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 Pitt County, NC
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PREPARED BY & RETURN TO: GREGORY K. JAMES, ATTORNEY *file*

STATE OF NORTH CAROLINA

COUNTY OF PITT

**DECLARATION OF COVENANTS CONDITIONS & RESTRICTIONS
 OF
 MILL CREEK HOMEOWNER'S ASSOCIATION OF GREENVILLE, INC
 PHASE I**

THIS DECLARATION, made on the date hereinafter set forth by ROBERSON LAND DEVELOPMENT, INC., a North Carolina Corporation, with its principal office located at 3562 Staton Mill Rd., Robersonville, North Carolina 27871, hereinafter referred to as "Declarant" does hereby covenant and agree to and with all other persons, firms or corporations now owning or hereafter acquiring as owners any tract or parcel of land in the area designated.

WITNESSETH:

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

Lying and being in the City of Greenville, Arthur Township, Pitt County, North Carolina and being all of Mill Creek Subdivision – Phase 1, as shown on map recorded in Map Book 67, Pages 25-26 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 same, 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
 TERMINOLOGY**

Section 1: "Association" shall mean and refer to Mill Creek Homeowner's Association of Greenville, Inc. – Phase One Homeowners 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 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 by the Association to be reserved to the Association at the time of the conveyance of the first lot described as follows:

Tract One: Being all that 1.9352 ac tract of land designated as "Common Area Phase One Stormwater Detention & Treatment to be Maintained by the Homeowners Association" on that certain map of Mill Creek Subdivision – Phase One, recorded in Map Book 67, Pages 25-26 of the Pitt County Registry.

Section 5: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area, and shall be known when platted as lots 1 through 75.

Section 6: "Declarant" shall mean and refer to Roberson Land Development, Inc., its successors and assigns.

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

**ARTICLE II
COMMON AREA**

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 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 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.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1: Every owner of a lot which is subject to assessment, as set forth in Article IV below, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Every member shall be subject to the By-Laws of the Association, whether currently of record or to be recorded in the Pitt County Register of Deeds Office. Every member shall subject to the By-Laws for the Association, whether currently of record or to be hereinafter recorded.

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

Class : Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each 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 not be assessed at any rate. Class B membership shall cease and be converted to the 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 June 1, 2011.

**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 assessment or charges for maintenance and electricity on all common areas, 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 of the assessment. Such assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2: Purpose of Assessments. 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 devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, landscaping maintenance, the cost of repairs and maintenance, electricity, replacements and additions, the cost of labor, equipment, materials management and supervision, the payment of taxes assessed against the Common Area, 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. No assessments shall be made on any lot until the platted lot shall have been conveyed by deed. The maximum annual assessment shall be \$120.00 per originally platted 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.

(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 established by the Consumer Price Index formula by a vote of the members, and for each succeeding period of two (2) years thereafter, provided that any such change 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 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 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, including fixtures and personal property related thereto, 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: Notice and Quorum for 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 or 4 shall be sent to all members not less than thirty (30) days nor more than (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 the 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 (½) 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. Except as provided for Class B members, both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7: Date of Commencement of Annual Assessments and 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 lot to any owner. However, it is not the intent of the owners to assess any Lot during the construction phase. That is to say the initial lot owner who receives a deed from the Declarant shall not pay assessments until the initial owner receives a certificate of occupancy from the local governing authority. 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 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 8. Effect of Nonpayment of Assessment and 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 eighteen 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 9: Subordination of the Lien to Mortgages. The lien of the assessments 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 assessment thereafter becoming due or from the lien thereof.

Section 10: 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 COMMITTEES

The Association may appoint an Architectural Control Committee. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE VI USE RESTRICTIONS

1. These covenants to run with the *land* and shall be binding on all parties and all persons claiming under them under until June 1, 2027, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owners of the lots, it is agreed to change said covenants in whole or in part.

2. If the parties hereto or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning real property situated in said development or subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violations.

3. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

4. All lots in this tract of the subdivision shall be known and described as residential lots and may not be subdivided.

5. No structure shall be erected, altered, placed or permitted to remain on any residential lot other than one single family dwelling not to exceed two and one-half stories in height, exclusive of basements, which may include an attached garage or carport for not more than two cars,

and one detached out building constructed and used incidental to the residential use of the property and having the same architectural design (vinyl, brick, shingles, etc.) as the dwelling.

6. Any attached or detached garage located on any lot which opens to the front or any side lot line must have a garage door which will close to block the view of articles stored in said garage.

7. Any residence built on any lot in the subdivision shall contain no less than one thousand four hundred (1400) square feet of heated space, exclusive of one story open porches and garages.

8. No mail or paper box or other receptacle of any kind for use in the delivery of mail, magazines, newspaper or similar materials shall be erected or located upon any lot except such receptacle of standard design as approved by the Declarant or its successors or designees.

9. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No condition shall be permitted or allowed to exist on the property which is or may become an annoyance or nuisance to the neighborhood.

10. No barber shops, beauty parlors or shops, commercial or business activity shall be permitted or suffered to remain on any of the lots shown on the map referred to herein, nor shall any activity be carried on which under the Ordinances of the City of Greenville, North Carolina, are identified as "Cottage Industries". No trade materials or inventories may be stored upon the premises, and no business or commercial venture shall be directed or carried on at the property except property located on one lot to be used by the developer/builder as a sales office.

11. No structure of a temporary nature, including, but not limited to, a trailer, mobile home, modular home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, and no trailer, mobile home, modular home, tent, shack, barn or other outbuilding shall be permitted to exist on the property as a residence except storage containers designated as useful in the construction of building homes on said lots in said subdivision by the builder/developer.

12. No sign of any kind shall be displayed to the public view on this property except one sign of not more than eight (8) square feet advertising the property for sale, or signs used by a builder, developer, Realtor or owner to advertise the property during construction and then for sale. This provision shall not preclude the developer from placing one or more entrance signs at the front of the subdivision or preclude the developer from displaying company advertising signs.

13. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred or

kept on any portion of the property, except that domesticated dogs, cats and small non-offensive and harmless household pets may be kept by the owner of the property, provided that they are not kept or used for breeding or maintained for any commercial purpose, and it is further provided that it is the intent of this covenant to allow owners of lots of the property to keep pets, within reason, but that there will not be allowed on the property an unreasonable number of hunting dogs or other such animals in kennels on the property. No pet or "dog runs" shall be permitted.

14. No trucks or tractors may be regularly stored or parked upon the property. This provision shall not, however, be interpreted to prohibit the owner of a pick-up truck, up to 1 ton in size, being used by any owner of this property for his personal conveyance, and such truck may be parked upon the property. Also the owner of any portion of the property may park thereon a lawn tractor to be used for the upkeep of the property. No minibikes, motorbikes, ATV's or similar vehicles shall be used on lawns, paved or unpaved streets or undeveloped areas. No vehicles, boats, trailers, recreational vehicles or the like shall be parked on the streets of the Development. All properties should have adequate parking. No parking of vehicles on the streets.

15. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials should be kept in a clean and sanitary condition.

16. No television satellite dish antenna shall be erected, placed or permitted to remain on any residential lot shown on the aforesaid map at any point from the front lot line to a line parallel to the front lot line passing through the rear line of the main structure of the dwelling set on said lot and if installed on the rear property of the lot shall be screened from view of all streets and shall not exceed two (2) square feet in surface area. No transmitting tower or antenna exceeding a height of twenty (20 feet from ground level, shall be placed, used or erected on any lot within the property, either temporarily or permanently, and same shall not be permitted to exist on the property.

17. No junk cars, trucks or other vehicles may be kept on any portion of the property. All vehicles kept on the property must have vehicle tags and be operational.

18. No bicycle ramps, skateboard ramps, roller blade ramps or basketball goals shall be kept in the street in front of or along side of any lot. No ramps, of a permanent or temporary nature, of any kind shall be erected or placed on any lot.

19. Clotheslines and drying yards are not permitted to be placed on any lot.

20. Any swimming pool must be screened by a privacy fence which shall be approved in writing by the Declarant its successors and or assigns.

21. No fence shall be constructed over six (6) feet in height or built or erected on any lot or be constructed of chain link or split rail; and any such salt treated redwood or cedar fence or privacy fence or black coated chain link fence or PVC fence shall be constructed, built or erected at least three (3) inches from the property lines of such lot and must totally secluded from view any above ground pool located on any lot, after having obtained written approval for same from Declarant or its designee. It is further provided that no fence of any kind shall be constructed on any lot on the property closer to the front of any lot than the rear portion of the main dwelling constructed on said lot.

22. All individual purchasers, from and after the date of the recording of this Declaration, shall be required to keep their respective portion of the property free and clear of weeds, rubbish, trash, debris and other matter. In any event, no grass over six (6) inches in height will be permitted to be maintained on any lot. A dumpster shall be placed on each lot from commencement to completion of any construction for any structure placed thereof.

23. Slab foundations are permitted, with the condition that they shall not be less than twenty-two (22) inches from the finished grade of the yard on the front view of the house.

24. No dwelling, building, structure or outbuilding, of any kind or nature, shall be constructed, erected, placed or altered on any lot on the property until the construction plans, specifications, and plans showing the location of such structures have been approved in writing by Declarant or its designee.

ARTICLE VII EASEMENTS

Easements for installation 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.

Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the lots. Mill Creek Homeowners Association of Greenville, Inc. shall be responsible for the maintenance and repair of all storm water wetland ponds located throughout the subdivision in accordance with that certain Storm Water Facility Inspection and Maintenance Agreement recorded in or to be recorded in the Pitt County Register of Deeds Office.

**ARTICLE VIII
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 Owner 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 of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods often (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) per cent 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.

Section 4: **Annexation.** Additional residential property and Common Area may be annexed to the Properties within five years from the recordation of this instrument in the Pitt County Registry.

Section 5: Any portion of the property dedicated to and accepted by a local public authority shall be exempt for the declarations contained herein.

IN WITNESS WHEREOF, the said party of the first part, have hereunto set their hands and seals, this the 13th day of June, 2007.

ROBERSON LAND DEVELOPMENT, INC.

BY: A. Brent Roberson (SEAL)
A. BRENT ROBERSON, PRESIDENT

ROBERSON BUILDERS, LLC

BY: A. Brent Roberson (SEAL)
A. BRENT ROBERSON, MEMBER/MANAGER

MILLS DEVELOPMENT GROUP, LLC

BY: Robert D. Parrot (SEAL)
ROBERT D. PARROT, MEMBER/MANAGER

BY: Carl W. Blackwood (SEAL)
CARL W. BLACKWOOD, MEMBER/MANAGER

STATE OF NORTH CAROLINA

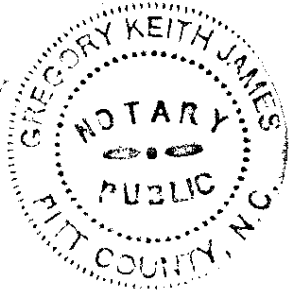
COUNTY OF PITT

I, Gregory Keith James, a Notary Public for said County and State, certify that A. BRENT ROBERSON personally came before me this day and acknowledged that he is President of ROBERSON LAND DEVELOPMENT, 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.

Witness my hand and Official Notarial Stamp or Seal, this the 15 day of June, 2007.

(NOTARY SEAL)

[Signature]
NOTARY PUBLIC
My Commission Expires: 11-04-10



STATE OF NORTH CAROLINA

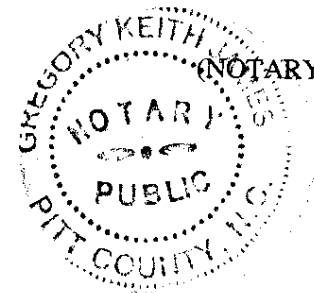
COUNTY OF PITT

I, Gregory Keith James, a Notary Public for said County and State, certify that A. BRENT ROBERSON personally came before me this day and acknowledged that they are Member/Managers of ROBERSON BUILDERS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company and that by authority duly given and as the act of such entitle, they signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Official Notarial Stamp or Seal, this the 15 day of June, 2007.

(NOTARY SEAL)

[Signature]
NOTARY PUBLIC
My Commission Expires: 11-04-10



STATE OF NORTH CAROLINA

COUNTY OF PITT

I, Gregory Keith James, a Notary Public for said County and State, certify that ROBERT D. PARROT AND CARL W. BLACKWOOD personally came before me this day and acknowledged that they are Member/Managers of MILLS DEVELOPMENT GROUP, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company and that by authority duly given and as the act of such entitle, they signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and Official Notarial Stamp or Seal, this the 15 day of June, 2007.

(NOTARY SEAL)

[Signature]
NOTARY PUBLIC
My Commission Expires: 11-04-10

