

Prepared by and return to: L. Ragan Dudley, Attorney at Law
HOMESLEY, GAINES & DUDLEY, LLP
316 East Broad Street, Statesville, NC 28677 or
116 Morlake Drive, Suite 103A, Mooresville, NC 28117

**DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR CASTLEGATE SUBDIVISION**

This Declaration of Covenants, Conditions, Easements and Restrictions for CASTLEGATE SUBDIVISION ("Declaration") is made this ____ day of May, 2008, by PHOENIX RISING DEVELOPMENT, LLC, a North Carolina limited liability company, herein collectively referred to as "Developer" or "Declarant".

WHEREAS, Developer owns that certain tract or parcel of land in Iredell County ("Property") known as CASTLEGATE SUBDIVISION (and as attached as Exhibit A) depicted on a plat of survey recorded in Plat Book , Page in the Iredell County Public Registry (the "Plat").

AND WHEREAS, Developer wishes to develop the Property into a residential subdivision known as "CASTLEGATE" according to a common scheme of development and to encumber the Property and lots and all common areas in the Property with the covenants, conditions, easements and restrictions contained herein to run with the land.

NOW, THEREFORE, the following covenants, conditions, reservations, easements and restrictions are hereby established and imposed upon all lots depicted on the Plat for the said Property located in Iredell County, North Carolina (excepting, however, any such lot or lots on the Plat, if any, upon which Developer shall or might cause to be developed or built certain amenities or additional common areas or common elements or limited common areas or limited common elements for the benefit of some or all of the Owners of lots making up the Property ("Amenities Lots"), said covenants, conditions, reservations, easements and restrictions to run with the title to said lots making up the Property, excepting the Amenities Lots, if any, and to be enforceable at law and in equity by each lot owner in the Property, by Developer and by the CASTLEGATE Homeowners Association, Inc. (the "Association") as a common scheme of development for and among such lots:

1. Residential Purpose. Except as hereinafter reserved, all lots shown on said Plat aforesaid shall be used for residential purposes only, and no building shall be erected, placed, or permitted to remain on any lot or combination of contiguous lots except one single family dwelling not to exceed two and one-half stories above ground, a private garage for not more than four cars, and such outbuildings as may be approved for use in connection with the dwelling; provided, however, that the said Developer reserves unto itself and any developer or other person or entity who may succeed to Developer's interests, the right to place and build a street or streets or roadways (together "Roadways") across any of the lots to provide ingress, regress and egress to and from any lands owned by Developer, to dedicate such Roadways, and to grant easements for the construction and maintenance of utilities within any the rights-of-way of any such Roadways, and provided further that any lot or lots may be used for the construction operation and maintenance of a swimming pool or other recreational facilities or common areas or amenities, if any, as the same might be constructed by the Developer or its successors. In addition, the lots and other property shown on the Plat are subject to the Septic Field Easements and Septic Supply Pressure Line Easements as are shown thereon and/or further described herein.

2. Square Footage. Single family dwellings shall contain not less than one thousand two hundred (1200) square feet of enclosed heated living area. All such square footage shall be computed exclusive of garage, carport, unheated storage areas, and non-living space. Each single family dwelling shall include a two (2) car garage. The intent and purpose of these covenants is to insure that all dwellings shall be of a consistent size as to insure an attractive subdivision. The garage and other accessory structures shall be constructed so that the outward appearance and structure are in keeping with the general architecture of the residence erected on said lot. Except as otherwise stated herein, roof pitch on dwellings and accessory structures shall be at least 6 inches vertically for each 12 inches horizontally, unless otherwise approved by Developer or its successor.

3. Temporary Buildings. No outbuilding, garage, shed, tent, single-wide or double-wide, or other-wide trailer, modular home, or temporary building of any kind shall be erected, constructed, permitted, or maintained upon any lot prior to commencement of the erection of a residence, and no outbuilding, garage, shed, tent, single or double-wide trailer or modular home, basement, or temporary building shall be used for permanent or temporary residence purposes; provided, however, that this paragraph shall not be deemed or construed to prevent the use of a temporary construction trailer or shed during the period of actual construction of any structure on such property, nor the use of adequate sanitary toilet facilities for workmen which shall be provided during such construction.

4. Temporary Facilities of Developer. Notwithstanding any other provisions contained herein to the contrary, Declarant, its heirs, assigns, agents, employees and contractors, shall be permitted to place and maintain upon one or more Lots, during the period of sale of Lots in the Subdivision or construction of dwelling housed thereon, such facilities and instruments necessary for the sale, construction and marketing of Lots and

dwelling houses, including but not limited to, a business office, storage buildings, model homes, portable toilets, temporary sales offices, yard signs, construction office, parking areas, lighting and temporary power poles.

5. Developer Approval. No dwelling structure, fence, wall, outbuilding, detached garage, or other accessory feature to the dwelling structure or a permitted recreational facility shall be commenced, erected, placed, maintained, or altered on any lot or combination of contiguous lots, until the complete construction plans, a plot plan, and specifications are approved in writing by the Developer, or its successors and assigns.

A. The areas over which approval shall be required shall include, but shall not be limited to, the size and plan of the principal residential structure, the location of the principal residential structure on the lot, the size and plan of the attached or detached garage, the location elevation, materials, and manner of construction of any dwelling driveway, walk, swimming pool, utility building, patio fence, or other exterior improvement.

B. All buildings shall have a roof of either slate, tile, wood shake shingles, asphalt/fiberglass composition shingles or other similar roofing material and be approved by the Developer as to the texture, material, and color. Further, the roof pitch elevation, exclusive of stoops, porches, or dormers shall have at least five (5) inches of rise for each twelve (12) inches of run. All garages shall have sideload entry or courtyard entry.

C. No buildings shall be constructed solely on a slab on grade foundation without the prior written approval of the Developer. The Developer encourages crawl space or basement foundations which provide access to building components and systems. No structure of any nature shall be erected on any lot that uses concrete blocks in a manner exposed on the exterior of the building.

D. Unless specifically otherwise approved in writing by the Developer, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot, and all structures are to have at least a portion of the front exterior consisting of brick or stone. Furthermore, no dwelling shall have an exterior surface composed of asbestos siding, perma-stone, masonite siding, exposed concrete block, cinder block, logs or other similar material.

6. Declarant's Right of Entry. In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the Committee for such plan), such entry to be made by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Declarant detract from the overall beauty, setting and

safety of CASTLE GATE SUBDIVISION. Those lot maintenance actions described herein above shall be done at the expense of the Lot Owner and if unpaid by the Lot Owner within sixty (60) days shall become a lien on said Lot. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant or the Association to mow, clear, cut or prune any Lot nor to provide garbage or trash removal.

7. Set Back. No building shall be erected on any lot nearer than thirty five (35) feet to the front (street) lot line, including the corner side of any corner lot; nearer than fifteen (15) feet to any interior lot line; or nearer than thirty five (35) feet to the rear lot line. A detached garage or permanent accessory building(s) is/are to be located no nearer than fifteen (15) feet to any interior lot line and no nearer than thirty five (35) feet to the rear lot line. No fence, wall, hedge, or similar obstruction exceeding two and one-half feet in height shall be permitted between the front lot line and front building setback line without the approval in writing by the Developer, or its successors and assigns. No low tree branches or other types of obstructions shall be placed or permitted to remain in the sight line approaches to any street or to street intersections. The "front line" on any corner Lot shall be the shorter of the two property lines along the two streets.

8. Easements.

A. Easements are reserved for the installation and maintenance of waterlines and of all other utilities of every nature and kind and drainage as set out on the Plat and elsewhere in this Declaration. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water throughout drainage channels in the easement. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which the public authority or utility company is responsible. Declarant reserves easements ten (10) feet in width along all front, side, and rear lot lines, for the installation and maintenance of the driveways, walkways, parking areas, telephone and electric power lines, cable television lines, water and sewer lines, drainage ditches and for other utility installations over the Properties. Each Owner, by his acceptance of a deed to a Lot, acknowledges such reservations and rights of the Declarant to transfer such easements to such utility companies as Declarant may choose. The easements reserved by the Declarant includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development. Within such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of utilities, or which may change the direction of flow or drainage

channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. Declarant reserves the right to amend or remove said easements in part or in whole that are indicated in these restrictions and on the recorded subdivision map of CASTLE GATE SUBDIVISION. Declarant may do so unilaterally without the consent of the Lot Owners.

B. A Sign Easement is reserved and given to the Declarant and the Association for the installation and maintenance of two (2) monument subdivision entry signs located on Lot and Lot as set out on the recorded Plat. Within these sign easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of any signage located thereon. These sign easements reserved by the Declarant and the Association include the lighting, electrical lines, irrigation and landscaping as well as the sign structure itself. These sign easements reserved by the Declarant and the Association include the right to maintain, landscape, or take any similar action reasonably necessary to install and to maintain the overall appearance of the entry signs for CASTLEGATE SUBDIVISION.

9. Prohibitions and Nuisances.

A. No farm animals, livestock, poultry, or swine of any kind shall be kept, raised, or bred on any lot except that dogs, cats, pet birds or other household pets may be kept provided they are not kept, bred, or maintained for any commercial purposes.

B. No noxious or offensive trade or activity shall be conducted or permitted on any lot, nor shall anything be done or permitted on any lot which may be or become nuisance or annoyance to the neighborhood.

C. No trailer, recreational vehicle, motor home, inoperable or wrecked vehicle, or boat of any kind may be stored or maintained on any lot except inside the garage or outbuilding or not viewable from any street side location.

D. No chain link fence, or wire and post fence shall be built on any lot and no fence of any kind shall be located on any lot that exceeds six (6) feet in height other than a fence enclosing a tennis court and such tennis court fence shall not exceed ten (10) feet in height. No fence of any kind shall be erected before first being approved by the Developer. The design, location, and materials utilized in the construction of any fence must be approved by the Developer. Any swimming pool facility or tennis court built on a lot shall be located so as to minimize the glare from lights onto an adjoining lot. Any swimming pool facility or tennis court built on a lot shall be located behind both of the rear corners of the dwelling. The design, location, and materials utilized in the construction of any swimming pool facility or tennis court facility must be approved by the Developer.

E. No vehicles of any type may be routinely parked in the front yard of a home on any lot other than in the driveway area.

F. No lot shall be used or maintained as a dumping ground for rubbish or unsightly objects. 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 material shall be kept in a clean and sanitary condition.

G. No storage tanks shall be erected or placed on any building lot above ground unless it is shielded from view with a structure of a nature in keeping with that of the residence on the lot.

H. At no time during initial construction, repairs and/or remodeling or reconstruction shall any building materials or trash be buried on any lot in this Subdivision. Contractor(s) shall at all times during his/her construction activities, maintain an on-site container for disposal of trash and discarded building materials and shall be responsible for all subcontractors disposing of their trash and unused building materials.

I. All construction materials and equipment shall be placed and stored on the lot and not in the right of way of the road. Any damage to the road surface, shoulders or drainage ditches caused by the Builder's subcontractors, material suppliers or employees shall be the responsibility of the contractor and shall be repaired or restored within ninety (90) days following written notice from Declarant. Building Contractor and its subcontractor, shall not enter upon nor disturb adjacent lots in the process of clearing and grading. Nor shall Building Contractor, its subcontractors, employees or material men enter upon or disturb adjacent lots during the course of construction for storage or delivery of materials or any other reason without the prior written consent of the adjacent lot owner.

J. Prior to site grading, building contractor shall take such measures, as are necessary to control erosion, including but not limited to, silt fences and a stone construction entrance, to prevent runoff and displacement of silt, mud and other matter onto the adjacent lots and into the right of way. Building Contractor shall comply with the rules and regulations set forth by the North Carolina Department of Environmental Health and Natural Resources and the Occupational Safety and Health Administration.

10. Driveways. All driveways shall be constructed on concrete and shall have a grade that slopes away from the highway/street surface at a rate equal to the slope of the shoulder, but not less than 1/4" per foot nor greater than one inch per foot in a normal crown typical section. The slope shall continue for a distance equal to the prevailing shoulder width or longer so as not to cause a hump or depression in the shoulder area. Beyond the shoulder, the grade of driveways within the right-of-way should not exceed +/- 10%. Driveways must be constructed so that they do not adversely affect highway/street

drainage or drainage of adjacent properties. Drainage and stability of the highway/street subgrade must not be impaired by driveway construction or roadside development. In no case may the construction of a driveway cause water to flow across the highway/street pavement, to pond on the shoulders or in the ditch, or result in erosion within the right of way. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and coverings must meet North Carolina Department of Transportation (hereinafter "D.O.T.") requirements and each owner will be responsible for making sure each individual driveway complies with D.O.T. guidelines in order to prevent any delay in the street maintenance being taken over by the state. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and coverings must meet North Carolina Department of Transportation (hereinafter "D.O.T.") requirements and each owner will be responsible for making sure each individual driveway complies with D.O.T. guidelines in order to prevent any delay in the street maintenance being taken over by the state.

11. Mailboxes. Mailboxes on each Lot shall conform to specifications set forth by the Developer. All mailboxes shall be of similar style and material and shall be maintained by the property owners to their original specifications. No newspaper boxes shall be permitted unless approved by the Developer, its successors or assigns. No brick or masonry mailbox columns will be allowed on any lot in the subdivision.

12. No Signs. No sign or bulletin boards of any description shall be displayed on any lot with the exception of "For Rent" or "For Sale" signs which shall not exceed two feet by three feet in size.

13. Trees. Allowing for clearance of trees for placement of dwelling and other outbuildings, hardwood trees are to be left standing on at least 20% of the area of each lot. Property owners are not allowed to "clear-cut" lots. Pine and other diseased or damaged trees may be cut, but should be replaced with hardwoods so that the lots keep their "wooded" appearance.

14. Lots. No lot shall be subdivided, by sale or otherwise, so as to reduce the total area shown on the aforesaid recorded plat. However, any number of lots may be consolidated into one lot, and in that case, these restrictions shall apply to the combination lot and to the same extent as if the consolidated lot were one lot. Provided, however, the subdivision and/or recombination by Declarant of certain lots and other areas making up the Subdivision as is depicted on a New Plat is hereby approved by the undersigned and shall not be considered a violation of this provision.

15. Covenants Run With the Land. These restrictions shall be covenants running with the land in the said subdivision and shall be binding on all parties and all persons claiming an interest in the property within the subdivision for a period to twenty-five

(25) years from the date of recordation of these restrictions pertaining to said subdivision, and after that time these restrictions shall be extended automatically for successive periods of twenty-five (25) years unless an instrument signed by a at least the percentage of owners in the Property as is required under N.C.G.S. §47F (North Carolina Planned Community Act) (the "Act") has been recorded agreeing to change said restrictions in whole or in part. So long as Declarant is the owner of any lot in the subdivision, Declarant may change or modify these restrictions in whole or in part by written instrument duly recorded.

16. Violations. If any person, persons, or entity owning property situated in the said subdivision shall violate or attempt to violate any of the restrictive covenants contained herein, it shall be lawful (i) for any other person, persons, or entity owning property situated in said subdivision (including, without limitation, the Association) to prosecute any proceedings at law or in equity against the person, persons, or entity violating or attempting to violate any such covenant either to prevent the violation thereof or to recover damages therefore or both and (ii) for the Association to assess fines pursuant to the Act for the duration of the violations after notice and opportunity for hearing.

17. Compliance. In the event that the Owner of any Lot fails to comply with any of the restrictions set forth herein or the rules and regulations subsequently promulgated by the Declarant, the Declarant shall have the right, but not the obligation, to enter any Lot and undertake any necessary action in order to cure such Owner's default. All expenses and costs incurred by the Declarant, including attorneys' fees, in curing such default shall be charged to the defaulting Owner and shall be payable by such Owner to the Declarant immediately upon demand. Furthermore, said default shall constitute a personal obligation of the Owner of the Lot, and also a continuing lien upon the Lot.

18. Severability. Invalidation of any one of these restrictive covenants by Judgment, Court Order, or Statue shall not affect any of the other provisions hereof, which shall remain in full force and effect.

19. Homeowners' Association. Developer has established the Association as a North Carolina non-profit corporation as the homeowner's association for the Property. Developer has conveyed or will convey to the Association by deed recorded in the Iredell County Public Registry the common areas within the Property as depicted on the Plat (together herein, "Common Areas"). In the future, Developer may, but is not obligated to, develop additional common areas and amenities for the use of lot owners and will likewise convey any such additional Common Areas, if any, to the Association. The Association shall be responsible for, among other things, establishing a budget for the Common Areas (referred to as "common elements" in the Act) for expenses for maintenance, repairs, taxes, insurance and the like; assessing and collecting periodic assessments ("Assessments") and special assessments from all Owner's of a lot or lots in the Property for such Common Areas' expenses; maintaining, insuring, repairing the Common Areas; and remitting payment for the Common Areas' expenses to vendors of products and services for the benefit of the Common Areas or Property. Each Owner of the Property

shall be, by virtue of the acceptance of a deed to one or more lots in the Property, (i) a member of the Association for the duration of such Owner's ownership of one or more lots in the Property, and no longer and (ii) obligated to abide by these covenants, conditions and restrictions and to pay when due the periodic assessments levied by the Association. All of the Owners together, if more than one person, of a particular lot in the Property shall constitute one member of the Association. Each lot in the Property is hereby allocated the following: (1) one vote to be exercised by its Owner(s) in meetings and for proxies and other voting and (2) a pro rata share (the numerator of which is 1 and denominator of which is the total number of lots on the Plat) of the Common Areas expenses assessed by the Association. The rights and obligations of Developer, the Association and the Owners of lots in the Property as regards Common Areas, the Association and assessments for Common Areas expenses shall be governed by the Act as the same shall exist from time to time. Included in the rights of the Association is the right to a lien in accordance with the Act for unpaid and past due assessments upon the lot of any Owner who has not paid the assessments for such lot which lien may be foreclosed by the sale of the Lot subject to such lien. In addition to the foregoing activities, the Association may, (1) upon relinquishment or assignment by Developer of Developer's rights with regard thereto, (A) act as the architectural control committee for all matters under the purview of such committee or Developer herein and (B) take any other action or have any other control or authority regarding such matters as are permitted under the Act for an "Association" to do or have, and (2) take any action that an "Association" is permitted to take under the Act. Included in the rights and powers of the Association by way of example and not limitation, the Association shall have the right to assess fines and to suspend the use of Common Areas for violations of the provisions of this Declaration and to assess late fees for past due assessments as permitted in the Act. Developer shall control the Association as permitted a "Declarant" under the Act until the latest time permitted under the Act unless Developer shall earlier voluntarily cede or assign such control and authority in a writing signed by Developer and the Association and recorded in the County land records as referred to in the Act. Thereafter, the Association shall be controlled by the lot owners as set forth in the Act and the Bylaws for the Association.

20. Lot for Pool and Playground Amenities designated. Lot 67 of CASTLE GATE, as depicted on a plat of survey recorded in Plat Book , Page in the Iredell County Public Registry (the "Pool Lot") shall be used only for and restricted to use as a pool and playground amenity area. The Pool Lot shall be used for a swimming pool and playground, and other amenities customary to this use. The Association shall be responsible for the maintenance of the Pool Lot upon the same conditions as all other Common Areas and subject to the provisions of Paragraph 15. The Association shall charge an annual membership fee in the amount of Two Hundred and No/100 Dollars (\$200.00) per Owner for the use of the Pool Lot. Neither Declarant, nor the Association, nor the officers, directors, members, employees, agents or affiliates of any of them, shall have any liability arising directly or indirectly out of the construction and maintenance of the pool and playground amenities described herein. Declarant hereby reserves a non-exclusive perpetual easement over all property within the Pool Lot for the purposes of facilitating the construction and maintenance of the Pool Lot.

21. Sewage Disposal.

A. Every dwelling unit erected on any Lot shall be served by an approved septic system for the disposal of sewage or connected to a private or public sewage disposal system ("Septic System"). All septic systems or other private sewage disposal systems shall be approved by and constructed and maintained in accordance with all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction. All Owners, by purchasing property subject to this Declaration, acknowledge that any governmental permit or approval allowing for the construction and operation of a septic system or other private sewage disposal system may be limited in duration in accordance with the terms thereof and neither Declarant, nor the Association, nor the officers, directors, members, employees, agents or affiliates of any of them, shall have any liability arising directly or indirectly out of the inability of an Owner to obtain any such permit or approval following the initial expiration thereof.

B. Each Lot Owner shall maintain, in accordance with all rules, regulations and requirements, all portions of any septic system or other sewage disposal system located on such Lot: (i) in an orderly condition, clean and free from debris, including any upkeep, repair, removal and replacement of any Improvements located thereon and (ii) in a good operating condition in compliance with any requirements imposed by the Declarant, the Association, or any governmental authority. If any septic system or other sewage disposal system located on a Lot is not maintained by the applicable Lot Owner as set forth herein, the Declarant or the Association, in its sole discretion, may enter such Lot to perform such maintenance and may levy a Special Individual Assessment upon the Lot Owner for the purpose of maintaining, repairing or replacing the Septic System or other sewage disposal system serving such Lot. In addition to the foregoing, the Association (or its designee) shall have the right to enter any Lot from time to time for purpose of inspecting and/or maintaining any septic system or other sewage disposal system and may levy Special Septic inspection Assessments to pay for any costs incurred in connection with any such maintenance, as more particularly described herein. In this regard, each Owner of a Lot (other than Declarant) 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 (in addition to other assessments provided for herein) Special Individual Assessments as levied in the discretion of the Association. Any such assessment or charge together with interest costs and reasonable attorneys' fees shall be a charge and a continuing lien upon the Lot against which each such assessment, or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot effective at the time when the assessment fell due.

C. Declarant hereby reserves unto itself, its successors and assigns, and grants to the Association, a non-exclusive easement burdening each Lot for the

purpose of connecting any residence(s) upon such Lot(s) to any public or private sewer line providing service accessible to such Lot, including access across such Lot and the light to install any pipes and apparatus as may be necessary to connect any such residences to such sewer line. By reserving said Easement, Declarant has not obligated itself, its successors or assigns, or the Association, to connect any public or private sewer line to the above-described Lots.

22. Septic System Inspection and Septic Inspection and Repair Easement.

A. The Association shall cause all private Septic Systems located within the Property to be inspected no less than every six (6) months. Such inspections shall be conducted in order to confirm that each such system is properly functioning and is generally in compliance with any applicable law, ordinances or governmental regulations. If an inspection reveals that a Septic System is not functioning properly, or is otherwise not in compliance with any applicable law, ordinance or regulations, the inspector shall notify the Owner, the Association and any other party or agency as required by law. The Owner shall be responsible for immediately repairing the Septic System at such Owner's sole cost and expense and providing the Association, within thirty (30) days, with proof of such repair. The Association shall be authorized to notify any applicable governmental or regulatory agencies or officials of the malfunctioning or noncompliance of any Septic System located within the Property.

B. The foregoing notwithstanding, neither Declarant, the Association, nor its directors, officers, agents or employees shall be responsible for damages or otherwise to anyone by reason of mistake of judgment, omission, negligence or nonfeasance arising out of the inspection services performed pursuant to this Declaration including, without limitation, any damages to any Lot or property by reason of the failure to inspect or the failure of such inspections to detect any malfunction, damage or noncompliance with law.

C. Declarant hereby reserves a non-exclusive perpetual easement over all property within the Property for the purposes of conducting the Septic System inspections and repairing and/or replacing the Septic System if an Owner fails to repair or replace the Septic System within thirty (30) days of notification by the Association. The Board of Directors of the Association shall have the right to levy a Special Individual Assessment against such Lot Owner pursuant to the Act to recover the costs and expenses incurred by the Association in maintaining, repairing or replacing the Lot Owner's Septic System.

23. Encroachment Agreement with the North Carolina Department of Transportation. Prior to the acceptance of the subdivision roads for public maintenance, the North Carolina Department of Transportation will require all Lot Owners to execute an encroachment agreement to allow the Association, Declarant and/or a Lot Owner to have the right to construct, install, excavate, dig, build, maintain, operate, remove and reinstall

septic lines, pipes and related equipment and apparatus within and upon the road rights-of-way adjacent to the Lots. Upon the request of the Association or Declarant, each Lot Owner, by acceptance of a deed of a Lot in the Property, agrees to execute any such Encroachment Agreement required by the North Carolina Department of Transportation or other governmental entity. In the event a Lot Owner does not execute the requested encroachment agreement, the North Carolina Department of Transportation will not accept the Roadways for dedication and will not maintain the Roadways as public roads.

24. Dedicated Open Space. The Plat depicts dedicated open space labeled as "Common Area" as required by Iredell County. Iredell County shall have no liability for such dedicated open space, however, and it shall be the responsibility of the Association to maintain the dedicated open space and to insure the same with liability and/or hazard insurance as deemed prudent by the Association.

25. Roadways. The roadways have been dedicated to the public as shown on the subdivision plat and will be maintained by the Association until such time as the Department of Transportation accepts them for state maintenance. Declarant contemplates all public rights of way will be turned over to the North Carolina Department of Transportation at which time the State of North Carolina will be responsible for maintenance of the roads. All roads in the Subdivision are hereby declared public. The maintenance of all roads in this Subdivision shall be the responsibility of the Lot Owners, and it shall be his/her/their responsibility to bring the roads up to the standards of the North Carolina Department of Transportation Secondary Roads Council before any public street or roads on the recorded plat are added into the North Carolina State Maintained Road System. Areas within the unsurfaced portions of the right of way, including the road shoulders and ditches shall, at all times, be the responsibility of the abutting property Owner(s) prior to and following acceptance into the North Carolina Department of Transportation.

26. Architectural Control.

A. Declarant hereby reserves the right to full architectural control and approval or disapproval of improvements to be constructed within the Subdivision. Prior to commencing construction upon any lot or any part of the land within the Subdivision, a lot owner shall submit to Declarant two full sets of plans and specifications for the proposed improvements to be constructed. In addition, the lot owner shall submit with the plans and specifications a \$400.00 refundable construction deposit payable to Declarant to insure that no damage is done during construction to the roadway, entryway, common areas or septic easement and other utility easement areas depicted on the New Plat and to further insure that such roadway and other areas are kept in good, clean and useable condition during the construction of the improvements. Such deposit shall be refunded to the lot owner upon issuance of a certificate of occupancy or completion of landscape installation whichever is later, for the new improvements less, however, the cost of any needed repairs or cleaning, in Declarant's discretion, to the roadway or other areas

mentioned herein. Declarant shall approve or disapprove any plans and specifications submitted to Declarant within 30 days after Declarant has received two full sets of plans and specifications. Declarant shall not be considered to have received a full and proper submission of plans and specifications however, until Declarant has received such additional materials or information as Declarant shall request of the lot owner. If Declarant shall not IN WRITING, have approved or disapproved or conditionally approved or disapproved a lot owner's submission of plans and specifications within 30 days after full and complete submission, then such plans and specifications shall be deemed approved. A conditional approval or conditional disapproval shall be deemed a disapproval of the plans and specifications as submitted requiring submission of new plans and specifications by the lot owner or submission of at least those items specified with particularity by Declarant after which new or additional submission. Declarant shall have an additional 30-day period to approve or disapprove the amended or additional plans and specifications. Such new or additional submission shall be deemed approved if not approved or disapproved (or conditionally approved or disapproved) by Declarant IN WRITING within such additional 30-day period. Declarant shall have the right through access to the courts (the costs of which shall be charged to the lot owner) to enjoin any lot owner from beginning or continuing or completing construction of any and all improvements which are or would be (if allowed to continue) in violation of this section and, to the extent permitted by the Act, to establish fines against the lot owner, to remove unapproved improvements and charge the lot owner with the costs of such removal and, after due demand upon the lot owner for collective action, to construct, correct, reconstruct, modify or complete any improvements which are or would otherwise be in violation of this section and to charge the lot owner for such corrective action.

B. In addition to the foregoing, landscaping plans must be provided by a lot owner to Declarant prior to the certificate of occupancy being issued for any improvements on such lot and prior to the installation of any landscaping improvements on the lot. Each lot shall have at least one landscaped "island" consisting of not less than two (2) trees of a minimum caliper of two-inches and at least eight (8) three-gallon perennials, or the equivalent thereof. Each house must be accented at the front right and left corners of the house with at least one (1) four-foot (minimum) Nellie Stevens holly. Each lot shall have in the front yard a minimum two-inch caliper tree within 50 feet of the centerline of the roadway every 50 feet across the front of the lot; this requirement may be satisfied from trees existing in the natural landscape. Declarant shall have 5 business days to approve or disapprove IN WRITING any landscaping plans submitted or else such plans shall be deemed approved. To the extent allowed by the Act. Declarant shall have the same rights of enjoinder of and enforcement for violations of these landscaping requirements as are set forth above regarding other improvements.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Developer has caused this instrument to be executed as of the day and year first above written.

PHOENIX RISING DEVELOPMENT, LLC
a North Carolina limited liability company

By: _____
JOEL H. PATTERSON, III, Manager of PHOENIX RISING DEVELOPMENT, LLC

By: _____
VIRGLE RAY SHORT, JR., Manager of PHOENIX RISING DEVELOPMENT, LLC

County, North Carolina

I, a Notary Public of the State and County aforesaid, do hereby certify that **Joel H. Patterson, III, Manager of PHOENIX RISING DEVELOPMENT, LLC, a North Carolina limited liability company** personally came before me this day and acknowledged the execution of the foregoing instrument being authorized to do so on behalf of the corporation by authority duly given. Witness my hand and official stamp or seal, this the _____ day of June, 2008.

Notary Public
My Commission Expires: _____

County, North Carolina

I, a Notary Public of the State and County aforesaid, do hereby certify that **Virgle Ray Short, Jr., Manager of PHOENIX RISING DEVELOPMENT, LLC, a North Carolina limited liability company** personally came before me this day and acknowledged the execution of the foregoing instrument being authorized to do so on behalf of the corporation by authority duly given. Witness my hand and official stamp or seal, this the _____ day of June, 2008.

Notary Public
My Commission Expires: _____