

NORTH CAROLINA  
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR YATES MILL RUN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for YATES MILL RUN, made on the date hereinafter set forth by EASTMAN DEVELOPMENT COMPANIES, INC., a North Carolina corporation, hereinafter referred to as the "Declarant."

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of real property located in Swift Creek Township, Wake County, North Carolina, which is more particularly described as:

ALL of that certain parcel of land, containing 67.514 acres as shown on that plat entitled "YATES MILL RUN" prepared by Watkins & Associates, P.A., dated September 26, 1986, and revised October 28, 1986, and being also that parcel of land described on Exhibit A which is attached hereto and made a part hereof.

WHEREAS, Declarant will subdivide the Property into single family residential lots and will convey the Property subject to those protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth, and Declarant further desires to notify future purchasers of lots in the Subdivision that it intends to subject additional parcels to some or all of these covenants, restrictions and conditions;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements, covenants, restrictions, and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Yates Mill Run Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to the above parcel of land and such additions thereto as may hereafter be brought within the jurisdiction of the Association by Declaration of Annexation or otherwise.

PRESENTED  
FOR  
REGISTRATION  
DEC 22 4 02 PM '86  
KIMBERLY A. MOORE  
REGISTER OF DEEDS  
WAKE COUNTY, NC

Section 3. "Common Open Space" shall mean that part of the Property dedicated to the common use and enjoyment of the owners including, but not limited to, that portion of the Property conveyed or leased to the Association by the Declarant. Common open space shall be maintained for forestry, pasture, agriculture and active or passive recreational uses, including swimming pools, tennis courts, athletic fields, bath houses, club houses and similar facilities and associated off-street parking. The common open space shall not include utility lines, utility structures and public roads. Common open space may be designated on all recorded plats of the Subdivision as either "non-permanent common open space" or "permanent common open space". As additional land is annexed and plats recorded, the Declarant may dedicate a portion of such annexed lands as part of the permanent common open space.

Section 4. "Non-permanent Common Open Space" shall consist of those areas so designated on recorded plats of the Subdivision, the ownership of which shall be retained by the Declarant and on which no dwellings shall be built so long as the area is subject to the provisions of Section 1-1-37(C) (9) of the Wake County Code (or similar law if the Property is then within the zoning jurisdiction of the City of Raleigh). Non-permanent common open space may include passive recreational lands such as natural areas, lands used for agriculture, pasture or forestry, lands reserved for conservation, utility systems and lands retained for future dedication as permanent common open space or otherwise. The Declarant reserves the right to control the use of all non-permanent common open space including, but not limited to, the right to lease part or all of it to the Association. It is the intention of the Declarant to develop the non-permanent common open space into residential lots, whether single family or otherwise, when such development is permitted by applicable zoning laws. The Declarant shall make all rules and regulations governing the use of the non-permanent common open space and shall maintain any such property not leased to the Association or to others.

Section 5. "Permanent Common Open Space" shall consist of those areas so designated on recorded plats of the Subdivision, the ownership of which shall be conveyed by the Declarant to the Association. Such areas shall be dedicated, in perpetuity, to the common use and enjoyment of the owners and their guests and tenants. The permanent common open space shall contain all active recreational areas and amenities and the Association shall be responsible for maintenance of such the permanent common open space and any improvements thereon.

Section 6. "Lot" shall mean and refer to any improved or unimproved plot of land shown upon any recorded subdivision map of the Property and intended for use as the site of a dwelling, and related improvements as hereinafter provided, and

specifically excluding the common open space and roadways.

Section 7. "Member" shall mean and refer to every person who holds membership in the Association. Every owner of a lot subject to assessment shall be a member of the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and any lessee or tenant of an owner.

Section 9. "Declarant" shall mean and refer to Eastman Development Companies, Inc., its successors and assigns, if such successors and assigns should acquire any of the Property for purposes of development.

Section 10. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 11. "Dwelling" shall mean and refer to a detached single family residential unit constructed on a lot. No dwelling shall be permitted on a lot which has a finished and heated floor area, exclusive of basements, steps, porches, storage areas and garages, of less than: (i) 700 square feet on the first floor in the case of a multi-story dwelling; and, (ii) 1200 total square feet in the case of a single story dwelling. The Board shall have the right to waive any violation hereof which does not exceed 10%. Paved driveways (concrete or asphalt) are required for each dwelling.

Section 12. "Board of Directors" or "Board" shall mean those persons elected or appointed and acting collectively as the Directors of the Association.

Section 13. "Amenities" shall mean the recreational facilities constructed, erected or installed by the Association within the permanent common open space for the use, benefit and enjoyment of all members. The Declarant does not intend to construct any amenities within the Subdivision.

Section 14. "Subdivision" shall mean and refer to the Property, and all lots, common open space, amenities and other improvements thereon which comprise Yates Mill Run, a single family residential subdivision.

Section 15. "Utility Area" shall include those portions of the Property set aside for fire stations, maintenance buildings, utility buildings, and the installation of utility systems to serve the Property. Such utility systems shall include, but not be limited to, water, sewer, telephone, cablevision, electricity

and gas. The utility areas may be conveyed to a municipality or utility company that operates and maintains such systems. Utility areas shall be accessible by easements of ingress and egress if not located on a public or private road.

## ARTICLE II

### ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation By Members. Annexation of additional Property shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any; provided, no annexation shall contain less than 10 acres, and all such annexations shall be contiguous to the Property.

Section 2. Recordation. Annexation of additional Property shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Association, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. All such annexed lands shall be deemed part of the Subdivision although they appear on a subsequently recorded plat of the Subdivision.

## ARTICLE III

### PLAN FOR PROPERTY DEVELOPMENT

Section 1. General. Declarant intends to develop the Subdivision in accordance with plans complying with applicable zoning regulations. A maximum of 30% of the area of the Property shall be included within lots and associated off-street parking for such lots. The remaining 70% of the area of the Property may include the common open space.

Section 2. Permanent Common Open Space. Each recorded plat of the Property shall show that permanent common open space shall be at least: (i) one acre for each 20 lots or (ii) 70% of the Property, whichever is less. The Subdivision, at all times, shall remain in compliance with the governing percentages of land area dedicated to lots and to permanent common open space.

Section 3. Reserved Utility Areas. The ownership of utility areas and facilities, including wells, water towers, treatment and disposal plants and dispersion areas and lines are reserved by the Declarant at this time for possible conveyance to a utility company or to a municipality.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The foregoing does not include persons holding an interest in a lot merely as security for the performance of an obligation.

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

Class A. Class A members shall be all owners with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership by this Article. When more than one person holds an interest in any lot, each shall be a member. The vote for such lot shall be exercised as the members determine, but in no event shall more than one (1) vote be cast with respect to any lot. Fractional voting shall not be allowed, as to any one vote, by joint owners of a lot.

Class B. The Class B member shall be the Declarant and it shall be entitled to three (3) votes for each lot it owns; provided, the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership;

(b) on January 1, 1993.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of this Declaration, the Association's By-Laws, a copy of which is attached hereto as Exhibit B, and the rules and regulations of the Association, every member shall have a right and easement of enjoyment in and to the permanent common open space and amenities which right and easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Delegation Of Use. Any Member may delegate his right of enjoyment to the permanent common open space and facilities to members of his family, his tenants, or his guests, subject to the By-Laws, this Declaration, and any rules adopted by the Board of Directors.

Section 3. Title to Permanent Common Open Space. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the permanent common open space to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, subject to utility and drainage easements and easements to governmental authorities.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation. The Declarant hereby covenants and agrees, and every other lot owner by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree, to pay to the Association: (i) annual assessments or charges which are common expenses and (ii) special assessments for the purposes set forth in this Article. Such assessments shall be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge and continuing lien upon the lot against which such assessment is made as well as the personal obligation of the lot owner at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each lot, except as otherwise provided in this Article. The common open space and amenities shall not be subject to assessment.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively:

(a) to promote the recreation, health, safety and welfare of the residents of the Property;

(b) to pay all ad valorem taxes on the permanent common open space and amenities;

(c) to acquire, improve and maintain the permanent common open space and amenities;

(d) for the use and enjoyment of the permanent common open space and amenities including, but not limited to, the cost of repairs and replacements of amenities and other improvements, facilities, and the cost of labor, materials and equipment necessary for the proper maintenance thereof;

(e) to procure and maintain insurance in accordance with the

By-Laws;

(g) to secure the services of professionals to represent the Association when necessary; and,

(h) to pay all expenses which, from time to time, the Board shall determine to be common expenses of the Association.

Section 3. Annual Assessments. The initial annual assessment shall be \$120.00 per lot. The annual assessment may not be increased in any calendar year by more than 5% above the maximum assessment for the previous calendar year, without the approval of two-thirds (2/3) of each class of member at a meeting duly called for this purpose and at which a quorum is present. The Board of Directors of the Association shall fix the annual assessment at an amount not in excess of the maximum stated herein. The Board of Directors may, in its discretion, fix the annual assessment for any given year at a lesser amount than the maximum provided herein, but such action shall not constitute a waiver of its right to revert to the full assessment for future years as provided in this Article.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessment authorized by Section 3 of this Article, the Association may levy special assessments for the purposes of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of amenities, any utilities serving the Subdivision and of any capital improvements to the permanent common open space; provided, however, that any special assessment may be levied only with the approval of two-thirds (2/3) of each class of members at a meeting duly called for this purpose and at which a quorum is present. Special assessments shall be due at such time as the Board shall determine, from time to time.

Section 5. Action Authorized under Sections 3 and 4. Written notice of a meeting provided for in Sections 3 and 4, hereof, shall be sent at least ten (10) days in advance and shall set forth the purpose of the meeting. At the first meeting called, as provided in Sections 3 and 4, the presence at the meeting of members, or of proxies, of each class of membership entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth herein, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

Section 6. Uniform Rate. Except as otherwise provided in this Article, annual and special assessments shall be fixed at a

uniform rate against all lots; provided, the Declarant shall be assessed only 25% of any assessment levied against any lot owned by it and held for sale.

Section 7. Commencement of Annual Assessments: Due Dates. The annual assessment shall be paid in equal monthly installments on the first day of each month commencing on March 1, 1987. The 1987 annual assessment on a lot shall be adjusted to reflect that only 10 months remain in the year at the time the assessment commences. Written notice of the annual assessment shall be sent to every owner subject thereto. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot shall be binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessment: Any annual or special assessment not paid when due shall become delinquent and shall, together with interest therefrom at the rate of 6% per annum from the due date, become a charge and continuing lien on the lot and all improvements thereon. If an assessment is not paid within 30 days after the due date, the Association may bring an action at law against the owner personally or foreclose the lien against the lot, and there shall be added to the amount of such assessment the costs of collection, including reasonable attorneys' fees and expenses, and interest as provided above. No owner may waive or escape liability for the assessments provided for herein by non-use of the common open space or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes assessed against the lot. Sale or transfer of a lot shall not affect the assessment lien; however, the sale or transfer of the lot pursuant to such mortgage or tax foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. Notwithstanding anything herein to the contrary, (i) any Property dedicated to, and accepted by, a local public authority; (ii) any Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina; (iii) the common open space; (d) and any Property conveyed to utility companies for wells, tanks, pipelines, treatment plants, and dispersion fields, lines, pumping stations and maintenance facilities or for the purpose of creating utility easements, shall be exempt from the



assessments created herein, except no lot devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VII

### ARCHITECTURAL CONTROL

No dwelling, garage, accessory building, dog house, greenhouse, wall, fence, swimming pool, or other improvement shall be commenced, erected, or maintained upon any lot or permanent common open space, nor shall any landscaping be done, nor shall any exterior addition to any dwelling or structure, or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Board of Directors or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, all decisions under this Article shall be the sole responsibility of Declarant until such time as Declarant shall no longer vote as a Class B Member of the Association.

## ARTICLE VIII

### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association, through its Board of Directors or duly authorized agents, shall have the authority to obtain and shall obtain insurance for all insurable improvements on the permanent and leased common open space against loss or damage by any type of hazard, including extended coverage for fire or vandalism. This insurance shall be in an amount sufficient to cover the full replacement cost of repair or reconstruction in the event of damage from any such hazard. The Association may also obtain a standard directors and officers liability insurance policy insuring such parties for claims for actions by them in such capacity on behalf of the Association. Premiums for all such insurance contemplated hereunder shall be common expenses of the Association.

Section 2. Disbursement of Proceeds. If the damage or destruction for which the insurance proceeds are paid is repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction and any excess shall be retained by and

for the benefit of the Association.

## ARTICLE IX

### CONDEMNATION

If all or any part of the permanent common open space shall be taken (or conveyed in lieu of or under threat of condemnation) the award made for such taking shall be paid to the Association and used for such purposes as the Board may determine, from time to time.

## ARTICLE X

### USE RESTRICTIONS

Section 1. Lot Use and Building Type. A lot shall be used only for residential purposes and all purposes incidental thereto, except Declarant, or its designee, may maintain a temporary business office and a model house on a lot. No building shall be erected, altered, placed or permitted to remain on any lot other than: (i) one dwelling; (ii) a private garage, whether attached to or detached from the dwelling, for not more than two cars; and, (iii) one accessory building for storage incidental to residential use and which is not in excess of 250 square feet in area and located to the rear of the dwelling.

Section 2. Dwelling Location. Each dwelling, garage and permitted accessory building on a lot shall have a front setback of 25 feet and a rear and side yard setback of 10 feet, provided, any such structure constructed on a corner lot shall be 25 feet from any public or private road. The Board of Directors or Architectural Committee shall have the right to waive minor violations of the setback and side line requirements (violations not in excess of 10% of the minimum requirements shall be deemed minor). The lot owner shall be solely responsible for obtaining any necessary waivers required from any governmental agency on account of any such violation. Eaves, chimneys, porches, decks and steps shall be considered as a part of the building.

Section 3. Lot Appearance. Each lot owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on his lot which shall tend to decrease the beauty of the Subdivision or any part thereof. All lots shall be kept clean and free of nonoperational or unlicensed vehicles, garbage, junk, trash, debris, or any substance that might contribute to a health hazard or the breeding and habitation of snakes, rats, insects, etc. Each lot owner shall cause his lawn to be regularly mowed as needed, cause the maintenance and protection of landscaping insuring proper drainage of the lot so as to prevent soil erosion, and cause the maintenance of the

dwelling and any other improvements located on his lot.

Section 4. Additional Restrictions. Unless the Board of Directors or Architectural Committee shall give its prior written consent:

(a) No antenna, satellite dish, outside clothes line or window air conditioning unit shall be installed on any lot or dwelling.

(b) No part of any lot or improvement thereon shall be used for business, manufacturing, trade, commercial or professional purposes of any kind, except as otherwise provided herein as to the Declarant. No activity shall be carried on upon any lot which may be or become an annoyance or nuisance to the neighborhood and Subdivision. No signs or billboards shall be erected or maintained on a lot. No trade materials or inventories may be stored on a lot or adjacent street.

(c) No fence, wall, hedge or mass planting shall be erected nearer the front property line of a lot than the minimum set back line established herein and no chain link or other variety of wire fence shall be erected except along the side and rear property lines of a lot;

(d) No owner shall permit any animal or poultry of any kind, other than house pets, to be kept or maintained on any lot or within any residence thereon.

(e) No mobile home, boat, trailer, camper, commercial truck, van or similar vehicle shall be parked on any street within the Subdivision or stored or regularly parked upon any lot except in a garage or well-screened enclosure located and constructed in accordance with this Declaration and, provided further, at no time shall any such vehicles be used for human habitation, either temporarily or permanently. Adequate off-street parking shall be provided by the lot owner for the parking of his automobiles, motorcycles or other vehicles and no lot owner shall park such vehicles on the streets within the Subdivision.

Section 5. Additional Rules. The Board of Directors shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the uses and enjoyment of the front yard space of each lot and the permanent common open space and amenities.

## ARTICLE XI

## EASEMENTS

Section 1. General. All of the Property, including lots and common open space, shall be subject to such easements for the installation and maintenance of roadways, greenways, walkways, parking, stream, and utility systems including, but not limited to, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, communication antenna lines, and other public utilities, as shall be established prior to subjecting the Property to this Declaration by the Declarant and as shown on any recorded plat of the Subdivision; and the Association shall have the power and authority to grant and establish in, over, upon, and across the permanent common open space such further easements as are necessary or desirable for the convenience, use and enjoyment of the Subdivision as a whole. Within these easements no structures, plantings or other materials shall be placed or permitted to remain which may damage or otherwise interfere with the intended purpose of such 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 a public authority or utility company is responsible.

Section 2. Private Streets. Any private street in the Subdivision shall be subject to an easement in favor of every lot therein and shall be deemed appurtenant to each such lot, whereby the owner of each such lot shall be entitled to use them as a means of ingress, egress and regress and for such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 3. Emergencies. Every lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any lot and that endangers such lot, any adjacent lot or the common open space and improvements thereon.

Section 4. Maintenance, Etc.. A perpetual general nondescript, nonexclusive easement of ingress, egress, regress and access is hereby established over the common open space and each lot for the benefit of applicable governmental agencies, utility companies and public service agencies as necessary for: setting, removing and reading of meters; cleaning, repairing, replacing and maintaining septic tanks, pumps, alarms, lift stations, utility lines and related facilities; and for fire fighting, garbage collection, postal delivery, emergency, rescue and law enforcement activities.

## ARTICLE XII

## GENERAL PROVISIONS

Section 1. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain uninterrupted traffic flow along all private streets within the Property. If it is necessary for "no parking" signs to be erected or to tow vehicles in order to accomplish this, this shall be done at the expense of the Association as a common expense.

Notwithstanding anything herein to the contrary, in no case shall any governmental body be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or the owners or occupants thereof when such failure is due to the lack of access to such areas due to inadequate design, or construction, blocking of access routes or any other factor within the control of the Declarant, the Association or any lot owner.

Section 2. Electricity and Street Lightning. Declarant reserves the right to subject the Property and any lot to a contract with any utility company for the installation of utility lines, pumps, lights, utility poles, electric cables and street lighting and service, either or all of which may require an initial payment and/or continuous monthly charges to the utility company by the owner of each lot. By acceptance of a deed to a lot, each owner agrees to pay any such charge.

Section 3. Water and Sewer Lines and Charges. Private utility companies may provide water and/or sewer services to the Subdivision. Such companies will bill each lot owner for such services based upon lawfully established rates. Each owner is hereby notified, and by acceptance of the deed to his lot acknowledges receipt of such notice, that either or both the water and sewer services to his lot may be terminated by such utility company because of nonpayment of any such charges.

Initially, a private utility company will provide sewer services to the Subdivision and the lot owner shall own the individual sewer lift station tank and septic tank; however, such utility company shall own any pumps, piping, controls, alarms or other equipment contained therein, and shall be responsible for maintaining such equipment. The alarm for such individual sewer system shall be located inside the dwelling and the controls shall be located on the side of the dwelling.

Each lot owner shall be responsible to maintain the water and sewer lines from his dwelling to their connection with the water or sewer main, water well or septic tank, including any portion of such service line crossing common open space.

Section 4. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 6. Prior Approval. Notwithstanding any provision in this instrument to the contrary, as long as the Property is a "common open space development" (as that term is now defined in Wake County's Zoning Ordinance 1-1-37(c)(9)) this Declaration shall not be amended or common open space dedicated without the prior approval of the Federal Housing Administration, the Veterans Administration, the Planning Board of Wake County or the Planning Department of the City of Raleigh (if the Subdivision has been included within the City's subdivision approval jurisdiction).

Section 7. Duration/Amendment. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Property for a term of 30 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless the Association approves a change therein. This Declaration may be amended by two-thirds (2/3) of each class of members at a duly called meeting at which a quorum is present. Written notice of such meeting shall be given to each member 20 days in advance of such meeting. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 8. Notices. Any notice required to be sent to any member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as the member upon the Association's membership roll at the time of such mailing. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any changes of address and it shall be the responsibility of any new member to immediately notify the Association of the fact of the transfer of ownership.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its proper

officers and its corporate seal affixed hereto, this the 18th day of December, 1986.

Eastman Development Companies, Inc.

By [Signature]  
President

Attest (SEAL)

[Signature]  
Assistant Secretary

\* \* \* \* \*

NORTH CAROLINA  
WAKE COUNTY

I, a Notary Public in and for said County and State, certify that F. Timoty Nicholls personally appeared before me this day and acknowledged that he is assistant secretary of Eastman Development Companies, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its president and sealed with its corporate seal and attested by him as its assistant secretary.

Witness my hand and notarial seal, this 18th day of December, 1986.

[Signature]  
Notary Public

My Commission Expires:

10/17/90

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Margaret Anne Guy

Notar(y)(ies) Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof

KENNETH C WILKINS, Register of Deeds

[Signature]

Lying and being in Swift Creek Township, Wake County, North Carolina, and more particularly described as follows:

BEGINNING at an existing concrete monument, a corner of lands of the State of North Carolina as shown on that certain map recorded in Book of Maps 1941, page 170, Wake County Registry, said beginning point also being designated as N.C. Coordinates Y = 721,370.348, and X = 2,085,272.034, and runs thence with the line of lands of the State of North Carolina South 1° 36' 23" West, crossing the right of way of Carolina Power and Light Company, 1521.50 feet to an iron pipe, a corner of Frances P. Wilson, as established in Deed Book 700, page 293, Wake County Registry; thence with the line of Frances P. Wilson North 88° 27' 25" West 168.15 feet to an existing iron pipe in the center line of the aforesaid right of way of Carolina Power and Light Company; thence continuing with the line of Frances P. Wilson North 88° 27' 25" West 1,629.13 feet to an iron pipe in the eastern right of way line of Yates Mill Pond Road, also known as N.C.S.R. 1382; thence with the eastern right of way line of N.C.S.R. 1382 the following courses and distances: (1) North 28° 48' 33" West 364.57 feet to an iron pipe, and (2) North 29° 24' 47" West 73.67 feet to an iron pipe, a corner of lands of James A. Jeffreys and wife, as established in Deed Book 2993, page 159, Wake County Registry; thence with the line of Jeffreys the following courses and distances: (1) North 89° 48' 55" East 287.82 feet to an iron pipe, (2) North 2° 48' 28" East 419.60 feet to an iron pipe, and (3) South 89° 48' 16" West 309.63 feet to an iron pipe, also being a corner of the lands of Michael L. Johnson and wife, as established in Deed Book 3079, page 308, Wake County Registry; thence with Johnson's line the following courses and distances: (1) South 89° 48' 16" West 110.02 feet to an iron pipe, and (2) North 2° 46' 54" East 105.46 feet to an iron pipe, also a corner of lands of Robert E. Stephenson and wife, as established in Deed Book 2227, page 183, Wake County Registry; thence with Stephenson's line the following courses and distances: (1) North 2° 46' 54" East 173.33 feet to an iron pipe, and (2) North 2° 46' 54" East 305.96 feet to an iron pipe, also a corner of lands of R. D. Newsome and wife, as established in Deed Book 1186, page 570, Wake County Registry; thence with Newsome's line North 10° 51' 38" East 85.58 feet to an iron pipe, in the line of the lands of H. F. Dover, as established in Deed Book 1900, page 389, Wake County Registry; thence with Dover's line North 89° 32' 30" East 1,676.65 feet to an existing concrete monument, also a corner of the lands of the State of North Carolina as established in Book of Maps 1941, page 70, Wake County Registry; thence with the line of the lands of the State of North Carolina the following courses and distances: (1) South 88° 32' 25" East 212.91 feet to an existing concrete monument, and (2) South 88° 32' 25" East 228.54 feet to an existing concrete monument, the point and place of the BEGINNING.

The above description is taken from a certain map entitled "Eastman Development Company" dated March 27, 1986 prepared by Richard L. Watkins, Registered Surveyor, Registration #L-2530, of Watkins & Associates, P.A., Fuquay-Varina, North Carolina. The above description is shown on said map as Tract 1 and is said to contain a total of 67.514 acres, inclusive of the right of way of Carolina Power and Light Company.