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Pitt County, NC  
Lisa P. Nichols REG OF DEEDS  
BK **3861** PG **338-352**

*File*

NORTH CAROLINA  
PITT COUNTY

PREPARED BY: HORNE & HORNE, PLLC

DECLARATION OF CONDITIONS, RESTRICTIONS  
AND COVENANTS OF MILL CREEK PHASE II

KNOW ALL MEN BY THESE PRESENTS, that ROBERSON LAND

DEVELOPMENT, INC., parties of the first part, do hereby covenant and agree to and with all other persons, firms and corporations now owning and/or hereafter acquiring as owners any lot, lots or parcels of land within the area designated and located in the City of Greenville, Pitt County, North Carolina, and known as Mill Creek Subdivision, Phase II as shown on the map of said subdivision recorded in Map Book 85, Page 9 in the Office of the Register of Deeds of Pitt County, North Carolina that said lots shown thereon are hereby subjected to the following covenants and restrictions as to the use thereof and running with the land by whomsoever owned.

WITNESSETH:

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

Lying and being in the City of Greenville, Pitt County, North Carolina and being all of Lots 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126 and 127 Mill Creek Phase II as shown on that certain map duly recorded in Map Book 85 Page 9 of the Pitt County Public Registry.

*K*

WHEREAS, to provide a means for meeting the purposes and intents set forth herein, Declarant has caused to be created Mill Creek Homeowner's Association of Greenville, Inc., its successors and assigns, a nonprofit corporation incorporated under Chapter 55A of the General Statutes of North Carolina.

NOW, THEREFORE, Declarant hereby covenants and declares, on behalf of itself and its successors and or assigns, that the real estate designated and described above shall from the date this declaration is recorded in the Register of Deeds be held, conveyed, acquired and encumbered subject to the Act and the terms and provisions hereof, all of which shall run with the real estate and bind and inure to the benefit of all prospective purchasers and parties who may acquire any right, title, estate or interest in or to any of such real estate or who may acquire any right of occupancy or entrance upon any portion thereof, all subject to the right of Declarant or the Association to amend this Declaration according to its terms.

ARTICLE 1  
DEFINITIONS

Section 1. "Act" Act means Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

Section 2. "Articles" means the Articles of Incorporation of Mill Creek Homeowner's Association of Greenville, Inc., its successors and assigns, as may be amended from time to time.

Section 3. "Association" shall mean and refer to Mill Creek Homeowner's Association of Greenville, Inc., its successors and assigns.

Section 4. "Association Documents" shall means collectively the Articles of Incorporation, this Declaration, the By-Laws, if any, and any other resolutions adopted by the Executive Board, all as may be amended, restated and revised from time to time.

Section 5. "Common Area" shall mean any real estate within Mill Creek Subdivision Section I as set forth on Map recorded in Map Book 67, Page 25-26 or Mill Creek Subdivision Section I as set forth on Map recorded in Map Book 85, Page 9 owned or leased by the Association other than a Lot or dedicated to a municipality or the State of North Carolina and, any and all personal property, equipment and fixtures owned, leased, maintained or operated by the Association for the benefit of the Property or the Owners. Notwithstanding this definition, to the extent that the provisions of the Act apply to "Common Area", including, without limitation, the provisions of Section 47F-3-112, those provisions shall apply only to "Common Area" as defined in the Act. All Common Areas and facilities thereon are private. The recording of a plat nor any other act of the Declarant is intended as a dedication to the public of any recreational facilities or amenities thereon.

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

Section 7. "Dedication" means the act of committing a portion of the Subdivision to the purposes of this Declaration.

Section 8. "Development Period" means a period Ten (10) years from the date this Declaration is recorded in the Register of Deeds; provided, that if Declarant is delayed in the improvement and development of the Property due to events beyond Declarant's control, then the period shall be extended for the length of the delay plus an additional two (2) years.

Section 9. "Lot" means a separately numbered tract of land lying within the Subdivision and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed to the Declarant and owned in fee the by Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located.

Section 10. "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 11. "Subdivision" means the property shown on the maps entitled "Mill Creek Subdivision Phases I and II as set forth on Map recorded in Map Book 67, Page 25-26 and in Map Book 85, Page 9 Pitt County Registry and any additional property within the Development Area which has been or may be dedicated pursuant to this Declaration.

## ARTICLE II

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 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.

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 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 November 1, 2024.

#### 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 \$180.00 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 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, 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 (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. 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 Declarant/Developer 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 property 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 assessments 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, 2039, 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 plot other than one detached 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 constructed on a Lot in the Subdivision shall have a minimum square footage, more specifically described as heated living area, exclusive of one-story open porches, garage and basements, of not less than One Thousand Six Hundred (1600) square feet.

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 any Lot which is or may become an annoyance or nuisance to the Subdivision.

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 any Lot and no business or commercial venture shall be directed or carried on at any Lot except a Lot

used by the Developer/Declarant 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 outbuildings erected, parked or placed on the tract shall at any time be used as a residence, temporarily or permanent, nor shall any structure of a temporary character be used as a residence.

12. No sign of any kind shall be displayed to the public view on any Lot 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 Declarant from placing one or more entrance signs at the front of the Subdivision or preclude the Declarant from displaying company advertising signs.

13. No animals, livestock, poultry, pigeons 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 hunting any commercial purpose, however, no owner of any Lot within the Subdivision will be allowed to keep more than three domesticated animals on any Lot. No animals will not be allowed on any Lot in kennels on any kind. No pet or "dog runs" shall be permitted on any Lot.

14. No trucks or tractors may be regularly stored or parked upon any Lot or in the Subdivision. 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 Subdivision for his personal conveyance, and such truck may be parked upon the Lot or Subdivision. No minibikes, motorbikes, ATV's or similar vehicle shall be used on any Lot or any where else in the Subdivision. 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 vehicle, boat, trailer, recreational vehicles or the like

shall be parked on any street in the Subdivision. No vehicle shall be parked on any street in the Subdivision.

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 or comparable communication device, except a small dish no larger than 18 inches in diameter to be placed in the rear of the lot so it will not be seen from any street, and 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 wrecked or junked motor vehicles or vehicles without current license plates and registration shall be permitted to remain upon any lot.

18. No bicycle ramps, skateboard ramps, roller blade ramps or basketball goals shall be kept in the street in front of or along side 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 or its successors and/or assigns.

21. No fence shall be constructed, built or erected on any Lot 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 two (2) inches from the property lines of any Lot and must be totally secluded from view any above ground pool located on any Lot, after having obtained written approval for same from the Declarant or its designee. It is further provided that

no fence of any kind shall be constructed on any Lot in the front yard of such lot, said front yard being defined as that particular area of the yard located between the rear corner of the residence and the street.

22. All Owners of any Lot, whether occupied or unoccupied, shall be well maintained by the Owner and no unattractive growth of vegetation or accumulation of rubbish or debris shall be permitted. All Owners of each Lot will maintain a suitable and even stand of grass upon said Lot. In any event, no grass over six (6) inches in height will be permitted to be maintained on any Lot.

23. Slab foundations are permitted, with the condition that they shall not be less than twelve (12) inches from the finished grade of the yard on the front view of the house.

24. No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, dwelling units, outbuildings, driveways, fences, walls, or other structures shall be undertaken upon any Lot in this Subdivision without the prior approval of Declarant or its successors or designees

#### 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 any and all 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.

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 automatically be 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 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 fifteen years from the recordation of this instrument in the Pitt County Registry.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands and seals, this the 21<sup>st</sup> day of November, 2019.

ROBERSON LAND DEVELOPMENT, INC.

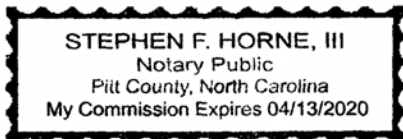
A. Brent Roberson (SEAL)  
A. Brent Roberson-President

STATE OF NORTH CAROLINA  
COUNTY OF PITT

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: A. Brent Roberson - President.

Witness my hand and Notarial Seal, this the 21<sup>st</sup> day of November, 2019.

(Affix Seal Here)



[Signature]  
NOTARY PUBLIC  
Printed/Typed Name: Stephen F. Horne III  
My Commission Expires: 4/13/2020