completed and all Lots have been sold by Declarant, no such model home may be maintained in Heartland Grove.

(j) Size of Dwelling. Single-story dwellings shall have a minimum of 2,200 square feet of heated living area within the primary dwelling and two-story dwellings shall have a minimum of 2,500 square feet of heated living area within the primary dwelling. In determining the square footage of the primary dwelling, all garages, storage houses, finished or unfinished basements, porches and decks shall be excluded.

(k) Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of

motor vehicles, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of any Lot at locations where they can be viewed from any street, other Lot, or any portion of the Common Areas. Said conduct shall not be conducted on any Common Area.

(l) Vegetable Gardens. Vegetable gardens shall be permitted to the rear and side of the dwelling unit, but prohibited from the front yards of all Lots.

(m) Keeping Animals. No stable, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot. However, a reasonable number of household pets as determined by the Executive Board of the Association shall be permitted, provided they are not raised for commercial purposes, and in the sole judgment of the Executive Board do not create a nuisance, such as by viciousness, noise, odor, damage or destruction of any property. Pets shall be kept under control and shall not be allowed to range the neighborhood. Pets shall be kept on leashes when not on the Lots of their Owners.

(n) Offensive Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. Each Lot Owner shall refrain from any act or use of his/her/its Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Lot Owners or the neighborhood. No inoperative vehicles shall be parked or permitted to remain in the Common Areas or on any part of a Lot visible from any street, other Lot, or any portion of the Common Areas of Heartland Grove Subdivision, and the same shall be removed within fifteen (15) days of becoming inoperative. No wrecked or junked motor vehicle or vehicle without a current license plate and registration shall be permitted to remain on the Property unless located on a Lot where it cannot be viewed from any street, other Lot, or any portion of the Common Areas of Heartland Grove Subdivision.

(o) Governmental Regulations. All governmental building codes, health regulations, zoning restrictions, and the like, applicable to the Property shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply. Nothing contained in this Declaration shall be deemed to be a waiver of any applicable governmental requirements or restrictions relative to the construction of improvements on and/or the use of any Lot.

(p) Required Land Area. No Lot may be subdivided by sale or otherwise so as to reduce the total area thereof below that as shown upon any recorded subdivision map of the Property.

(q) Erosion Control. During the period of Lot grading and construction of Improvements thereon and thereafter, each Owner shall exercise and maintain such erosion control measures, including the erection of silt fences, as may be required by the Declarant or the Association, as applicable, in order to minimize erosion and runoff. Compliance with any applicable erosion control ordinance, regulation or law enacted by Chatham County shall not constitute automatic approval by Declarant or the Association, and the Declarant or Association, as applicable, reserves the right to impose requirements and standards in excess of those required by any such ordinance, regulation or law.

(r) Setbacks. All structures shall be set back 40 feet or more from the front lot line and 25 feet or more from side and rear lot lines of all Lots. No structures of any type are permitted in easements designated on the recorded plat. Nothing herein shall relieve the requirements to comply with any setbacks imposed by Chatham County, relief being available solely from Chatham County.

(s) Exterior Specifications. Minimum 25-year shingles for roofing; brick foundations and front steps, as a minimum (brick piers may be used under long porches in lieu of solid masonry); driveways require a minimum 4" gravel base covered with crusher run or 63 gravel, or solid surface material.

(t) Swimming Pools. Belowground swimming pools are permitted to the rear of the Dwelling Unit so long as there is no interference with the septic areas as determined by the

Chatham County Health Department. Aboveground swimming pools are not permitted on any Lot.

(u) Fences. Installation of fences shall be controlled pursuant to Article 8.

(v) Garbage and Refuse Storage/Disposal. No Lot or Common Area shall be used or maintained in an unsightly manner or as a dumping ground for rubbish, trash or debris. Rubbish, trash, debris, garbage and other waste shall be collected only in sanitary receptacles as approved by the governing municipality. All containers or other equipment for the storage or disposal of such waste materials approved by the governing municipality shall be kept in a neat, clean and sanitary condition and stored on the Lots in an area suitably screened from public view as determined by the Association or the Committee.

(w) Temporary Structures. No temporary structures such as sheds, trailers, basements, shacks, barns, tents or other outbuildings shall be erected or placed on a Lot (or Common Area) without the written approval of the Declarant or the Association. Such structures, if permitted, may be used only during periods of construction, and never as a residence.

(x) Garages, Parking and Vehicle Storage. The only garages or vehicular storage facilities on Lots shall be those contained in or attached to the Dwelling Units constructed by Lot Owners, or those enclosed garage buildings constructed in like fashion to the Dwelling Unit. All garages shall be enclosed on not less than three (3) sides. Lot Owners must also provide not less than two (2) parking spaces on the Lot for offstreet parking; said parking spaces may be in the driveway and are not required to be covered. Recreational vehicles shall be governed as provided in subsection (c) above. No vehicle located on a Lot may be used as a dwelling, even temporarily.

(y) Underground Utilities. All utility lines serving structures located on Lots shall be placed underground.

(z) Mobile Homes and Manufactured Housing. No mobile home, trailer, manufactured housing or modular home shall be located on any Common Area or Lot. Provided, however, Declarant, its successors and assigns, shall be permitted utilization of a mobile home, trailer or similar structure on the Property during periods of construction and marketing. Any such structure utilized by the Declarant, its successors and assigns, or their agents shall promptly be removed following completion of construction and sale of all the Lots in Heartland Grove.

(aa) Screening. The erection or placement of any swing sets, tree houses, play houses, play areas or gazebos shall be constructed or placed on a Lot without prior written approval of the Committee provided the same are located behind the residence. The placement of air conditioning or other mechanical equipment on a Lot shall be permitted without prior written approval by the Committee provided the same are concealed behind screening or integrated into the building design so as to be inconspicuous, compatible and harmonious with the surroundings. The provisions of this section shall not be construed to prohibit Declarant from establishing certain Common Areas or Limited Common Areas as neighborhood parks or playgrounds with appropriate equipment, structures and other improvements installed thereon.

#### ARTICLE 11 -- LENDER'S NOTICE

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(a) any condemnation or casualty loss that affects either a material portion of Heartland Grove or the Lot securing its mortgage;

(b) any sixty (60) day delinquency in the payment of assessments owed by the Owner of the Lot on which it holds the mortgage;

(c) a lapse, cancellation or material modification of any insurance policy or

fidelity bond maintained by the Association;

(d) any proposed action that requires the consent of a specified percentage of mortgage holders; and

(e) the Association's financial statement for the previous fiscal year.

#### ARTICLE 12 – GENERAL PROVISIONS

(a) Parties Bound. All persons and entities acquiring any interest in any of the Lots, including but not limited to lessees, shall be bound by the provisions of this Declaration, as may be supplemented or amended. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall likewise be bound.

(b) Duration. The provisions of this Declaration and any supplements thereto shall run with and bind the Property and all portions thereof perpetually from the date this Declaration is recorded, unless rescinded pursuant to subsection (c) below.

(c) Amendment or Rescission. Except as otherwise provided herein, this Declaration may be supplemented, amended or rescinded only by the affirmative vote or written agreement signed by Lot Owners of Lots to which at least two-thirds (2/3) of the votes in the Association are allocated at that time, cast in person or by proxy at a meeting duly held in accordance with the Bylaws of the Association; provided that the terms and provisions of this Declaration may be supplemented, modified, amended or superseded by the Declarant if necessary for the exercise of any Special Declarant Right, as defined herein. For so long as Declarant owns any Lots, this Declaration may not be amended or rescinded without Declarant's approval. Any amendment, supplement or rescission must be recorded at the Chatham County Registry to be effective.

Any instrument amending this Declaration, pursuant to an amendment requiring approval of at least 2/3 of the votes of the Association, shall be delivered, following approval by the Members, to the Executive Board. Thereupon, the Executive Board shall, within thirty (30) days of delivery, take the following action:

(i) reasonably assure itself that the amendment has been duly approved by the Members as provided in this subsection. For this purpose the Executive Board may rely on its roster of Members without causing any title to be searched;

(ii) attach to the amendment a certification as to its validity which shall be executed by the Association; and

(iii) cause the instrument to be recorded in the Chatham County Registry.

(d) Enforcement. The Declarant, any Lot Owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this Declaration. The Declarant, the Association or any Lot Owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefore. The Declarant, the Association and/or any Lot Owner shall be entitled to recover reasonable attorneys' fees and costs incurred in bringing and prosecuting such action from the breaching or violating Lot Owner(s). The Association, acting through its Executive Board, shall have the right to impose reasonable monetary fines, not exceeding one hundred dollars (\$100.00) for each day that the violation of any provision of this Declaration, as may be supplemented or amended, continues, after first having provided the appropriate Lot Owner with ten (10) days' written notice of its intent to do the same. Any such fine shall constitute a lien against the Owner's Lot and be subject to collection pursuant to Article 5.

(e) Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

(f) Assignment by Declarant. Any or all of the rights, powers, titles, easements, and estates reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, titles, easements and estates when requested by the Declarant. Any such assignment or transfer shall be made by an appropriately recorded written instrument executed by the Declarant and the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

(g) Conflicts. In the event of any conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control, except to the extent the same is inconsistent with the North Carolina Planned Community Act contained in N.C.G.S. Chapter 47F. In the event of a conflict between this Declaration or the Bylaws and the Articles of Incorporation, the provisions of the Articles of Incorporation shall control.

(h) Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

(i) Rights Exclusive. All rights herein created for, held by, or reserved by Declarant shall belong exclusively to Declarant and to such persons, firms or corporations to whom they are expressly assigned by Declarant, including the Association, and none of them shall be deemed transferred to the Owner of any Lot or other portion of the Property unless the instrument effecting such transfer expressly recites the assignment of such rights.

(j) Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

(k) Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

#### ARTICLE 13 -- MORTGAGE CONSENT AND SUBORDINATION

(a) SOUTHBANK and H. Eugene Tatum III, Trustee, execute this document for the sole and limited purpose of submitting their respective interests in Lot 4 of Heartland Grove Subdivision under that certain Deed of Trust dated February 27, 2004, recorded in Book 1087, Page 502, Chatham County Registry, and in Lot 34 of Heartland Grove Subdivision under that certain Deed of Trust dated February 27, 2004, recorded in Book 1087, Page 510, Chatham County Registry, to the provisions of the North Carolina Planned Community Act, N.C.G.S. Chapter 47F ("the Act") and the covenants, conditions and restrictions contained herein. SOUTHBANK and said Trustee hereby confirm that said Lots 4 and 34 shall hereafter be held, sold and conveyed subject to the terms, restrictions, covenants and conditions set forth herein, and in any amendment, modification or addition hereto, and that they, their successors and assigns, shall be bound by the terms hereof if they take title to said Lots through foreclosure or otherwise.

(b) Central Carolina Bank, a Division of National Bank of Commerce, and Southland Associates, Inc., Trustee, execute this document for the sole and limited purpose of submitted their respective interests in Lot 8 of Heartland Grove Subdivision under that certain Deed of Trust dated February 24, 2004, recorded in Book 1086, Page 713, Chatham County Registry, to the provisions of the North Carolina Planned Community Act, N.C.G.S. Chapter 47F ("the Act") and the covenants, conditions and restrictions contained herein. Central Carolina Bank and said Trustee hereby confirm that said Lot 8 shall hereafter be held, sold and conveyed subject to the terms, restrictions, covenants and conditions set forth herein, and in any amendment, modification or addition hereto, and that they, their successors and assigns, shall be bound by the terms hereof if they take title to said Lots through foreclosure or otherwise.

IN TESTIMONY WHEREOF, DECLARANT has caused this instrument to be executed in its name, and its seal to be hereto affixed, this the day and year first above written.

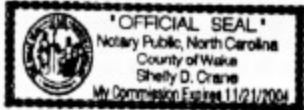
TIMBERLYNE HOLDINGS, LLC

By: Chester W. Burgess III  
Chester W. Burgess III, Manager

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

I, Shelly D. Crane, a Notary Public of Wake County, North Carolina certify that Chester W. Burgess III, personally appeared before me this day and acknowledged that he is the Manager of Timberlyne Holdings, LLC, and that by authority duly given, as the act of said company, the foregoing instrument was signed in its name by said Manager.

Witness my hand and official stamp or seal, this 30<sup>th</sup> day of April, 2004.



Shelly D. Crane  
NOTARY PUBLIC

My commission expires: 11/21/2004

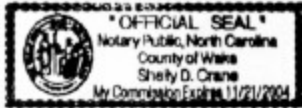
BURGESS CONSTRUCTION COMPANY

By: Chester W. Burgess III  
Chester W. Burgess III, President

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

I, Shelly D. Crane, a Notary Public of Wake County, North Carolina certify that Chester W. Burgess III, personally appeared before me this day and acknowledged that he is the President of Burgess Construction Company, and that by authority duly given, as the act of said company, the foregoing instrument was signed in its name by said President.

Witness my hand and official stamp or seal, this 30<sup>th</sup> day of April, 2004.



Shelly D. Crane  
NOTARY PUBLIC

My commission expires: 11/21/2004

H. Eugene Tatum III  
H. EUGENE TATUM III, TRUSTEE

SOUTHBank, a Federal Savings Bank

By: [Signature]

Its: Exec. V. Pres -

STATE OF NORTH CAROLINA  
COUNTY OF Durham

I, Tonia L. Allen, a Notary Public of Person County, North Carolina, certify that H. Eugene Tatum III, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 2<sup>nd</sup> day of April, 2004.

[Signature]  
Notary Public



(STAMP/SEAL)  
My commission expires: 3/3/07

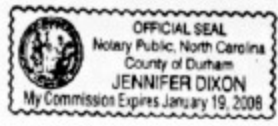
STATE OF NORTH CAROLINA  
COUNTY OF Durham

I, Jennifer Dixon, a Notary Public of Durham County, North Carolina, certify that William T. Moore personally appeared before me this day and, being first duly sworn, acknowledged that he/she is Executive Vice Pres. of SOUTHBank, a Federal Savings Bank, and that by authority of its Board of Directors duly given, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this 27<sup>th</sup> day of April, 2004.

Jennifer Dixon  
Notary Public

(STAMP/SEAL)  
My commission expires: 1-19-08



TRUSTEE:  
SOUTHLAND ASSOCIATES, INC.

By: Chas. J. V.

Its: VP.

CENTRAL CAROLINA BANK, A DIVISION  
OF NATIONAL BANK OF COMMERCE

By: Mary E. Rice

Its: 1st Vice-President

STATE OF NORTH CAROLINA  
COUNTY OF Orange

I, Margie E. Burns, a Notary Public of Chatham County, North Carolina, certify that Charles J. Harris personally appeared before me this day and acknowledged that he is VP of Southland Associates, Inc., Trustee, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its VP.

Witness my hand and official stamp or seal, this 26 day of April, 2004.



Margie E. Burns  
Notary Public

(STAMP/SEAL)  
My commission expires: February 10, 2007

STATE OF NORTH CAROLINA  
COUNTY OF Orange

I, Margie E. Burns, a Notary Public of Chatham County, North Carolina, certify that Mary E. Rice personally appeared before me this day and acknowledged that he is 1st VP of Central Carolina Bank, a Division of National Bank of Commerce, and that the 1st VP of said corporation signed the foregoing instrument, all by authority duly given and as the act and deed of said corporation.

Witness my hand and official stamp or seal, this 26 day of April, 2004.



Margie E. Burns  
Notary Public

(STAMP/SEAL)  
My commission expires: February 10, 2007



EXHIBIT A

Being all of TRACT 2, containing 50.38 acres, more or less, according to a plat entitled "Minor Subdivision, Property of Paul Elwood & Sandra L. Fearington", recorded in Plat Slide 2003-180, Chatham County Registry, reference to which is hereby made for a more particular description of same.

<p>Chatham County, North Carolina  REBA G. THOMAS Register of Deeds  The foregoing certificate(s) of  SHELLY D CRANE  TONIA L ALLEN  JENNIFER DIXON  _____  notary/notaries public  is/are certified to be correct.  <i>Vicki E. Scott</i>  Assistant - Register of Deeds</p>	<p>Chatham County, North Carolina  REBA G. THOMAS Register of Deeds  The foregoing certificate(s) of  MAGGIE E BURNS  _____  notary/notaries public  is/are certified to be correct.  <i>Vicki E. Scott</i>  Assistant - Register of Deeds</p>
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FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR HEARTLAND GROVE

Prepared by and return to: Dorrestein & Crane, P.C.  
141 Providence Road, Suite 160  
Chapel Hill, North Carolina 27514

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEARTLAND GROVE ("First Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between TIMBERLYNE HOLDINGS, ILC, a North Carolina limited liability company, its successors and assigns and BURGESS CONSTRUCTION COMPANY, a Virginia corporation (hereinafter collectively referred to as "Declarant"); COMMONWEALTH CONSTRUCTION & DESIGN, INC., a North Carolina corporation; H. EUGENE TATUM, III, Trustee, and SOUTHBANK, a Federal Savings Bank (for the limited purposes set forth hereinbelow); SOUTHLAND ASSOCIATES, INC., Trustee, and CENTRAL CAROLINA BANK, a Division of National Bank of Commerce (for the limited purposes set forth hereinbelow); WAYNE R. HADLER, Trustee, and HARRINGTON BANK, FSB (for the limited purposes set forth hereinbelow); CB SERVICES CORP., Trustee, and RBC CENTURA BANK (for the limited purposes set forth hereinbelow); JERRY L. BAKER, Trustee, and FIRST HORIZON HOME LOAN CORPORATION (for the limited purposes set forth hereinbelow).

W I T N E S S E T H:

WHEREAS, Declarant caused that certain Declaration of Covenants, Conditions and Restrictions for Heartland Grove (the "Declaration") to be filed on May 5, 2004, in Book 1102, Page 351, Chatham County Registry;

WHEREAS, Declarant, along with Commonwealth Construction & Design, Inc., are at least two-thirds (2/3) owners of all of the property which is the subject of the Declaration;

WHEREAS, SOUTHBANK, a Federal Savings Bank ("SOUTHBANK"), and H. Eugene Tatum III, Trustee, hold a security interest in Lots 3-7, 11-30, and Lots 32-34 of Heartland Grove Subdivision under those certain Deeds of Trust recorded in Book 1025, Page 1100; Book 1087, Page 502; Book 1087, Page 510; Book 1102, Page 916; Book 1115, Page 24; and Book 1117, Page 984, Chatham County Registry;

WHEREAS, Central Carolina Bank, a Division of National Bank of Commerce ("Central Carolina Bank"), and Southland Associates, Inc., Trustee, hold a security interest in Lot 8 of Heartland Grove Subdivision under that certain Deed of Trust dated February 24, 2004, recorded in Book 1086, Page 713, Chatham County Registry;

WHEREAS, Harrington Bank, FSB, and Wayne R. Hadler, Trustee, hold a security interest in Lot 2 of Heartland Grove Subdivision under that certain Deed of Trust recorded in Book 1102, Page 551, Chatham County Registry; and in Lot 9 of Heartland Grove Subdivision under that certain Deed of Trust recorded in Book 1102, Page 541, Chatham County Registry;

WHEREAS, RBC Centura Bank, and CB Services Corp., Trustee, hold a security interest in Lots 5 and 7 of Heartland Grove Subdivision under that certain Deed of Trust recorded in Book 1115, Page 7, Chatham County Registry;

WHEREAS, First Horizon Home Loan Corporation, and Jerry L. Baker, Trustee, hold a security interest in Lots 10 and 31 of Heartland Grove Subdivision under that certain Deed of Trust recorded in Book 1121, Page 389, Chatham County Registry;

WHEREAS, the Declarant and Commonwealth Construction & Design, Inc. desire to amend the Declaration and SOUTHBANK, H. Eugene Tatum III, Central Carolina Bank, Southland Associates, Inc., Harrington Bank, FSB, Wayne R. Hadler, RBC Centura Bank, CB Services Corp., First Horizon Home Loan Corporation, and Jerry L. Baker consent to such amendment and execute this document for the sole and limited purpose of submitting their respective interests to the provisions of this amendment;

NOW THEREFORE, the parties hereto, pursuant to Article 12, section (c) of the Declaration, do hereby amend Article 6, section (c) of the Declaration as follows:

#### ARTICLE 6 – EASEMENTS

(c1) Temporary Construction Access and Disturbance Easement. An easement over, through and to each and any of the Common Areas is hereby reserved, conveyed and established in favor of Declarant, the Association and all Lot Owners, to be used for purposes of ingress, egress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any such Lot, and the installation and maintenance of roadways, sidewalks, surface water and underground drainage, and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant, the Association or an Owner (when permitted by the provisions of this Declaration) as well as the extension of sidewalks, surface water and underground drainage and utility conduit and hookups to any Dwelling Unit situated on a Lot. In using and taking the benefits of said easement, Declarant or its designee, the Association and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designee, or an Owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant, its designee or Owner, as the case may be, shall indemnify the Association for the reasonable expenses incurred in performing such restoration. Where an Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably proximate to his Lot and shall be as determined by the Association.

(c2) Utility Easements. Easements for the installation and maintenance of utilities are reserved by the Declarant and may be granted by Declarant to the Association and to public and private utilities across the front, side and rear Lot lines of each Lot within Heartland Grove, as set forth below, for present and future utility services to Lots within Heartland Grove, including but not limited to water lines, sanitary sewer lines, storm drainage culverts, sprinkler lines, natural gas lines, electrical wires, television cables/wires, telephone cables/wires, irrigation lines, security wires, street lights, communication lines, communication devices, and other services:

- (i) front Lot lines – forty feet (40')
- (ii) rear Lot lines – twenty-five feet (25')
- (iii) side Lot lines – twenty-five feet (25')

Within these easement areas, no structure, planting or other material (other than sod), which may interfere with the installation and maintenance of utility facilities, shall be placed or permitted to remain unless such structure, planting or other material was installed by the Declarant. The Declarant, the Association, and their respective successors and assigns are hereby granted access to all easements within which such facilities are located for the purpose of operation, maintenance and replacement thereof.

In the event any Lots are recombined or reconfigured with the joinder of the Declarant or the Association, then the easements reserved herein shall run along the newly established Lot lines and the easements along the old Lot lines shall be abolished, unless an

existing improvement, including but not limited to a utility line or drainage system, is in place or an easement is expressly reserved.

Declarant reserves the right to subject the Property to contract with Carolina Power & Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power and Light Company by each residential customer.

Except as herein amended, all provisions of the Declaration shall remain in full force and effect.

All parties hereto hereby declare that all of the Property shall hereafter be held, sold and conveyed subject to the terms, restrictions, covenants and conditions set forth in the Declaration and as amended by this First Amendment, for the purpose of enhancing and protecting the value and desirability of the Property in order to contribute to the personal and general health, safety and welfare of the Property owners and residents therein, and to maintain the land and improvements therein. The terms, covenants, conditions and restrictions contained in the Declaration and this First Amendment shall run with the Property and be binding upon all parties having any right, title or interest in the Property or any part thereof at any time, their heirs, successors and assigns.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal, the day and year first above written.

**TIMBERLYNE HOLDINGS, LLC**

By: \_\_\_\_\_  
Chester W. Burgess III, Manager

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina certify that Chester W. Burgess III, personally appeared before me this day and acknowledged that he is the Manager of TIMBERLYNE HOLDINGS, LLC, and that by authority duly given, as the act of said company, the foregoing instrument was signed in its name by said Manager.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

**BURGESS CONSTRUCTION COMPANY**

By: \_\_\_\_\_  
Chester W. Burgess III, President

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina certify that Chester W. Burgess III, personally appeared before me this day and acknowledged that he is the President of BURGESS CONSTRUCTION COMPANY, and that by authority duly given, as the act of said company, the foregoing instrument was signed in its name by said President.

Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

**COMMONWEALTH CONSTRUCTION &  
DESIGN, INC.**

By: \_\_\_\_\_, President

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina certify that \_\_\_\_\_, personally appeared before me this day and acknowledged that he is the President of COMMONWEALTH CONSTRUCTION & DESIGN, INC., and that by authority duly given, as the act of said company, the foregoing instrument was signed in its name by said President.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
H. EUGENE TATUM III, TRUSTEE

SOUTHBank, a Federal Savings Bank

By:

Its: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that H. EUGENE TATUM III, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and, being first duly sworn, acknowledged that he/she is \_\_\_\_\_ of SOUTHBank, a Federal Savings Bank, and that by authority of its Board of Directors duly given, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

SOUTHLAND ASSOCIATES, INC., Trustee

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

Its:

CENTRAL CAROLINA BANK, A DIVISION  
OF NATIONAL BANK OF COMMERCE

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

Its: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of SOUTHLAND ASSOCIATES, INC., Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of CENTRAL CAROLINA BANK, A DIVISION OF NATIONAL BANK OF COMMERCE, and that the \_\_\_\_\_ of said corporation signed the foregoing instrument, all by authority duly given and as the act and deed of said corporation.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



\_\_\_\_\_  
WAYNE R. HADLER, TRUSTEE

HARRINGTON BANK, FSB

By:

Its: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that WAYNE R. HADLER, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and, being first duly sworn, acknowledged that he/she is \_\_\_\_\_ of HARRINGTON BANK, FSB, and that by authority of its Board of Directors duly given, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

CB SERVICES CORP., Trustee

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

Its:

RBC CENTURA BANK

By:

Its:

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of CB SERVICES CORP., Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of RBC CENTURA BANK, and that the \_\_\_\_\_ of said corporation signed the foregoing instrument, all by authority duly given and as the act and deed of said corporation.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
JERRY L. BAKER, TRUSTEE

FIRST HORIZON HOME LOAN CORPORATION

By:

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, \_\_\_\_\_, certify that JERRY L. BAKER, Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally appeared before me this day and, being first duly sworn, acknowledged that he/she is \_\_\_\_\_ of FIRST HORIZON HOME LOAN CORPORATION, and that by authority of its Board of Directors duly given, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_