

Doc ID: 00466810010 Type: CAP  
 Recorded: 05/02/2008 at 10:02:03 AM  
 Fee Amt: \$41.00 Page 1 of 10  
 Pitt County, NC  
 Judy J. Tart Register of Deeds  
 BK 2488 pg 661-670

*For: Allen Hahn*

BY-LAWS

OF

KINSEY CREEK OWNER'S ASSOCIATION, INC

ARTICLE I:

NAME AND LOCATION

The name of the Corporation is **KINSEY CREEK OWNER'S ASSOCIATION, INC.**, hereinafter referred to as the "Association". The principal office of the corporation shall be located in Pitt County, North Carolina, but meetings of members and directors may be held at such places within the State of North Carolina, County of Pitt, as may be designated by the Board of Directors.

ARTICLE II:

DEFINITIONS

Section 1: "Association" shall mean and refer to **KINSEY CREEK OWNER'S ASSOCIATION, INC.**, its successors and assigns.

Section 2: "Properties" shall mean and refer to that certain real property located in the various Sections and Additions to KINSEY CREEK and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3: "Common Area" shall mean all real property owned by or used by the Association for the common use and enjoyment of the owners.

Section 4: "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the properties with the exception of the common area.

Section 5: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot 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.

Section 6: "Member" shall mean and refer to those persons entitled to membership.

Section 7: "Mortgagee" shall mean and refer to persons, firms or corporations holding a recorded lien appearing of record in the Pitt County Registry against any lot as defined in Section 4 hereof.

Section 8: "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Property recorded in the Pitt County Registry.

### ARTICLE III:

#### MEMBERS

(a) Class of Members: The Association shall have such classes of Members as named in the Declaration. The qualifications and rights shall be as follows:

1. Every beneficial owner, as distinguished from a security owner, of property in Pitt County, North Carolina, as described in the Declaration shall be a Member.
2. Membership shall include an undertaking by the applicant to comply with and be bound by the Articles of Incorporation, these By-Laws and amendments thereto, the Declaration, and the policies, rules, and regulations at any time adopted by the Association in accordance with these By-Laws.
3. Membership in this Association shall terminate on a Member's ceasing to be a beneficial owner of the property.

(b) Voting Right: Each family unit, regardless of number of members in the family, shall be entitled to one vote for each lot owned.

1. At membership meetings all votes may be cast in person, or by proxy.
2. The Board of Directors is authorized to establish regulations providing for voting by mail.

ARTICLE IV:

MEETINGS OF MEMBERS

Section 1: Annual Meetings. The first annual meeting of the members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day and the same month of each year thereafter, at the hour of 2: 00 o'clock p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2: Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the membership.

Section 3: Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting by mailing a copy of such notice, postage prepaid, at least ten (10) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 4: Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time or time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5: Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot.

ARTICLE V:

BOARD OF DIRECTORS

Section 1: Number. The affairs of this Association shall be managed by a Board of at least three (3) directors, who must be members of the Association, which can also be the President, Vice-President and Secretary-Treasurer of the Association.

Section 2: Term of Office. At the first annual meeting the members shall elect one-third (1/3) of the directors for a term of one (1) year, one-third (1/3) of the directors for a term of two (2) years and one-third (1/3) directors for a term of three (3) years; and at each annual meeting thereafter the members shall elect directors for a term of three years to replace those whose terms have expired.

Section 3: Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4: Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5: Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI:

NOMINATION AND ELECTION OF DIRECTORS

Section 1: Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors

as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2: Election. Election to the Board of Directors shall be by secret ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

ARTICLE VII:

MEETING OF DIRECTORS

Section 1: Regular Meetings. Regular meetings of the Board of Directors shall be held no less than quarterly without notice at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2: Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association or by any two directors after not less than three (3) days notice of each director.

Section 3: Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VIII:

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1: Powers. The Board of Directors shall have power to:

- (a) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws and the Articles of Incorporation.
- (b) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

- (c) Adopt and publish rules and regulations governing the use of the Common Area and facilities and the personal conduct of the members and their guests thereon, and to establish penalties for infractions.
- (d) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, any contract for management must contain a clause requiring not more than 90 days termination notice.
- (e) procure, maintain and pay premiums or such policies of insurance as the Board deems necessary for protection of the common areas and members of the Owners Association.

Section 2: Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed,
- (c) as more fully provided in the Declaration, to:
  - 1. fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period;
  - 2. send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - 3. foreclosure the lien against any property for which assessments are not paid
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) cause such repairs and maintenance as are enumerated in the Declaration of Covenants, Conditions and Restrictions.
- (f) Cause all officers or employees having fiscal responsibilities to be bonded.

ARTICLE IX:

OFFICERS AND THEIR DUTIES

Section 1: Enumeration of Officers. The officers of this Association shall be a president and vice president, who shall at all times be members of the Board of Directors, a secretary, a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2: Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3: Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year or until his successor is elected and qualified, unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 4: Special Appointments. The Board may elect such officers as the affairs of the Association may require, each of whom shall hold office for such period, having such authority and perform such duties as the Board may, from time to time, determine.

Section 5: Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6: Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaced.

Section 7: Multiple Officer. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8: Duties. The duties of the officers are as follows:

President

- (a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

- (b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

- (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

- (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and, shall prepare an annual budget and statement of income and expenditures to be presented to the membership at its annual meeting, and deliver a copy of each to the members.

ARTICLE X:

COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI:

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable hours, be subject to inspection by any member or a mortgagee of any member. The Articles of Incorporation and By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at a reasonable cost.



ARTICLE XII:

ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his lot.

ARTICLE XIII:

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "KINSEY CREEK OWNER'S ASSOCIATION, INC." and the words: "CORPORATE SEAL --2008" in the center thereof.

ARTICLE XIV:

AMENDMENTS

Section 1: These By-Laws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2: In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control.

IN WITNESS WHEREOF, we being the incorporator and initial Director of KINSEY CREEK OWNERS ASSOCIATION, INC., have hereunto set our hands and seals, this the 30 day of April, 2008.

[Signature] (SEAL)  
Rocky E. Russell, Director  
[Signature] (SEAL)  
L. Allen Hahn, Incorporator

STATE OF NORTH CAROLINA  
COUNTY OF Pitt

I, Jennifer H. Tolliver, a Notary Public in and for the aforesaid County and State, do hereby certify that Rocky E. Russell, personally appeared before me this day, and after being duly sworn, acknowledged the due execution of the foregoing By-Laws KINSEY CREEK OWNER'S ASSOCIATION, INC and certify that the same is true.

WITNESS, my hand and notarial seal, this the 30 day of April, 2008.

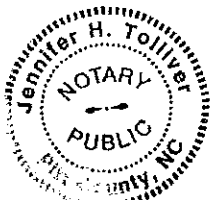


[Signature]  
Notary Public Jennifer H. Tolliver  
My Commission Expires: 7-7-08


STATE OF NORTH CAROLINA  
COUNTY OF Pitt

I, Jennifer H. Tolliver, a Notary Public in and for the aforesaid County and State, do hereby certify that L. Allen Hahn, personally appeared before me this day, and after being duly sworn, acknowledged the due execution of the foregoing By-Laws KINSEY CREEK OWNER'S ASSOCIATION, INC., and certify that the same is true.

WITNESS, my hand and notarial seal, this the 30 day of April, 2008.



[Signature]  
Notary Public  
My Commission Expires: 7-7-08

  
 Doc ID: 004668800012 Type: CRP  
 Recorded: 05/02/2008 at 10:01:07 AM  
 Fee Amt: \$47.00 Page 1 of 12  
 Pitt County, NC  
 Judy J. Tart Register of Deeds  
 BK 2488 pg 649-660

  
 PREPARED BY: L. ALLEN HAHN, P.A.  
 FILE: L. ALLEN HAHN, P.A.

NORTH CAROLINA  
 PITT COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 KINSEY CREEK

THIS DECLARATION, made on the date hereinafter set forth by ROCKY RUSSELL DEVELOPMENT, LLC, a North Carolina Limited Liability Company and ROCKY RUSSELL BUILDERS, INC., collectively, hereinafter referred to as "Declarant".

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Declarant is the owner of certain property in Greenville Township, Pitt County, North Carolina, which is more particularly described as follows:

*All of that certain building area designated as Lot 7A as shown on map entitled "Medford Pointe, Karringtya Crossing (Lot 8) and Kinsey Creek (Lot 7, Phase 1)" drawn by Baldwin and Associates recorded in Map Book 69, at Page 155 of the Pitt County Registry.*

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with 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

Section 1: "Association" shall mean and refer to KINSEY CREEK OWNERS ASSOCIATION, INC., its successors and assigns.

Section 2: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties; including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3: "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4: "Common Area" shall mean all real property (including the improvements thereto) owned or used by the Association for the common use and enjoyment of the owners.

Section 5: "Lot" shall mean and refer to any numbered or lettered lot or plot of land shown upon any recorded subdivision map of the properties.

Section 6: "Declarant" shall mean and refer to ROCKY RUSSELL DEVELOPMENT, LLC and ROCKY RUSSELL BUILDERS, INC., their successors and assigns.

Section 7: "Member" shall mean and refer to every person or entity who holds membership in the Association.

## ARTICLE II:

### PROPERTY RIGHTS

Section 1: Owner's Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights and right of use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed Sixty (60) days for any infraction of its published rules and regulations;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area 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 agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2: Declaration of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3: Transfer of Common Areas. The Declarant herein will convey to the Homeowners Association listed herein, the common areas as shown on the above referenced plot, prior to the sale of the first lot out of Declarant into a third party.

ARTICLE III:

MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to ownership of any lot which is subject to assessment.

Section 2: The Association shall have two classes of voting membership.

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for such Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as then determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, and notwithstanding any other provisions herein, shall be assessed at a rate of not more than twenty-five percent (25%) of the Class A membership rate. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than January 1, 2015. Declarant shall not be assessed on any lot until a final certificate of occupancy shall have been issued for the unit on said lot. However, at no time will Declarant's assessed dues be greater than twenty-five percent (25%) of the regular membership rate.

ARTICLE IV:

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's 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 delinquent assessment shall not pass to his successors in the title unless expressly assumed by them.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, the cost of yard maintenance, common lighting, repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3: Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment to be charged per lot, shall be determined by Declarant prior to conveyance of the first Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) from the preceding month of July, or ten (10%) percent, whichever is less.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for the next succeeding two (2) years may be increased above that previously established by Declarant through a majority vote of all members, and for each succeeding period of two (2) years thereafter, provided that any such change shall have the assent of a majority of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix an annual assessment at an amount not in excess of the maximum.

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 for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or

replacement of a capital improvement upon the Common Area, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose.

Section 5: Membership in Additional Owner's Association. It is anticipated that a pool and recreational area will be constructed on other property now owned by Medford Point Development, LLC. Members in KINSEY CREEK will also become members of the Medford Point Home Owners Association responsible for the pool and recreational area, will pay dues, and abide by the rules, covenants and By-Laws for that Association. The members shall also be entitled to all of the rights and benefits afforded other members of the Association.

Section 6: Notice and Quorum of Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days or 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 (60%) per cent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, 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 7: Uniform Rate of Assessment. Except as provided for Class B members, both annual and special assessments must be fixed as a uniform rate for all Lots and may be collected on a monthly basis.

Section 8: Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 assessments against each Lot 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 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 Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance

Section 9: Effect of Nonpayment of Assessment. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight (8%) per cent per annum. The Association 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 or deny liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10: Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage 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 from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11: Exempt Property. All property dedicated to and accepted by, a local authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State 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 V:

#### PARTY WALLS

Section 1: General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent no inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2: Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3: Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, an Owner who has use the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4: Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or will act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.



Section 5: Right to Contributions Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6: Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, and binding on the parties.

ARTICLE VI:

EXTERIOR MAINTENANCE

Section 1: Types of Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Townhouse Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks, and other exterior improvement. Such exterior maintenance shall not include glass surfaces or doors. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in the Article.

Section 2. Costs Subject to Assessments. In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, guests, or invitees, or tenants, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. Homeowners Insurance. All unit owners must carry and maintain an HO3 homeowners policy covering loss or damage to the unit and furnish a copy to the Owner's Association at purchase of each unit and upon request.

ARTICLE VII:

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding

structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. For the purpose of this Article, storm windows and a storm door on the rear entrance may be placed and maintained on townhouses without need for approval of the architectural committee; but a storm door placed and maintained at the entrance, or front door, to a townhouse must be approved by the architectural committee in accordance with the provisions of this Article.

ARTICLE VIII:

USE RESTRICTIONS

**Section 1: Land Use and Building Type.** No Lot shall be used except for townhome residential purpose.

**Section 2: Nuisance.** No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereof which may be or may become an annoyance or nuisance to the neighborhood.

**Section 3: Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. (See Section 10 Below)

**Section 4: Outside Antennas.** No outside radio, satellite dishes or television antennas shall be erected on any Townhouse unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

**Section 5: Homeowners' Dues.** Homeowners' monthly dues and/or assessment payments are due and payable on the first day of each month. Dues and/or assessments not paid within 30 days will be subjected to accruing interest at a rate of 1.5% per month or 18% per annum, with a minimum late fee of \$10.00.

**Section 6: Renters.** Renters are considered equal with resident owners to abide by these rules and regulations. Non-resident owners must be aware that Section 32-3 of the Greenville Zoning Ordinance stipulates that no more than three (3) unrelated persons may occupy a single-family dwelling. The owners of the property in violation of this Ordinance are subject to enforcement action up to and including the issuance of Civil Citations of \$50 per day for each and every day the violation continues.

**Section 7: Units for Sale.** "For Sale" signs and "Open House" signs may only be placed in the shrubbery bed near the entrance of the unit that is for sale. In no case shall any signs be displayed on the common grounds, except that "Open House" signs may be displayed at the Subdivision entrance for 48 hours prior to the end of

the open house. All units must be fully insured and minimal utilities must be maintained at all times, including period of vacancy.

**Section 8: Ground Maintenance.** Maintenance of the grounds shall be performed by the Homeowners Association including mowing, edging and fertilizing of the grass; cleaning the common areas; pruning the shrubs; distributing pine straw; and replacement of trees, shrubs, etc.

Residents who choose to plant trees or shrubs in the borders in front of their units (with proper approval) are responsible for the care and maintenance of those plantings. Owners are also responsible for damages caused to buildings, patios, sidewalks or fencing caused by such plantings. If the unit is sold, it must be conveyed to the new owners that they, and NOT the Association, are responsible for such planting. Plantings within the patio area must be located and/or maintained to prevent possible damage to plumbing, fences, patio fences, patio surfaces, and exteriors and/or patios are the responsibility of the owners. Under no circumstances are residents to plant any trees, shrubs or flowers in the common areas. Residents may NOT plant winter rye grass in front of their units. This causes mowing issues, as well as an inconsistent appearance.

**Section 9. Grounds and Parking Lot Appearance.** There will be no dumping of any foreign material on common grounds, including, but not limited to motor oil, solvent, paints, etc. The homeowner is responsible for cleaning and/or repairing damage to the parking lot caused by his/her vehicle or guests' vehicles leaking oil, antifreeze or other corrosive substances on the pavement.

**Section 10. Pets.** No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except dogs, cats or other household pets. No animal may be kept or maintained for commercial purposes and must not disturb or annoy other residents.

10.1 Dogs must be on a leash at all times, City of Greenville Ordinance.

10.2 No dogs may be staked on the common area. This includes front columns of the unit, as well as patio fences, decks and gates.

10.3 Owners of all dogs shall be expected to "scoop the poop".

10.4 No animal may make noises that disturb other residents. City Ordinance.

10.5 Do not allow dogs to urinate on the shrubs, as they are easily killed by dog urine.

10.6 Cat owners are required to restrain their pets and may NOT allow them to roam free. The city has a nuisance law that can be enforced by the Animal Control Officer.

**Section 11. Vehicles.** Only passenger cars and/or trucks of ½ ton capacity or less shall be permitted to utilize parking spaces. Boats, trailers, recreational vehicles and large trucks over ½ ton capacity are expressly prohibited. Vehicles are prohibited from being parked in any area that is not a designated parking space, to include along curbs, gutters and cul-de-sacs. Only two (2) parking spaces per unit are allowed.

**Section 12. Dumpster Rules.**

- 12.1 All trash should be placed in the proper dumpster (regular or recycle) in closed plastic bags. Both household and pet waste must be in closed plastic bags.
- 12.2 No paint cans are to be placed in dumpsters.
- 12.3 Discarded appliances, water heaters, and/or furniture should be removed by the installer or resident. DO NOT place beside or in the dumpster area.
- 12.4 Residents must notify Public Works to pick up large items. DO NOT place items beside dumpster until you have called for pick up. Large items should be stored in home or patio until the pick up date.
- 12.5 Parking in front of dumpsters is prohibited and vehicles are subject to towing at the owner's expense.
- 12.6 Residents must call Public Works for pick up of yard trimmings and limbs if they are placed at the curb or beside the dumpsters.

**Section 13. Common Area Regulations.**

- 13.1 Children are not to play on neighbors' lawns, roofs, fences, in or around dumpsters or mail houses. Parents are responsible for any damage caused to the buildings, common area improvements, lawns, trees, dumpsters, etc. by their children, pets and/or guests.
- 13.2 It is illegal to discharge any weapon, including air rifles and BB guns, in the subdivision. Use of fireworks and laser devices are prohibited.
- 13.3 All personal property, including firewood, lawn furniture, empty containers, coolers, grills, trash bags, play toys, fishing rods, items of clothing, gardening tools, etc. are to be stored within patio area ONLY. They are not allowed anywhere outside the patio areas, nor are they permitted at the entrance ways to the units, including the front yards and rear common areas. Holiday decorations must be confined to the unit's shrubbery beds and the area around the door.

**ARTICLE IX:**

**EASEMENTS**

Easements for installments and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

All Lots and Common Areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, but not limited to, such items as overhanging eaves, stoops, chimneys, bay windows, gutters and downspouts, misaligned common walls foundation footings and walls. Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the lots.

ARTICLE X:

GENERAL PROVISIONS

Section 1: Enforcement. The Association, 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 to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3: Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term or twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less that ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

However, additional land owned by Declarant adjacent to the land described herein may be annexed by the Declarant and Amendments to the Declaration may be made by the Declarant without the consent of members within ten (10) years of the date of this instrument.

IN WITNESS WHEREOF, ROCKY RUSSELL DEVELOPMENT, LLC and ROCKY RUSSELL BUILDERS, INC., the Declarant, have caused this in its name, this the 30 day of April, 2008.

**ROCKY RUSSELL DEVELOPMENT, LLC**

BY: Rocky Russell (SEAL)  
Rocky E. Russell, Member-Manager

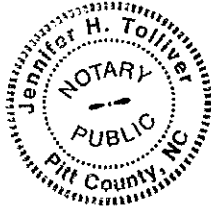
**ROCKY RUSSELL BUILDERS, INC.**

BY: Rocky Russell (SEAL)  
Rocky E. Russell, President

NORTH CAROLINA  
PITT COUNTY

I, **JENNIFER H. TOLLIVER**, a Notary Public for said County and State, do hereby certify that **ROCKY E. RUSSELL**, as Member-Manager of **ROCKY RUSSELL DEVELOPMENT, LLC**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 30 day of April, 2008.



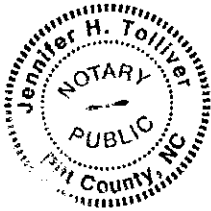
*Jennifer H. Tolliver*  
\_\_\_\_\_  
JENNIFER H. TOLLIVER, Notary Public

My Commission Expires: 7-7-08

NORTH CAROLINA  
PITT COUNTY

I, **JENNIFER H. TOLLIVER**, a Notary Public for said County and State, do hereby certify that **ROCKY E. RUSSELL**, as President of **ROCKY RUSSELL BUILDERS, INC.**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 30 day of April, 2008.



*Jennifer H. Tolliver*  
\_\_\_\_\_  
JENNIFER H. TOLLIVER, Notary Public

My Commission Expires: 7-7-08