

For Registration Register of Deeds  
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Moore County, NC

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STATE OF NORTH CAROLINA  
COUNTY OF MOORE

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR WINDS WAY FARM**

WHEREAS, Declarant desires to have certain areas of Winds Way Farm owned by this Association and benefit all owners within Winds Way Farm; and,

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection, and enhancement of the values and amenities in Winds Way Farm, and to insure the residents' enjoyment of the specific rights, privileges and easements in the common elements or common areas and facilities to create an organization of which will be delegated and assigned the powers of owning, maintaining and administering the common elements or common areas, facilities, and administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WEHREAS, Declarant has incorporated under the laws of the State of North Carolina, as a not for profit corporation, Winds Way Farm Homeowners Association, Inc., for the purposed of exercising the functions aforesaid within the community known as Winds Way Farm;

NOW, THEREFORE, Declarant hereby submits said Property, and such additions thereto, and annexation thereto, as may hereafter be made pursuant to this Declaration, pursuant to Chapter 47F of the General Statutes of North Carolina as amended, known as the "Planned Lot Development Act" (herein the "Act"), and to that end does hereby publish and declare that all of the said Property to be known as "Winds Way Farm" which shall be held, sold, and conveyed subject to the terms and provisions of the Act, the terms and provisions of which shall apply hereto and control, except as herein modified by the following easements, restrictions, covenants, conditions, uses and obligations 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**

Unless it is plainly evident from the context that a different meaning is intended, the following words and terms shall have the following meanings:

A. Act. The North Carolina Planned Lot Development Act, Chapter 47F of the North Carolina General Statutes.

B. Additional Properties. Shall mean and refer to any lands adjoining the Property, which now are owned or may be hereafter acquired or developed by the Declarant and annexed to and made a part of the properties by the Declarant and subjected to this declaration. The annexation of such additional properties shall become

submitted electronically by "Sandhills Law Group"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Moore County Register of Deeds.

effective by the recording in Moore County by the Declarant of an amended declaration for each new section annexed.

C. Allocated Interests. The undivided interests in the Common Elements, the Common Expense liability, and in the Association allocated to each Lot.

D. Assessment. A share of the funds required for the payment of Common Expenses that from time to time is assessed against the Lot Owner by the Association.

E. Association. The non-profit incorporated Association known as Winds Way Farm Homeowners Association, Inc., its successors and assigns, the entity responsible for the operation of the Development pursuant to the Act, which entity includes all of the Lot Owners acting as a group in accordance with this Declaration.

F. Board of Managers or Board. Shall mean the Officers of the Association, as defined herein.

G. Building. All structures and improvements now or hereafter erected upon the property.

H. Common Elements or Common Areas or Open Space shall mean all real property owned by the Association for the common use and enjoyment of the Owners. Common areas shall specifically include, but shall not be limited to, all areas entitled "Open Space" or "Common Area" shown on recorded plats or as Exhibits to any deeds to the Association. All common area shall be subject to the terms and conditions of this Declaration and the ordinances of the Town of Aberdeen and Moore County, where applicable.

I. Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

J. Common Expense Liability. The liability for Common Expenses allocated to each Lot pursuant to the Act, this Declaration, and the By-Laws, if applicable.

K. Declarant. Declarant shall mean and refer to Winds Way Farm, LLC, a North Carolina limited liability company, its grantees, successors and assigns.

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

M. Development Rights. Among those rights hereby reserved by the Declarant are to add additional phases to the development, to make additions to or to change the configuration of the Lots and to change or revise the common elements within the development.

N. Documents or Association Documents. This Declaration, By-Laws and the Rules and Regulations, if any, and all other Exhibits attached hereto and all other documents and regulations promulgated pursuant to the authority created herein and in the Act, and as such documents shall be amended from time to time.

O. Improved Lot. A lot on which a single family dwelling has been constructed on it.

P. Lot. A part of the Property that is to be subject to private ownership, as designated on the Plat recorded in Plat Cabinet 18 at Slide 407, and subsequently Recorded plats and as further defined in the Act.

Q. Member. Member shall mean and refer to an Owner subject to assessment as provided in this Declaration.

R. Owner or Lot. A person or entity, or any combination thereof, that is record owner of a fee simple title to any Lot that is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

S. Plats or Plans: the plats and plans required to be filed with the Moore County Register of Deeds, including those plats or plans for development "Winds Way Farm", Phase 1 being duly recorded in Plat Cabinet 18 at Slide 407 of the Moore County Registry, as the same may amended from time to time.

T. Property or Properties or Development. The lands described as

Tract 1 - Being all of Lot 1 containing 93.11 acres as shown on a plat recorded in Plat Cabinet 7, Slide 380, Moore County Registry, entitled Raymond C. Auman/J. Andrew Auman Recombination Map", Sandhills Township, Moore County, North Carolina, by Emmett S. Raynor, PLS, dated March 24, 1999.

LESS and EXCEPTING a certain tract or parcel of land situate in Sandhill Township, Moore County, Aberdeen, North Carolina, fronting and lying on the west side of NC Hwy 5, being further described by metes and bounds as follows:

BEGINNING on an iron rod found in the west right of way line of NC Hwy 5, said rod being the Southeast corner of Lot 2 as shown on the map recorded in Plat Cabinet 7 Slide 380 in the Moore County Registry; running thence from said beginning corner with said right of way line of NC Hwy 5 South  $7^{\circ}43'44''$  East a distance of 419.92 feet to an iron rod set; thence North  $89^{\circ}53'442''$  West a distance of 524.77 feet to an iron rod set; thence North  $7^{\circ}09'24''$  West a distance of 419.36 feet to an iron rod found, said iron rod being the Southwest corner of said Lot 2; thence with the south line of said Lot 2 South  $89^{\circ}53'22''$  East a distance of 520.55 feet to the BEGINNING, containing 4.99 acres, more or less, and being that portion of Lot 1 which embraces that 1.38 acres described in Deed Book 448 Page 707, which was previously identified as Parcel ID number 00046333, as shown on the aforementioned map.

AND,

Tract 2 - BEGINNING at a concrete monument, an original corner of the Chapin land, and the common corner of Lots No. 6 and 7 of the division of said lands, running thence as the common line of the aforesaid lots S.  $89^{\circ} 15' E.$  855 feet to a stake in said line; thence as a new line, N.  $0^{\circ} 45' E.$  about 1085 feet to a point in an original line of said Chapin land, in the center of the county road leading to the V. Z. Reed place; thence as said original line and with the center of said road, S.  $74^{\circ} 20' W.$  about 671 feet to the point of curve of said road, the easterly corner of 1.14 acres conveyed by Chapin to L.L. Biddle; thence as a line of that tract and along a curve of said road, the long chord of which curve bears S.  $57^{\circ} 26' W.,$  303.2 feet to the point of tangent of said curve; thence continuing along the center of said road, S.  $40^{\circ} 31' W.$  224.6 feet to the point of another curve; thence as a chord of 1t, S.  $44^{\circ} 52' W.$  53 feet to a point in the center of said road m an original line of the Chapin land, another corner of the said 1.14 acres; thence as said original line, S.  $21^{\circ} 53' E.$  537.4 feet to the beginning, containing twenty (20) acres, more or less, and being and comprising the western portion of said Lot No. 7 of the said division of the Chapin Lands made in February, 1947, by R. E. Wicker, Civil Engineer.

LESS AND EXCEPTING:

Parcel 1: A certain parcel of land in Sandhill Township, Moore County, North Carolina, fronting on the northwest side of NCSR 1115 (Linden Road) being a part of that T. C. Auman tract recorded and described in Deed Book 166, Page 450, and having a boundary described as follows:

BEGINNING at a new PK nail. 1.60 feet north of the center line of SR 1115 (the same being the southeast corner of the Yarborough tract recorded in Deed Book 173, Page 505) and running thence with the Yarborough line, S.76-37 W. 267.83 feet to a new iron pipe set for the southeast corner of a new 1.01 acre lot, thence as that lot line, S.76-37 W. 194.86 feet to an existing iron stake, the southwest corner of the Yarborough tract, thence on a new line, S. 04-53 W. 151.28 feet to a nail in the center line of NCSR 1115 (Linden Road), thence as the center line of said road, the following courses, N. 56-58 E. 31.18 feet, N. 57-04 E. 99.96 feet, N. 57-14 E. 100.04 feet, N. 58-29 E. 100.07 feet, N, 63-24 E. 99.95 feet, N. 70-18 E. 100.00 feet to a new PK nail in the center of the road, thence N. 00-54 E, 1.60 feet to the BEGINNING, containing 0.63 acres, more or less, as surveyed and mapped on 13 May, 1990, by Carl A. Samuelson, RLS.

Parcel 2: Beginning at a point in the centerline of S.R 1115 (Linden Road), the southeast corner of Lot 1 as shown on that certain plat of survey entitled "Minor Subdivision Plan for Mike Hicks" by American Surveying and Mapping, recorded in Plat Cabinet 6, Slide 934 of the Moore County Registry running thence with said centerline S 56 degrees 14 minutes W 206.20 feet, thence S 58 degrees 29 minutes W 67.89 feet and 90.81 feet, thence S 62 degrees 18 minutes W 61.92, running thence N 22 degrees 51 minutes W 7.04 feet, running thence N 44 degrees 32 minutes E 53.00 feet; running thence N 40 degrees 31 minutes E 224.60 to a control corner; thence along a long chord N 57 degrees 26 minutes E base bearing; thence S 4 degrees 14 minutes W 128.93 feet to the beginning point, containing 0.79 ac, more or less, and being a part of Lot 1 and Lot 2 as described on said Plat of Survey, to which plat reference is hereby made for a more particular reference.

together with the Buildings and improvements located thereon, and such additional properties as may be subsequently subjected to this Declaration by Supplemental Declaration in the manner herein provided "Development").

U. Special Declarant Rights. Rights reserved for the benefit of the Declarant that may not be altered by the members or lot owners, including, but not limited to rights (i) to complete improvements indicated on plats and plans filed with the Declaration; (ii) to exercise any Development Right; (iii) to maintain sales offices, management offices, signs advertising the development and models; (iv) to use easements through the common area(s) for the purpose of making improvements within the Property or within real estate which may be added to the Property; or (v) to appoint or remove any officers or executive board members of the Association during the period of Declarant control, all of which Special Declarant Rights are more fully set forth herein.

V.. Supplemental Declaration. A document filed by Declarant to change the configuration of the Lots and to change or revise the Common Elements or Open Space within the Development in the manner provided herein, or to add additional properties as may be subsequently subjected to this Declaration by Supplemental Declaration.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

A. Declarant submits only that land shown as Phase 1 on the plat, thereof recorded in Plat Cabinet 18 at Slide 407 in the Office of the Register of Deeds of Moore County, saving and excepting the roadways shown on said plat as said roads will be ultimately dedicated to the Town of Aberdeen. Nevertheless, Declarant hereby reserves the right and option, but not the obligation, to expand the property subject to this Declaration by adding all or any portion or portions (whether in one phase or additional phases) of the land described as Phase 2 as proposed and shown on said plat recorded in Plat Cabinet 18 at Slide 407.

Further, the Declarant also retains the right to add contiguous, or nearly contiguous, tracts to the project at its sole discretion, in which case the maximum number of lots would be increased. The Properties shall be owned, held, leased, transferred, sold, mortgage and/or conveyed by Declarant, the Association and each Lot Owner subject

to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and lies set forth in this Declaration.

Any extension shall occur, if at all, by the recordation of one or more amendments to this Declaration and one or more supplementary plats as required by law. Each amendment to the Declaration shall be called a "Supplemental Declaration" or "Amended Declaration" and shall be executed by the Declarant or its successors and assigns. The recordation of any such supplemental declaration and expansion of the property subject to this Declaration effectuated thereby, shall not require consent or ratification of any lot owner.

The real property that is, and shall be submitted to this Declaration is that real property shown as Phase 1 on that plat recorded in Plat Cabinet 18 at Slide 407 of the Moore County Registry, saving and excepting the roadways shown on said plat as said roads will be ultimately dedicated to the Town of Aberdeen..

B. Additional Properties may be annexed to and made a part of the properties by the Declarant and subjected to this declaration in multiple additions.

Annexation of additional property shall require approval from the Town of Aberdeen, and shall be required to occur within fifteen (15) years from the date of this instrument, provided, however, that all annexations of additional properties to the original development described in Article I hereof must be contiguous to the property described in Article I hereof or property previously annexed, or property of the Declarant. Provided further, that no annexation of additional property shall have the effect of placing the original development in violation of the Town of Aberdeen Zoning Ordinances.

Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation, except approval by the Town of Aberdeen.

The Declarant will dedicate and convey any Common Area in annexed property to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other easement, mineral rights and the terms and conditions of the Declaration and any applicable supplemental Declaration.

The Declarant reserves the following Development Rights: (i) to add real estate to the Properties in accordance with this Article; (ii) to create Lots; (iii) to add Common Area; (iv) to modify or change Lot types; (v) to withdraw undeveloped real estate from the Properties.

C. The Common Areas, Common Elements, and facilities, if any, are shown and referenced in that deed from Declarant to the Association and also shown on that recorded plat in Plat Cabinet 18 at Slide 407 of the Moore County Registry.

D. Each Lot shall be conveyed and treated as an individual Property capable of independent use and fee simple ownership, and the Lot Owners of each Lot shall also own, as an appurtenance to the ownership of each said Lot conveyed, an equal pro rata undivided interest in the Common Areas.

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

or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as hereinafter provided.

**ARTICLE III**  
**USE RESTRICTIONS**

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

The use of the Property shall be in accordance with the following provisions:

A. Each of the Lots shall be occupied only for residential purposes. No Lot may be divided or subdivided into a smaller Lots nor any portion thereof sold or otherwise transferred without the consent of all Lot Owners and compliance with the Act.

B. The Common Areas and facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Lot.

C. No use or practice shall be permitted in the Development that reasonably could be considered the source of annoyance or nuisance to residents or interfering with the peaceful possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard allowed to exist. No Owner shall permit any use of his/her Lot or of the Common Elements that will increase the rate of insurance upon the Development Property or any part thereof. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Rental of less than the whole lot is prohibited.

D. Reasonable regulations concerning the use of the Development Property may be made and amended from time to time by the Association.

E. Each Lot Owner shall maintain, repair and replace, at is or her own expense, all portions of his or her Lot, except as may be otherwise provided in this Declaration.

F. No Lot Owner shall alter any Common Elements without the prior written consent of all members of the Association. Except as allowed herein, no Lot Owner shall fix any object to the Common Elements or in any manner change the appearance of the Common Elements without first obtaining the written consent of the Association. There shall be no obstruction of the Common Area, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Area, or removed therefrom, without the prior consent of Declarant or the Association. Provided, however, Declarant and the Association shall have the right to install, place, repair, replace and maintain signs in the Common Area and to install, maintain, repair and replace in the Common Area such materials, equipment and other apparatus as may be necessary to enable the Association to carry out its power and duties under this Declaration.

In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Lot Owner, or by any member of a Lot Owner's family, guests, invitees, licensees, agents, occupants, users, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Lot Owner. If the Lot Owner fails to repay the expenses incurred by the Association within 30 days after notice to the

Lot Owner of the amount owed, then the failure to so repay shall be a default by the Lot Owner under the provisions of this Section.

G. Converting any Lot to timeshare lot ownerships, per Chapter 93A of the North Carolina General Statutes or any successor statute, or other forms of fractional ownership, is expressly prohibited within the Development.

H. No animals or livestock of any kind shall be raised, bred, kept or maintained on any Lot or in any dwelling except certain domestic household pets and chickens (solely for the purpose of producing eggs for household consumption and not commercial production), subject to the rules and regulations approved for all members of the Association. The rules and regulations may regulate, permit or prohibit the kind and number of domestic household pets and chickens. Domestic household pets and chickens may not be raised, bred, kept or maintained for any commercial purposes. All household pets shall be kept on a leash at all times when outside the Lot, unless in a fenced in area, and animal waste must be immediately removed. Such pets may not be permitted to run at large at any time. Owners of pets on the Property shall control excessive barking or other disturbances caused by the pets. All chickens must be kept in a fenced in area behind the house in the rear of the Lot. Roosters are specifically prohibited.

I. There shall be no parking of any vehicle, camper, boat, trailer, or similar, in the streets, rights-of-way or easement areas. All parking shall be limited to garages and fenced in areas behind the house in the rear of the Lot so long as the stored vehicle, camper, boat, trailer, or similar does not exceed the fence height. No vehicle, trailer, or similar, may be parked so as to block any sidewalk, if any. No trucks shall be permitted except for standard 2-ton pickup trucks, or smaller sized trucks. All tools or other materials stored in vehicles for overnight parking shall be kept out of sight. No stripped, wrecked or partially wrecked, or junk motor vehicle or part thereof, or any motor vehicle not displaying a current valid inspection sticker shall be permitted to be parked or kept on the Property. Nothing herein shall be deemed to prohibit temporary parking of vehicles involved in deliveries to a Lot or Lot Owner.

The Board of Directors shall have the right and authority to make, amend, implement and enforce such additional parking rules and regulations as it deem necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the Lot Owner, or the guest(s) or invitee(s) of a Lot Owner, to which such vehicle is registered.

No rule or action by the Association or Board shall unreasonably impede the Declaration's right to develop the Properties.

J. No burning of wood, leaves, trash, garbage or household refuse or burning as a means of clearing brush shall be permitted on the Property.

K. Garbage and trash shall be disposed by Lot Owners in accordance with rules and regulations approved for all members of the Association.

L. No laundry or wash shall be dried or hung outside any Lot, unless within fenced in areas.

M. There shall be no obstruction of the Common Elements that prohibits maintenance of any utilities located therein.

N. The Declarant, and after the period of Declarant control, the Association, shall have exclusive control over any yard decorations in any front or side yards. No such decorations shall be allowed without the approval of the Declarant, and after the period of Declarant control, the Association.

O. No sign of any kind shall be displayed to the public view on any Lot except for signs that are allowed by law and approved by the Declarant, and which are for one or more of the following purposes: (i) advertising the Lot for sale or rent, (ii) advertising the building contractor constructing improvements at the Lot

during initial construction and sales period, (iii) identifying the rental or sales office and/or model home of Declarant, (iv) identifying the subdivision or phase name and/or identifying the Lot number of a Lot, and (v) any other purpose approved by the Declarant or the Board of Directors; provided however, the foregoing limitations shall not act to restrict or prohibit Declarant or the Association or any applicable governmental entity from erecting, maintaining, repairing and replacing (and Declarant hereby reserves for itself, the Association and such governmental entities the right to erect, maintain, repair and replace) on a Lot or on the Common Area, landscaped rights-of-way, roadway medians and any easement reserved or granted for such purposes, signs and billboards advertising the Properties or portions of the Properties, or signs identifying various subdivisions or phases of the project, or regulatory street and directional signs.

P. Walls, Fences and Hedges. No wall, fence or hedge of any height shall be constructed on any Lot until after the height, type, design and approximate location of any of the foregoing are approved in writing by Declarant, its successors or assigns pursuant to Article VIII, Architectural Control, and receipt of a permit, if any, issued by the Town of Aberdeen. The heights or elevations of any wall, fence or hedge shall be measured from the existing elevations of the Lot at or along the applicable points or lines and no fence or wall shall exceed six (6) feet in height above said elevation(s). Fences or walls must be constructed to or along the property line along the Lot and there shall not be any double fencing. Chain link fence is strictly prohibited. In the event Declarant, its successors or assigns, fails to approve or disapprove such wall, fence or hedge within thirty (30) days after the plans specifications for such wall, fence or hedge has been submitted to it, such approval will not be required and this covenant will be deemed to have been fully complied with.

#### ARTICLE IV EASEMENTS

A. All of the Properties, including Common Areas, shall be subject to such easements for walkways, parking areas, water lines, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over and under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant unto itself, its invitees, licensees, guests, customers, agents, employees, contractors, heirs, successors and/or assigns from this conveyance, the following:

i. A perpetual and unlimited access easement for ingress, egress and regress over the conveyed property.

ii. A perpetual and non-exclusive easement for construction, installation, maintenance and replacement of any and all utilities on, over, under, and across the property conveyed.

iii. A perpetual and non-exclusive easement for the excavation and removal of surface and subsurface materials for parking area or amenity installation and/or any other use in the Declarant's sole discretion, so long as the excavated materials are used within the properties of Winds Way Farm.

B. Easements are hereby declared and granted, and the Board may hereafter declare, grant or assume easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone and television wires and equipment and electrical conduits, and wires over, under, along and on any portion of the Common Area.

C. All easements and rights described herein are easements appurtenant, and shall run with the land by whomsoever owned, and shall inure to the benefit of and be binding on the undersigned, their successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion



thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

D. The Declarant reserves the right to subject the real property in this subdivision to a contract with Progress Energy, or similar Utility provider, for the installation of street lighting, which contract requires a continuing monthly payment to Progress Energy, or similar Utility provider, by each residential customer.

E. An easement is hereby granted to all police, fire protection, ambulance and similar persons, companies or agencies performing emergency services, to enter upon the Lots or Common Areas in the performance of their duties.

F. Each Lot Owner is hereby declared to have an easement and the same is hereby granted by the Declarant over all adjoining parcels for the purpose of accommodating any encroachment due to engineering errors, errors in original constructions, settlement or shifting of a building, or any other cause. There shall be valid easement for the maintenance of said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of a Lot Owner if said encroachment occurred due to the willful misconduct of said Lot Owner.

G. In the event that any Lot shall encroach upon any Common Area or upon any other Lot for any reason not caused by the purposeful or negligent act of the Lot Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of said encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Area shall encroach upon any Lot, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Area onto any such lot for so long as such encroachment shall naturally exist.

H. An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

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

J. All Members of the Association, their invitees, licensees, guests, customers, agents, employees, contractors, are granted herein the non-exclusive perpetual right of use and enjoyment of all Common Areas and Amenities, now or as later created, as are shown and delineated in that certain plat recorded in Plat Cabinet 18 at Slide 407, Moore County Registry, and also referenced and shown in that deed from Declarant to Association and recorded among the Register of Deeds, Moore County, North Carolina, and as later created on said Common Areas.

#### **ARTICLE V** **NOTICE**

The name and address of the initial process agent to receive service of process in any matters affecting the Property is as follows:

Winds Way Farm, LLC  
Attn: William Warren Dabbs, II  
P. O. Box 2032  
Wilmington, New Hanover County, NC 28402

The process agent may be changed through the signing of a memorandum of change by the then acting process agent, which shall be delivered to the President of the Association for their records and for access by its Members.

## ARTICLE VI INSURANCE

Each Lot Owner shall purchase, maintain in force and administer homeowners insurance coverage for their Lot and associated interests.

There shall also be obtained in the Association name master policies of insurance coverage for the Common Areas as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association. Property damage insurance must be maintained at one hundred percent (100%) of the current replacement cost of the Common Areas, excluding those areas that are normally excluded from coverage such as land, earthen dams, foundation, excavations, etc. The property damage policy must protect against loss or damage by fire and all other hazards that rare normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard 'all-risk endorsement. In addition, public liability insurance covering all Common Areas and any other areas that are under the Associations' control and supervision in an amount of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. All liability insurance shall contain cross liability endorsements to cover liability of the owners as a group to an individual owner.

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

All contracts of property insurance purchased by the Association shall be for the benefit of all of the Lot Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each Lot Owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the Lot Owner's undivided interest in the Development whether or not stated therein. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Proceeds of master insurance received by the insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

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

## ARTICLE VII ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments. Assessments against Lot Owners by the Board of Directors made pursuant to this Declaration shall, if not paid when due, create a lien in favor of the Association against the Lot of the defaulting owner as provided in Chapter 47F, both of the North Carolina General Statutes, and shall be collectable as provided therein.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, 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 assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Lot.

2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Area, including the improvement, maintenance and repair of any Common Area, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area, the procurement and maintenance of insurance in accordance with this Declaration, the By-Laws, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, signs, paving, grading, landscaping and any other major expense for which the Association is responsible, and such other needs as may arise.

3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the maximum annual assessment shall be \$840 per Lot. Said amount shall be collected monthly at a rate of \$70.00 per month, due on the first day of each month.

(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 membership by up to ten percent (10%) of the previous year's assessment.

(b) 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 above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) 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 the annual assessment at an amount not in excess of the maximum.

5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) 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.

6. Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. 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 sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis, provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, may be a lesser amount as fixed by the Board of Directors of the Association, but shall not be less than twenty-five percent (25%) of the regular assessments for other Lots.

8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the day of conveyance of an improved lot. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment 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 Lot 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 the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein. Declarant shall not be responsible for annual assessments unless it is the owner of a completed dwelling and it is occupied or intended to be owned by Declarant and not marketed for sale.

9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser rate of twelve percent (12%) per annum or the maximum allowable rate under North Carolina law. The Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien against the property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. 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.

11. Exempt Property. All Properties dedicated to, and accepted by, a local public 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.

12. Working Capital Fund. At the time of closing of the sale of each Lot a sum equal Two Hundred Dollars (\$200.00) for each lot shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is (i) establish a new account for initial Lot Owners, (ii) issue estoppel certificates, and (iii) other administrative duties in the creation and management of new accounts. Amounts paid into the fund shall not be considered advance payment of regular assessments.

**ARTICLE VIII**  
**ARCHITECTURAL CONTROL**

The Declarant, and after the period of Declarant Control, the Association, shall have the right and obligation to control the development and appearance in the Planned Community.

**ARTICLE IX**

**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 of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. The Declarant may amend this Declaration in order to add additional phases to the development. Any such amendments shall be effective upon the recording of such Amendment(s) in the Office of the Register of Deeds for Moore County.

If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been executed by the Lot Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WINDS WAY FARM

WINDS WAY FARM HOMEOWNERS ASSOCIATION, INC.

BY: \_\_\_\_\_ (SEAL)  
Its: President

**ARTICLE X**  
**THE ASSOCIATION**

A. Common Elements. Except as otherwise specified herein, the Association will maintain, repair and replace all Common Areas, including, but not limited to, all sidewalks and all improvements and utilities within the Common Area. The costs of such maintenance repair and replacement shall be a Common Expense. All damage done to the Common Areas by or for the Association shall be repaired by the Association and the cost thereof shall be a part of the Common Expenses. The Association will also maintain and repair the swales (as shown on the plat(s) recorded (now and any future recordings) for this subdivision) and it is specifically noted that the Town of Aberdeen is not responsible for repair or maintenance of said swales.

B. Membership. Every Lot Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Lot Owner, whether one or more persons, will have more than one membership per Lot owned, but all of the persons owning each Lot will be entitled to rights of membership and use and enjoyment appurtenant to such ownership. Ownership of such Lot shall be the sole qualification for membership. The foregoing is not intended to include persons or entities that hold an interest

merely as security for the performance of an obligation. Every member shall have a right and easement of enjoyment in and to the Common Areas, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the dries, walkways and parking areas of the Common Areas, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to these covenants and restrictions and the right of the Association, in accordance with its Articles of Incorporation and By-Laws to impose rules and regulations for the use and enjoyment of the Common Areas and improvements thereon, which rules and regulations may restrict the use of the Common Areas.

C. Transfer of Membership. A Lot Owner shall not transfer, pledge or alienate his Membership in the Association in any way, except upon the sale or encumbrance of the Lot, and then only to the purchaser of his Lot.

D. Class of Membership. The Association shall have two classes of voting memberships

Class "A". Class A members shall be all Lot 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 the Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting shall be prohibited.

2. Class "B". The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall automatically terminate upon the happening of either of the two following events, which ever occurs earliest:

- (a) Upon the closing of the sale of 75% of all Lots in all phases, on an overall basis in the development, or
- (b) ten years following the date of incorporation of the Association.

E. Voting Rights. Except as otherwise provided herein or in the By-Laws, each member shall be entitled to vote in Association matters. 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 by one person or alternative persons as the Lot Owners among themselves determine. If more than one of the multiple owners is present at a meeting in person or by proxy, the vote allocated to their Lot may be cast only in accordance with the agreement of a majority in interest of the owners as evidenced by a written designation filed with the secretary of the Association. There is a majority agreement if any of the multiple owners casts the vote allocated to his Lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the Lot.

F. Officers. The initial officers of the Association shall be: Brandon D. Dabbs, President and William Warren Dabbs, II, Secretary/Vice President.

### ARTICLE XIII GENERAL PROVISIONS

1. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

2. The Association, or any Lot 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 Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

4. Compliance with Wetlands Regulations. In the event a portion of the Property is determined to meet the requirements for designation as a regulatory wetland, then any subsequent modification, construction, fill or alteration of any kind of such wetland shall conform to the requirements of state and federal wetland rules in force at the time of the proposed alteration.

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

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

7. No Lot Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Lot(s) or the Common Area.

8. Whenever there exists a conflict between the provisions of This Declarant and the Articles or Incorporation or Bylaws of the Association, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles of Incorporation and Bylaws, the provisions of the Articles of Incorporation shall control. In the event of a conflict between the Act and this Declaration, the Act shall control.

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

10. The designations used herein shall include the singular as well as the plural and the masculine, feminine or neuter gender may be read in either the masculine, feminine or neuter gender or a combination thereof as the context may require in order to accurately refer to the person or persons first named hereinabove.


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

**\*\*\* THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK \*\*\***

IN TESTIMONY WHEREOF, the Declarant has caused this document to be executed this the 21<sup>st</sup> day of January 2020.

IN WITNESS WHEREOF, the said Declarant has hereunto set its hand and seal, or if Corporate, has caused this instrument to be signed in its Corporate name in the ordinary course of business by its duly authorized officer, pursuant to authorization from the Board of Directors, or if Limited Liability Company (Company), in its Company name in the ordinary course of business by its duly authorized manager, pursuant to authorization from its members, the day and year first above written.

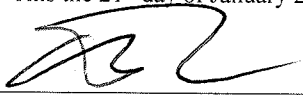
DECLARANT: **Winds Way Farm, LLC**

BY:  (SEAL)  
D&B on Linden, LLC, its Member  
BY: Brandon D. Dabbs  
ITS: Member/Manager

STATE OF NORTH CAROLINA ,  
COUNTY OF Moore , to wit:

I, Clark H. Campbell, a Notary Public for the State and, County aforesaid, do hereby certify that **Brandon D. Dabbs**, Member/Manager of D&B on Linden, LLC, Member of **Winds Way Farm, LLC**, personally appeared before me, as proven by photographic identification, this day and acknowledged the execution of the foregoing instrument as a duly authorized act of the said Company.

This the 21<sup>st</sup> day of January 2020.

  
Notary Public, Clark H. Campbell  
My Commission Expires: 08/27/2022

CLARK H. CAMPBELL  
Notary Public  
North Carolina  
Moore County



IN TESTIMONY WHEREOF, the Declarant has caused this document to be executed this the 24<sup>th</sup> day of January 2020.

IN WITNESS WHEREOF, the said Declarant has hereunto set its hand and seal, or if Corporate, has caused this instrument to be signed in its Corporate name in the ordinary course of business by its duly authorized officer, pursuant to authorization from the Board of Directors, or if Limited Liability Company (Company), in its Company name in the ordinary course of business by its duly authorized manager, pursuant to authorization from its members, the day and year first above written.

DECLARANT: **Winds Way Farm, LLC**

BY: *Vickie M. Auman* (SEAL)

Vina Vista, LLC, its Member

BY: Vickie M. Auman

ITS: Member/Manager

STATE OF NORTH CAROLINA  
COUNTY OF Moore, to wit:

*Homer Craig Phifer III*

I, ~~Clark H. Campbell~~, a Notary Public for the State and, County aforesaid, do hereby certify that **Vickie M. Aumans**, Member/Manager of Vina Vista, LLC, Member of **Winds Way Farm, LLC**, personally appeared before me, as proven by photographic identification, this day and acknowledged the execution of the foregoing instrument as a duly authorized act of the said Company.

This the 24<sup>th</sup> day of January 2020.

*[Signature]*

Notary Public,

My Commission Expires: *27 Sep 2020*

