

North Carolina  
Wake County

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**  
**OF**  
**FERN VALLEY HOMEOWNERS ASSOCIATION, INC.**

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THIS DECLARATION, made this \_\_\_\_\_ day of \_\_\_\_\_, 2002 by ROBERT J. SULLIVAN J. BUILDER, NC., a North Carolina Corporation, (hereinafter called "Declarant"). with its principal office in Apex, Wake County, North Carolina and the undersigned Lot Owners;

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in or near Fuquay-Varina, County of Wake, State of North Carolina, which is more particularly described in Article II hereof;

WHEREAS, in order to provide a coordination and continuity among the various phased communities, the owners of dwelling units in those communities, it is deemed appropriate to have an association in which all owners in Fern Valley Homeowners Association, Inc. are members; and,

WHEREAS, Declarant desires to have certain areas of the Development owned by this Association and benefit all owners within the Development; and,

WHEREAS, the undersigned Lot Owners are owners of lots within Phase I or Phase 2 of Fern Valley Property Owners' Association, which are subject to certain Protective Covenants for Fern Valley as recorded in Book 8233, Page 1375 of the Wake County Registry and desire to subject their lots to the plan and operation of this Declaration and to subject

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them to the jurisdiction of this Association; alternatively, owners of lots within Phase 1 or Phase 2 may desire to subject their lots to the operation of this Declaration and the jurisdiction of the Association after the recordation of this Declaration by recording an instrument specifically for this purpose, and,

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection and enhancement of the values and amenities in Fern Valley Homeowners Association, Inc., and to insure the residents' enjoyment of the specific rights, privileges and easements in the Community Common Properties and facilities to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Community Common Properties, facilities, and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, Fern Valley Homeowners Association, Inc., for the purpose of exercising the functions aforesaid within the community known as Fern Valley,

NOW THEREFORE, the Declarant and the undersigned Lot Owners declare that the real property described in Article II, and such additions, and annexations thereto, as may hereafter be made pursuant to Articles II and III hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements,



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charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration or amendment hereto (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to Fern Valley Homeowners Association, Inc, its successors and assigns.

(b) "Community Common Property" or "Common Area" or "Common Property" shall mean and refer singularly or collectively, as applicable, to all real property and improvements thereon or associated therewith, which is/are owned or leased by, or located in an easement granted to or reserved by, the Association and which has/have been designated by Declarant or the association as "Community Common Property", "Common Area", "Open Space", "Landscape Buffer", or some other, similarly descriptive term, on a recorded plat, in a Supplemental Declaration, or

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in a deed or other written instrument, and also shall refer to all personal property owned or leased by the Association and designated as Common Property by the Declarant or the Association. All Common Area or Community Common Property shall be subject to the terms and conditions of this Declaration and the ordinances of the Town of Fuquay-Varina.

(c) "Declarant" shall mean and refer to Robert J. Sullivan Builder, Inc., its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns should acquire more than one undeveloped Lot or Living Unit location for the purpose of development. The development of a Lot or Living Unit site shall mean and refer to the construction of a residence thereon, including a condominium unit.

(d) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments thereto which are recorded in the Office of the Register of Deeds, Wake County, North Carolina.

(e) "Living Unit" shall mean and refer to any structure, or part of a structure designed and built for occupancy as a single family residence and shall include single family residences, condominium units, townhouses, villas, and any other single family

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dwelling unit located on the Properties, including attached or detached units.

(f) "Lot" shall mean and refer to any numbered or lettered plot of land shown on any plot including exact metes and bounds descriptions and recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration as it may be amended.

(g) "Member" shall mean and refer to an "Owner" subject to assessment as provided in this Declaration.

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

(i) "Property" shall mean and refer to that certain real property described in Exhibit A hereto, and any annexation thereto.

**ARTICLE II**

**PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. Property Made Subject To Declaration.**

The Properties described in Exhibit A hereto and any annexation are hereby made subject to this Declaration and the Properties shall be owned, held, leased, transferred, sold,

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mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

**Section 2. Existing Property.**

The real property which hereby is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described in Exhibit A hereto.

**Section 3. Mergers.**

Upon a merger or consolidation of the Association with another organization as provided by its By-Laws, its properties, rights and obligations may be transferred to another surviving or consolidated Homeowner's Association or, alternatively, the properties, rights and obligations of another homeowner's corporation may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowner's corporation may administer the covenants and restrictions established by this Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

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**ARTICLE III**

**ANNEXATION OF ADDITIONAL PROPERTIES**

**Section 1. Annexation by Members.**

Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Property only if two-thirds (2/3) of the votes entitled to be cast in each class of Members are cast in favor of annexation. A meeting duly called for this purpose, written notice of which shall be sent to all members not less than ten (10) days in advance of the meeting.

For the purpose of such meeting, the presence of members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of members, shall constitute a quorum.

If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation, and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the

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proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which he is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

**Section 2. Annexation by Declarant.**

If within fifteen (15) years from the date of incorporation of the Association, the Declarant should develop additional land, such land may be annexed by the Declarant without the consent of members by the recordation of a Declaration of Annexation for such purpose. All annexations of additional properties to the original development described in Exhibit A must be contiguous to the properties described in Exhibit A or property previously annexed.

**Section 3. Phase I and II Lot Owners.**

Owners of Lots within Phase I or Phase II of Fern Valley Property Owners' Association, who are subject to certain protective covenants for Fern Valley, as recorded in Book 8233, Page 1375 of the Wake County Registry, may desire following the recordation of this Declaration to subject their lots to the plan and operation of this Declaration and to the jurisdiction of the Association. They may do so by recordation of an instrument specifically for this purpose. Thereafter, such lots shall be held, transferred, sold, conveyed and occupied

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subject to the covenants, conditions, restrictions, easements, charges and liens herein set forth without further act or requirement.

**Section 4. Conveyance of Community Common Properties.**

The Declarant will convey any Community Common Properties in annexed areas in the same manner and is provided in Article VI, Section 3, hereinbelow.

**Section 5. Reserved Declarant Rights.**

The Declarant reserves the following development rights: (i) to add real estate to the properties in accordance with Article III; (ii) to create Living Units; (iii) to add Community Common Properties; (iv) to modify or change Living Unit types; (v) to reallocate Living Units or Lots within the property; (vi) to withdraw undeveloped real estate from the Properties.

**Section 6. Town of Fuquay-Varina.**

Additional lands may be added to the Property pursuant to the terms of this Declaration and subject to the ordinances of the Town of Fuquay-Varina.

**Section 7. Use of Name.**

Additional lands which become subject to this Declaration under the provisions of this Article may in the future be referred to as Fern Valley. Also, the name Fern-Valley may be used by the Declarant to refer to other nearby properties not subject to this Declaration.

**ARTICLE IV**

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**MEMBERSHIP**

Every person or entity which is a record owner of a fee or undivided interest in any Living Unit which is subject to this Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit which is subject to assessment by the Association. Ownership of such Living Unit shall be the sole qualification for membership.

**ARTICLE V**

**VOTING RIGHTS**

**Section 1. Classes of Voting Membership.**

The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all those Owners of Lots and Living Units with the exception of the Declarant (as defined in this Declaration). Class A members shall be entitled to one vote for each Lot, or Living Unit in which they hold the interest required for membership by ARTICLE IV. When more than one person holds such interest in any Lot, or Living Unit, all such persons shall be members, and the vote for such Lot, or Living Unit shall be exercised as the majority of such persons among



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themselves determine; however, in no event may more than one vote be cast with respect to any one Lot. Fractional voting shall be prohibited. At any meeting of the members, a representation by any of such persons that a majority of such persons have agreed as to the vote for such Lot or Living Unit shall be conclusive unless another of such persons contests such representation at such meeting prior to the casting of such vote.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration). The Class B member(s) shall be entitled to three (3) votes for each Lot or Living Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership; but provided that the Class B membership shall be reinstated if thereafter, and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Property without the assent of Class A members because of development of such additional lands by the Declarant, as provided for in Article III herein; or

(b) fifteen (15) years following the date of incorporation of the Association.

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**ARTICLE VI**

**PROPERTY RIGHTS IN THE COMMUNITY COMMON PROPERTIES**

**Section 1. Owners' Easements of Enjoyment.**

Every member shall have a right and easement of enjoyment in and to the Community Common Properties, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Community Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot and Living Unit and subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Community Common Properties;
- (b) the right of the Association to suspend the voting rights and right to use the recreational or other Community Common Properties facilities by an Owner for any period during which any assessment against his Living Unit remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate, sell or transfer all or any part of the Community Common Properties, to any public agency, authority, or utility for such purposes, and subject to such conditions as may be agreed to by the members. No

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such dedication or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members and an instrument properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, conveyances for general utility purposes as specified herein may be made without consent of the members;

(d) the Association, acting through its Board of Directors, from time to time may exchange with Declarant or any member a portion of the Community Common Properties for real property owned by the Declarant or such member, provided that the exchange is approved by the vote of fifty-one percent (51%) of each class of members at a meeting of the members of the Association duly held in accordance with its Bylaws; the property received by the Association shall be of approximately the same size as the portion of Community Common Properties exchanged; the property conveyed to the Association is free and clear of all encumbrances except the Declaration and easements for greenway, drainage, utility, and sewer, the requirement of the Town Code of Fuquay-Varina, if any, as to the exchange must be approved, if required, by the Planning Director of the Town of Fuquay-Varina. Provided, however, where the exchange is done to eliminate an encroachment of a structure into the

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Community Common Properties or to allow the necessary setback between the structure and the property line, the notice and consent provisions hereinabove shall not be required and only the approval of the Board of Directors of the Association shall be necessary, The real property so acquired by the Association shall be a part of the Community Common Properties. The portion of the Community Common Properties so acquired by Declarant or a member, shall cease to be Community Common Properties and shall be subject to those provisions of the Declaration that were applicable to the properties conveyed to the Association by the Declarant or member.

(e) the right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Community Common Properties and facilities and in aid thereof to mortgage said properties, and the rights of such mortgages in said properties shall be subordinate to the rights of the Members hereunder;

(f) the right of the individual members to the use of parking spaces as may be provided by the Board of Directors;

(g) the right of the Association in accordance with its Articles of Incorporation or By-Laws to impose rules and regulations for the use and enjoyment of the Community Common Properties and improvements thereon, which rules and regulations may further restrict the use of the Community Common Properties.

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**Section 2. Delegation of Use.**

Except as specifically limited hereinbelow, any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Community Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

**Section 3. Title to the Community Common Properties.**

Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Community Common Properties to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other easements and encumbrances (not constituting a lien to secure the payment of money) and mineral interests outstanding and of record in Wake County, North Carolina, and the terms and conditions of this Declaration and any applicable supplemental Declaration, prior to the conveyance of the first Lot or Living Unit in that Phase.

**Section 4. Utility Lines.**

Each Owner, occupant, guest, and invitee acknowledges that neither the Association, nor the Declarant, nor a Builder shall in any way be considered insurers or guarantors of health within the Properties and neither the Association, if formed, nor the Declarant, nor a Builder shall be held liable for any personal injury, illness or other loss or damage caused by the presence or malfunction of utility lines adjacent to, near, over or on the Properties. Each

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Owner, occupant, guest and invitee assumes all risk of personal injury, illness or other loss or damage arising from the presence of utility lines and further acknowledges that neither Declarant, nor the Association nor a Builder have made any representations or warranties, nor has any Owner, occupant, guest or invitee relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines.

**ARTICLE VII**

**COVENANT FOR MAINTENANCE ASSESSMENT**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**

The Declarant, for each Lot, Living Unit owned within the Properties, hereby covenants, and each owner of any Lot, Living Unit and Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) to the appropriate governmental taxing authority, a pro rata share of assessments against the Community Common Properties and for improvement and maintenance of public roads if the Association shall default in payment thereof, all as hereinafter provided. The annual and special assessments, together with interest, late fees, and costs, and reasonable attorneys' fees for collection, shall be a charge on the land and shall be a continuing lien upon the

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Property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot and Living Unit to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the parcel described in such conveyance to him within the ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Owner at the address of the parcel or to such other address as said Owner shall have designated, the amount of such charge shall become a lien upon said Owner's parcel and shall continue to be such lien until fully paid.

**Section 2. Purpose of Assessments.**

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The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of Properties, services and facilities, and for the use and enjoyment of the Community Common Properties, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Community Common Properties, the procurement and maintenance of insurance in accordance with this Declaration, the Bylaws, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

**Section 3. Maximum Annual Assessment and Annual Assessment-Class A Lots.**

Through and including December 31, 2002, the maximum annual assessment shall be four hundred dollars (\$400.00) per Lot.

- (a) The maximum annual assessment for the calendar year beginning January 1, 1996, and for successive calendar years thereafter, shall be established by the Board and may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed five percent (5%) of the amount of the maximum annual assessment of the immediately preceding calendar year.
- (b) The maximum annual assessment for the calendar year beginning January 1, 1998, and for each successive calendar year thereafter, may be increased without limit



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by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to nor be a limitation upon any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

(c) Subject to the provisions of this Article VII, the Board may fix the annual assessment at any amount not in excess of the maximum annual assessment allowed for the applicable calendar year.

**Section 4. Special Assessments for Capital Improvements.**

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Community Common Properties, or any extraordinary maintenance of any property for which the Association is responsible, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3, 4**

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**and 5.**

Written notice of any meeting called for the propose of taking any action authorized under this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. It the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.**

Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units and may be collected on a monthly basis. Assessments may differ between areas having different sub-classes of membership. Assessments with respect to a sub-class of membership shall be determined by the cost to the Association, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to the sub-classes of memberships. Provided, however, that the assessment for Lots or Living Units owned by Declarant or any builder who has purchased an undeveloped lot for the primary purpose of constructing a Living Unit thereon, which Living Unit is not and has never been occupied as a

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residence shall be twenty-five percent (25%) of the regular assessments for Lots or Living Units.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.**

(a) The annual assessments provided for herein shall commence as to all Lots and Living Units in phases one, two and \_\_\_\_\_ on January 1, 2002. Thereafter, annual assessments shall commence as to all Lots and Living Units in each subsequent phase on the first day of the month following the conveyance of the first Lot in that respective phase from the Declarant to another Owner.

(b) The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and Living Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Living Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Living Unit is binding upon the corporation as of the date of issuance.

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**Section 8. Effect of Nonpayment of Assessments: Remedies of the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate then permitted by North Carolina law. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property. No owner may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Common Properties or abandonment of his Lot or Living Unit.

**Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes.**

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to such mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Exempt Property.**

All properties dedicated to and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State

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of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**ARTICLE VIII**

**USE RESTRICTIONS**

**Section 1. Rules and Regulations.**

The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment the Community Common Properties. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorneys' fees. No rule or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

**Section 2. Land Use and Building Type.**

No Lot shall be used except for residential purposes, except that nothing herein shall preclude the use of any lot for a utility purpose for the benefit of this subdivision or access by

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the Declarant or its successors in interest, except that if any Lot is purchased from the developer by an individual lot owner or builder, then said lot must be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed two and one-half (2 1/2) stories in height and a private garage for not more than three (3) cars and (with approval of the Architectural Control Committee) an accessory building or structure for storage or other appropriate use, not in excess of two hundred fifty (250) square feet in area. No owner will cut down any tree greater than 4 inches in diameter, on his or her Lot, without the approval of the Architectural Control Committee.

**Section 3. Dwelling Size and Driveways.**

Except with prior written approval of the Architectural Control Committee, no one-story residential structure which has an area of less than one thousand two hundred (1,200) finished, heated square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any Lot. No one (1) and one-half (1/2) story residential structure which has an area of less than one thousand five hundred (1,500) finished, heated square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any lot. No two-story residential structure which has an area of less than one thousand five hundred (1,500) finished, heated square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted

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to remain on any Lot. All driveways shall be concrete from street to each house, including parking area.

**Section 4. Building Location.**

No building shall be located on any Lot nearer to the front line than thirty (30) feet or nearer to the rear line than thirty (30) feet, or nearer to the side street than fifteen (15) feet in the case of a corner Lot. No building or garage shall be located nearer than eight (8) feet from an interior Lot line, and no other permitted accessory building shall be located nearer than eight (8) feet to an interior lot line, nor nearer than fifteen (15) feet from the rear lot line, nor nearer than fifty (50) feet from the front setback line. For purposes of this covenant, eaves, steps, chimneys and stoops shall not be considered part of a building. No portion of any building shall be permitted to encroach upon another Lot. Declarant reserves the right to waive in writing any minor violation of this Section, and for purposes hereof, any violation which does not exceed ten percent (10%) shall be considered a minor violation.

**Section 5. Nuisances.**

No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No signs or billboards shall be stored or regularly parked on the premises, and no commercial trucks or tractors may be parked regularly upon the premises. No business activity or trade of any kind whatsoever, which shall include, but not be limited to, the use of

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any residence as a doctor's office, professional office of any kind, fraternity house, rooming or boarding house, antique or gift shop, shall be carried on upon any Lot.

**Section 6. Temporary Structures.**

Except as hereinbefore set forth, no trailer, tent, shack, barn or other out-building, except a private garage for not more than three (3) cars, shall be erected or placed on any Lot covered by these covenants. Except with the prior consent of the Architectural Control Committee, no detached garage shall at any time be used for human habitation, either temporarily or permanently.

**Section 7. Fences.**

No fence, wall, hedge or mass planting shall be permitted beyond the line extending from the front of the house to either side Lot line, except upon approval by the Architectural Control Committee. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the community, including any Lot, without the prior written consent of the Architectural Control Committee. The committee may issue guidelines detailing acceptable fence styles or specifications, but in no event shall hogwire be approved. Chainlink fencing is prohibited.

**Section 8. Accessory Buildings.**

No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, doghouses, and greenhouses) shall be placed on a Lot without



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the prior written approval of the Architectural Control Committee, with said Committee to have the sole discretion relating to the location and type of accessory building which shall be permitted on any Lot. Under no circumstances shall metal storage buildings be permitted. All accessory buildings must conform to the same architectural style as the residence located on the same Lot. Carports opening to the front of the house are expressly prohibited hereby.

**Section 9. Appearance.**

Each Owner shall keep his building site free from tall grass, undergrowth, dead trees, trash and rubbish, and properly maintained so as to present a pleasing appearance within the subdivision. In the event an Owner does not properly maintain his building site as above provided, in the opinion of the Declarant and/or Architectural Control Committee, then Declarant (or its successors in interest), at its option, may have the site cleaned to its or the Architectural Control Committee's satisfaction, and the costs thus incurred shall be the responsibility of the Lot owner. The costs of clean-up, if expended by the Declarant or its successors in interest, shall be a continuing lien upon the Property until the sums due and payable are paid in full. Location of satellite television receivers must be approved in writing by the Architectural Control Committee, but in no event shall any receiver be visible from any road within the subdivision. No clothes line shall be permitted if visible from any road within the subdivision. Trash cans must be located as to not be visible from any road within the subdivision. Screening for satellite television receivers, clothes lines and trash cans are

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subject to approval by the Architectural Control Committee. Communication towers are expressly prohibited. All primary fuel storage tanks must be placed underground. Home curtain foundation walls are expressly prohibited unless approval for same is first obtained, in writing, from the Architectural Control Committee. Brick mailboxes are expressly prohibited. No inoperable motor vehicles may be parked on any lot if visible from any road within the subdivision.

**Section 10. Animals.**

No animals or pets of any kind, other than ordinary household pets, shall be kept or maintained on any part of said Property.

**Section 11. Parking.**

Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles owned by such Owner, and Owners of Lots shall not be permitted to park their automobiles on the streets in the subdivision. Owners of Lots shall not be permitted to park boats, trailers, campers, commercial vehicles and all other similar Property on the streets in the development, and such Property shall not be permitted to be parked where it is visible from any streets in the subdivision.

**Section 12. Underground Utilities.**

Declarant reserves the right to subject the real Property described hereinabove to a contract with Carolina Power & Light Company or its successors in interest for the installation

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of underground electric cables which may require a continuous monthly charge to the Owner of each Lot.

**ARTICLE IX**

**EASEMENTS**

**Section 1. Utility Easements.**

All of the Properties, including Lots, Living Units, Community Common Properties and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Community Common Properties conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties without approval of the membership as provided in the Articles of Incorporation.

**Section 2. Unintentional Encroachments.**

In the event that any Lot or Living Unit shall encroach upon any Community Common Properties or upon any other Lot or Living Unit for any reason not caused by the purposeful or negligent act of the Owner, then an easement appurtenant to such Lot or Living Units shall

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exist for the continuance and maintenance of such encroachment upon the Community Common Properties or other Lot or Living Units for so long as such encroachment shall naturally exist; and, in the event that any portion of the Community Common Properties shall encroach upon any Lot or Living Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Community Common Properties onto any such Lot or Living Unit for so long as such encroachment shall naturally exist.

**Section 3. Property Easements.**

Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Community Common Properties, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Properties or any portion thereof.

**ARTICLE X**

**INSURANCE**

**Section 1. Insurance to be Maintained by the Association.**

The following insurance coverage shall be maintained in full force and effect by the Association:

- (a) Property damage insurance at one hundred percent (100%) of the current

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replacement cost of the Community Common Properties, excluding those areas that are normally excluded from coverage such as land, earthen dams, foundation, excavation, etc. The property damage policy must protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard "all-risk" endorsement.

- (b) Public liability insurance covering all Community Common Properties and any other areas that are under the Association's control and supervision in an amount of at least \$1 million for bodily injury and property damage for any single occurrence. All liability insurance shall contain cross liability endorsements to cover liability of the owners as a group to an individual owner.

**Section 2. Premiums.**

Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

**Section 3. Insurance Beneficiaries.**

All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

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**ARTICLE XI**

**ELECTRICAL SERVICE**

Declarant reserves the right to subject the Properties to a contract for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment by the Owner of each lot within the Properties.

**ARTICLE XII**

**ARCHITECTURAL CONTROL AND INSPECTION**

**Section 1. General Provisions.**

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, buildings, outbuildings, fences, walls and other structures, shall be undertaken upon the Properties, unless plans and specifications therefore, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to Declarant and expressly approved in writing by it.

This Article shall not apply to the activities of the Declarant, nor to the improvements to the Common Area by or on behalf of the Association. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

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No subsequent alteration or modification of improvements may be undertaken on any of the Properties which shall not be subject to the foregoing requirement, without prior review and express written approval by the Declarant or the Board of Directors of the Association, (after such approval rights have been assigned to the Association), (the Declarant reserves the right to assign all or any portion of its approval rights to the Association at any time), or by an "Architectural Committee" composed of three (3) or more representatives appointed by the Board.

Refusal or approval of plans, location, exterior color or finish, or specifications may be based by Declarant, Board of Directors or Architectural Committee, as the case may be, upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant, Board of Directors or Architectural Committee, as the case may be, shall seem sufficient.

In the event that the Declarant, or the Board of Directors or Architectural Committee, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval of the submitted items will be deemed granted, and the requirements of this Article will be deemed to have been fully met; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant, Association, or Architectural Committee, as the case may be, if they contain

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inaccurate or erroneous information or fail to present adequate information upon which the Declarant or the Board of Directors or Architectural Committee, as the case may be, can arrive at a decision.

The Declarant shall have the right, at its election, but shall not be required to, enter upon any of the Properties during site preparation or construction, erection or installation of improvements to inspect the work being undertaken, and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

**Section 2. No Waiver of Future Approvals.**

Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

**Section 3. Limitation of Liability.**

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Declarant, the Architectural Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Committee, the Board, nor



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the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that such person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**ARTICLE XIII**

**EXTERIOR MAINTENANCE**

**Section 1. Duty to Maintain.**

It shall be the duty of each Owner to properly maintain his Lot or his Living Unit or his Multiple-Family Lot and all improvements constructed on such Lot or his Living Unit.

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**Section 2. Remedies of Association.**

If, in the opinion of the Association, the owner of a Lot shall fail to maintain his Lot owned by him in a manner which is reasonably neat and orderly, or shall fail to keep the improvements constructed thereon in a state of repair so as not to be unsightly, the Association in its discretion, by the affirmative vote of two-thirds (2/3) of the members of the Board of Directors, and following ten (10) days written notice to the Owner, may enter upon and make, or cause to be made, repairs to such improvements and perform such maintenance on such Lot as the removal of trash, cutting of grass, pruning of shrubbery, and seeding and correction of items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. All costs incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such costs, shall be added to and become a part of the assessment to which such Lot is subject.

**ARTICLE XIV**

**GENERAL PROVISIONS**

**Section 1. Enforcement.**

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions, of this Declaration. Failure by the Association or by any

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Owner to enforce any covenant or restriction hereby contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability of Provisions.**

If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

**Section 3. Duration and Amendments.**

(a) The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless the Association approves a change in the covenants and restrictions. The covenants and restrictions of this Declaration may be amended at any time if

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seventy-five percent (75%) of the vote of each class of members at a duly called meeting of the Association at which a quorum is present approves the change; provided that prior to the sale of the first Lot or Living Unit, this Declaration may be amended by the Declarant without consent of the Members.

Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

(b) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a government agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation,

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or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(c) No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

(d) As long as there is a Class B membership, and if Declarant determines to quality this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Community Common Property, and amendment of this Declaration'

**Section 4. Availability of Documents.**

The Association will have current copies of the Declaration, By-Laws, and other rules concerning Fern Valley Homeowners Association, Inc. as well as the Association's own books, records and financial statements available for inspection during normal business hours by owners and by holders, insurers and guarantors of first mortgages that are secured by Living

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Units in Fern Valley Homeowners Association, Inc.

**Section 5. Rights of Eligible Mortgage Holders.**

Eligible Mortgage Holders are those holders of a first mortgage or deed of trust on a living unit ("Eligible Mortgages") who have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. Amendments of a material nature to this Declaration or the By-Laws of the Association require the approval of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the holders of Eligible Mortgages. Any action to terminate this Declaration or the legal status of the Association for reasons other than substantial destruction or condemnation of the Property, shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the holders of Eligible Mortgages.

The holder, insurer, or guarantor of a mortgage or deed of trust on any Living Unit in Fern Valley Homeowners Association, Inc, is entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of Fern Valley Homeowners Association, Inc.;
- (b) A lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; and
- (c) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. To obtain this information, the mortgage holder,

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insurer, or guarantor should send a written request to the Association, stating both its name and address and the unit number or address of the unit covered by its mortgage or deed of trust.

**Section 6. Condemnation.**

If any part of the Community Common Property shall be taken (or conveyed in lieu of or under threat of condemnation) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceed shall be payable to the Association for the benefit of the Owners.

**Section 7. Titles.**

The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

**Section 8. Number and Gender.**

Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

**Section 9. No Exemption.**

No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owners' Lots or the Common Area.

North Carolina  
Wake County

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
FERN VALLEY HOMEOWNERS ASSOCIATION, INC.**

Phases 3-5  
BK009243PG00054

**Section 10. Conflict Between Declaration and Articles of Incorporation. Bylaws.**

Whenever there exists a conflict between the provisions of this Declaration and the Articles of Incorporation or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles of incorporation and Bylaws, the provisions of the Articles of Incorporation shall control.

**Section 11. Laws of North Carolina.**

This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

**Section 12. Assignment.**

Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any Supplemental Declaration.



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BK009243PG00054

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, and the undersigned Phase 1 and Phase 2 Lot Owners have caused this instrument to be executed as of the 8 day of JAN, 2002.

ROBERT J. SULLIVAN BUILDER, INC.

By: [Signature] (SEAL)  
President

ATTEST:

Susanne Sullivan  
Secretary

STATE OF NORTH CAROLINA

ACKNOWLEDGEMENT

COUNTY OF WAKE

I, Neil Ray McLean, a Notary Public of the County and State aforesaid, certify that Susanne Sullivan, personally came before me this day and acknowledged that he/she is Secretary/Assistant Secretary of ROBERT J. SULLIVAN BUILDER, INC., 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 President, ~~sealed with its corporate seal~~ and attested by her as its Secretary/Assistant Secretary.

Witness my hand and official stamp or seal, this 8 day of Jan, 2002.

[Signature]  
Notary Public

My commission expires: 3/21/2003



\* THIS IS A REVERSE ENGINEERED VERSION OF THE REGISTERED DOCUMENT \*

North Carolina  
Wake County

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**  
**OF**  
**FERN VALLEY HOMEOWNERS ASSOCIATION, INC.**

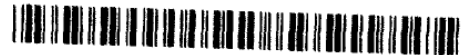
Phases 3-5  
BK009243PG00054

**EXHIBIT A**

Properties subject to Covenants, Conditions and Restrictions  
OF  
Fern Valley Homeowners Association, Inc.

Being all properties as described and recorded in BOOK OF MAPS 2009  
PG. 28 Wake County, North Carolina.

Laura M Riddick  
Register of Deeds  
Wake County, NC



Book : 009243 Page : 00054 - 00091

North Carolina  
Wake County

**DECLARATION OF COVENANTS,  
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Phases 3-5  
BK009243PG00054

**Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds**

**North Carolina - Wake County**

The foregoing certificate of Neil Ray McLean

\_\_\_\_ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Janel Morgan  
Assistant ~~Deputy~~ Register of Deeds

**This Customer Group**  
\_\_\_\_\_ # of Time Stamps Needed

**This Document**  
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38 # of Pages