

~~WAKE COUNTY, NC 146
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02/12/2007 AT 10:30:55~~

BOOK:012395 PAGE:01424 - 01448

WAKE COUNTY, NC 516
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
08/15/2008 AT 15:19:55

Prepared by and return to: George N. Hamrick
7048 Highway 64 East, Suite 200
Knightdale, NC 27545

BOOK:013214 PAGE:02296 - 02321

NORTH CAROLINA
WAKE COUNTY

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS ASHTON GLEN OF WAKE COUNTY
HOMEOWNERS ASSOCIATION, INC.**

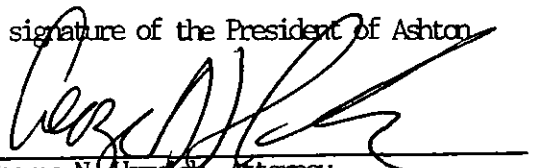
THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
is entered into this 12th day of February, 2007, between Johnny Watson Builders,
Inc. (hereinafter "Declarant"), and Ashton Glen of Wake County Homeowners Association,
Inc., (hereinafter "Association") and all the parties hereafter acquiring any of the described
property.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the County of
Wake, State of North Carolina, known as Ashton Glen of Wake County Subdivision,
Phase 1, as shown on map recorded in Book of Maps 2067, Page 0359, Wake County
Registry; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and
advantage of every party hereafter acquiring any of the described property that certain
covenants, conditions, easements, assessments, liens, and restrictions governing and
regulating the use and occupancy of the Property be established; and

This document is being re-recorded to notarize¹ the signature of the President of Ashton
Glen of Wake County Homeowners Association, Inc.
This 1st day of August, 2008.


George N. Hamrick, Attorney

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of said Property; and for the continued maintenance and operation of any common area or retention ponds, but not including any private ponds located on the property.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the Property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments, and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title, or interest in any of the Properties and which shall inure to the benefit of each Owner thereof.

ARTICLE I PROPERTY SUBJECT TO THIS DECLARATION

The Property which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Wake, State of North Carolina, and is more particularly described as being all of that property shown on map and survey recorded in Book of Maps 7007, Page 0359 Wake County Registry, plus all utility, access, sign and landscape easements and retention ponds shown on the aforesaid map. The Declarant hereby subjects the heretofore described property to this Declaration and the jurisdiction of the Association. Additional properties may be subjected to these Declarations within Twenty-five (25) years from the date of this instrument.

ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to *Ashton Glen of Wake County Homeowners Association, Inc.*, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Permanent Common Open Space" shall consist of those areas designated on recorded plats of Ashton Glen of Wake County Subdivision as such, including, but not limited to, sign easements, landscape easements, sight triangle easements and access easements. It shall also mean the open space neighborhood recreation areas designated on the recorded plat as "dedicated greenway easements".

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Permanent Common Open Space.

Section 6. "Declarant" shall mean and refer to Johnny Watson Builders, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Common Expense" shall mean and include:

- (A) All sums lawfully assessed by the Association and its Members.
- (B) Expenses of the common area and administration, maintenance, repair, or replacement of the Permanent Common Open Space;
- (C) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- (D) Expenses agreed by the members to be common expenses of the Association.
- (E) Ad valorem taxes and public assessment charges lawfully levied against common areas;
- (F) Expenses agreed by the members to be common expenses of the Association.
- (G) Utilities used in connection with the common areas.

Section 8. "Easements" The following easements exist within the subdivision, as shown on recorded map:

(A) Sign Easements. These sign easements shall be maintained by the Homeowners Association.

(B) Fence Easement. This easement will be maintained by the Homeowners Association.

(C) Sight Triangle Easements. This sight triangle easement is a requirement of the North Carolina Department of Transportation and no additional plantings are permitted within said easement. The easement will be maintained by the Homeowners Association.

(D) Landscape Easement. This easement will be maintained by the Homeowners Association.

(E) Dedicated Greenway Easement. This easement will be maintained by the Homeowners Association.

(F) Utility Easements. Ownership and maintenance of utility easements will be maintained by the property owner.

ARTICLE III PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Permanent Common Open Space and over the common open spaces for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Permanent Common Open Space to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided, however, that the Declarant will be solely responsible for dealing with the North Carolina Department of Transportation relating to the adding of the streets within the subdivision to the North Carolina Department of Transportation maintenance system.

(c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Permanent Common Open Space and facilities and

in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; and

(d) the right of the Association to adopt, publish and enforce rules and regulations as provided in Article VII.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Permanent Common Open Space and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the 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, prior to the conveyance of the first Lot, subject to utility and storm drainage easements and other easements as may be shown on recorded map and the lien of the Declarant to SunTrust Bank.

Section 4. Parking Rights. Parking may be prohibited at any time on the Permanent Common Open Space. Parking is expressly prohibited on the streets and access easements as shown on recorded map.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

Class B. The Declarant shall be a Class B member and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

outstanding in the Class B membership; or

(b) on December 1, 2012; or

(c) upon the surrender of all Class B membership by the holder thereof or cancellation by the Association.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(A) Annual assessments or charges.

(B) 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.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and, in particular, for the acquisition, improvement and maintenance of the Permanent Common Open Space. The Declarant will convey all Permanent Common Open Space shown on the various plats of the subdivision to the Association. Maintenance shall include such items as the cutting and removal of weeds and grass and the removal of trash and rubbish from the Permanent Common Open Space and any other maintenance required for the use and enjoyment of the Permanent Common Open Space, including, but not limited to the cost of repairs, replacement and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Permanent Common Open Space, the procurement and maintenance of insurance in

the Permanent Common Open Space, the procurement and maintenance of insurance in accordance with this declaration, 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, grading, landscaping and any other major expense for which the Association is responsible and such other needs as may arise.

Section 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.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$_____ per lot.

- (A) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of 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 no 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.

Section 5. Special Assessment 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 Permanent Common Open Space, 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 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.

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 Sections 3, 4 or 5 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 (60%) percent 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.

Section 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 an annually basis, provided, however, that the assessment for Lots owned by Declarant or a member of the Builder Team which are not occupied as a residence, may be a lesser amount as fixed by the Board of Directors of the Association.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the 1st day of the month following the conveyance of the Permanent Common Open Space. 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 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 that the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the North Carolina 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 Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Permanent Common Open Space 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.

Section 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.

Section 11. Exempt Property. All Property dedicated to, and accepted by, a local public authority and all Property owned by a charitable or non-profit 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.

Section 12. Advance Payment of Assessments. At the time the closing of the sale of a lot and residence by a Builder to a homeowner, a sum equal to the pro-rata balance of the homeowners dues for the calendar year in which the closing took place will be collected from the homeowner and transferred to the Association, said sum being equal to the fraction of the annual homeowners dues which would have been due from the date of closing to the end of the calendar year in which the closing took place.

Section 13. Fines. By complying with N.C.G.S. 47F-3-107.1, the board may impose fines against any lot for a violation of these covenants. Such fines shall be a lien against the owner's lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fine. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the association may otherwise be legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the association might otherwise be entitled to recover by law from such owner. Fines shall be as follows:

- (A) First noncompliance or violation: a fine of not less than \$50.00.
- (B) Second noncompliance or violation: a fine not in excess of \$100.00.
- (C) Third and subsequent noncompliance or violation or violations that are of a continuing nature: a fine of not less than \$100.00 per week for continued violation or noncompliance.

ARTICLE VI ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. A. Until such time as the Declarant shall sign the rights, powers, duties and obligations of the Architectural Control Committee to the Association, the Architectural Control Committee shall consist of one (1) or more persons designated by the Declarant.

B. Declarant shall retain control of the Architectural Control Committee until such time as the certificate of occupancy has been issued on the last lot in the subdivision. At such time (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by the Declarant), whichever is earlier, the rights, powers, duties and obligations of the Architectural Control Committee shall be assigned to the Association. Upon said assignment to the Association, (i) the Board shall designate the number of and appoint the members of the Architectural Control Committee on an annual basis, (ii) in the event of the death, resignation, or removal by the Board (with or without cause) of any member of the Architectural Control Committee appointed by the Board, the Board shall have the full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member; and (iii) members of the Architectural Control Committee appointed by the Board may be removed and replaced by the Board at any time with or without cause, without notice.

C. **Prior Approval.** No building, sign, fence, hedge, wall, walk, mailbox, dog houses, landscaping ornaments or other structure or planting shall be constructed, erected or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation shall have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is

proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within thirty (30) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved. There is specifically reserved unto the Architectural Control Committee, the right of entry and inspection upon any Lot for the purpose of determination by the Architectural Control Committee whether there exists any construction of any improvement which violates the terms of any covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Architectural Control Committee and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the property of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expense and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Control Committee or any officer, employee, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in Judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant, or Architectural Control Committee to recover any such damages.

Section 2. Maintenance. The Permanent Common Open Spcaes and improvements thereon including, landscape easements, sign easements, fence easements and dedicated greenway easements as shown on the recorded map shall be maintained by the Association.

Any Owner who fences or encloses any portion of his Lot (which fence or enclosure shall require the prior approval of the Association) may plant trees, shrubs, flowers and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties as to the Common Area. No such maintenance by an Owner shall reduce the Assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. Grass is the only vegetation permitted to be planted by the owner within the landscape easements and sight triangles shown on the recorded map. The Architectural Control Committee reserves the right to designate a uniform variety of grass which is to be planted by the owner within the landscape easements.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner or his family, tenants, contract Purchasers, guests, or invitees or of any contractor, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the Assessment to which such Lot is subject.

The streets within Ashton Glen of Wake County Subdivision shall be dedicated for public use on each recorded map. The Declarant shall be responsible for any maintenance or repair necessary for any street until maintenance is formally accepted by the North Carolina Department of Transportation or other appropriate government entity. Provided, however, that once a certificate of occupancy has been issued for the residence on an individual lot, the owner of that lot shall be responsible for the maintenance of the shoulders of the streets located within the right-of-way. Any repairs or maintenance to the shoulders of the streets, required by the Department of Transportation, in order for the Department of Transportation to take over maintenance of the street shall be the responsibility of the individual lot owner.

Section 3. Designated Building Design. No building (including an accessory building or structure and a garage) shall be erected, placed, or altered on any premises in said development until the building plans, specifications, and plat showing the location of every such building have been approved by the Architectural Committee, in writing, as to conformity and harmony of external design with existing structures in the subdivision, including, without limitation, proposed exterior materials and colors, and as to location of the building with respect to topography and finished ground elevation. Also regarding an accessory building, the maximum square feet in area is 224. This measures out to be 16' x 14'. **All accessory buildings must either be on a concrete slab or continuous cinder block, painted or stucco.** Brick or stone is also permitted. The minimum roof pitch shall be no less than 8/12. In the event the Committee fails to approve or disapprove the design or location within thirty (30) days after the plans and specifications have been submitted to it, or, in any event, if no suit to enjoin the erection of any such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required, and this covenant will be deemed to have been fully complied with. Members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant. Only brick and block foundations with crawl spaces shall be permitted on single family residences. Manufactured and modular housing is prohibited on all lots. With Architectural Control Committee approval, a detached storage building may be built off site and transported to the lot. All single family residences shall be "stick built" on site, except that panelized walls, roof trusses and pre-engineered floor joists are permissible with Architectural Control Committee approval. Each residential structure shall be required to have sidewalk lighting, brick or stone entrance columns with an address plaque and stone

wrap-around driveway pipe, all as shall approved by the Architectural Control Committee prior to installation. Any accessory building located on the property with the approval of the Architectural Control Committee shall have a maximum square footage in area of 224 square feet. All accessory buildings must either be on a concrete slab or continuous cinder block foundation, which shall be either painted or stuccoed.

Section 4. Dwelling Size and Driveways. Except with prior written approval of the Architectural Control Committee, no residential structure on any Lot which has an enclosed heated area of less than 2800 square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any Lot. If additional lands are annexed pursuant to the provisions of this Declaration, the minimum enclosed heating area applicable to residential structures on Lots with said annexed additional lands shall be as set forth in the recorded Declaration of Annexation which annexes said additional lands; if the recorded Declaration of Annexation shall not specify the minimum heated area applicable to residential structures on Lots within said annexed land, then the minimum heated area for said Lots shall be 2800 square feet as above provided. All driveways shall be concrete from the street to each residence including the parking area, provided, however, that if there is any parking area located on Common Area Property, that parking area may be asphalt. The Declarant reserves the right to waive in writing any minor violation of this section, and for purposes hereof, any violation which does not exceed 10% shall be considered a minor violation. Each residence shall be required to have an attached two car garage. Architectural approval is required for all additional garages, whether attached or detached. The exterior material of the residential structure must be approved by the Architectural Committee.

Section 5. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utility and drainage facilities, 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 the drainage channels in the easements. Such 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. The Association maintenance obligation on the storm drainage pipes shall cease when the North Carolina Department of Transportation accepts the streets in the subdivision into the state maintenance system.

Section 6. Trucks, Boats, Trailers and Other Motorized Vehicles. No unlicensed vehicle or trailer shall be parked or kept on any lot or street in the subdivision. Street parking is prohibited in the subdivision. It is not permissible for a tractor trailer or tractor cab to be

parked in the subdivision at any time, either permanently or temporarily. The operation of motor bikes, dirt bikes, all-terrain vehicles, go carts, golf carts and motorized recreational vehicles shall be prohibited both on the streets of the subdivision and on the individual lots comprising said subdivision. **The parking of travel trailers, campers, boats and utility trailers must be approved by the Architectural Committee**

ARTICLE VII USE RESTRICTIONS

Section 1. Rules and Regulations. 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 each Lot and the Common Area, including, but not limited to levying fines or penalties.

Section 2. Use of Lots. No Lot shall be used except for single-family residential purposes, except for use by the Declarant or Declarant's assigns as a temporary sales office and it shall be permissible for an owner to work out of the owner's residence in the subdivision provided that said work does not create abnormal vehicular traffic and that said work is of a professional nature as defined by the Board of Directors. No building shall be erected, altered, placed or permitted to remain on any Lot without written permission of the Architectural Control Committee.

(A) Outside clothes lines shall be permitted, in locations approved by the Architectural Control Committee.

(B) No Commercial signs, with the exception of a "For Sale" or "For Rent" sign no larger than eighteen (18) inches by twenty-four (24) inches shall be erected or maintained on any Lot. Such signs allowed hereunder, being temporary in nature, shall not be subject to any set back requirement. Declarant and/or Declarant's assigns shall be authorized to erect and maintain temporary signs for the sales and construction offices and for marketing of Ashton Glen of Wake County, and to erect and maintain decorative fencing at any sales or construction office.

(C) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used.

(D) With the approval of the Architectural Control Committee, an in-ground pool shall be permitted. No above-ground pool can be permitted.

(E) Nothing shall be kept and no activity shall be carried on in any dwelling structure on a Lot or on the Common Area which will increase the rate of insurance for the Common Area. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his dwelling structure or on the Common Area which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area.

(F) Except with the prior written consent of the Architectural Control Committee, no trailer, tent, shack, barn, or other outbuildings, shall be erected or placed on any Lot covered by these covenants. No detached garage shall be used for human habitation, temporarily or permanently.

(G) No fence, wall, hedge, or mass planting shall be permitted to be closer to the street than the rear corner of the residence, except upon approval by the Architectural Control Committee.

(H) No accessory building of any nature whatsoever (including but not limited to a detached garage, storage building, dog houses, greenhouses) shall be placed on any Lot without prior written approval of the Architectural Control Committee, with said Committee to have the sole discretion relating to the location and type of accessory building which shall be permitted on any Lot.

(I) Each Owner shall keep his building site free of tall grass (Grasses eight (8) inches in height and taller are prohibited), undergrowth, dead trees, trash and rubbish and property maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his Lot as above provided, in the opinion of the Architectural Control Committee, the Committee may have the required work done and the costs thus incurred shall be paid by the Owner or the Owner may be fined.

(J) No "satellite dish" exceeding twenty four inches (24") in diameter shall be erected or allowed to remain on any Lot. Each Owner must receive location approval by the Architectural Control Committee prior to installation. No radio or ham radio tower shall be permitted on any lot.

(K) Decorative lawn ornaments shall be approved in writing by the Architectural Control Committee prior to installation on any Lot.

(L) All mail boxes, address plaques must be uniform in design and color as determined by the Architectural Control Committee.

(M) Garbage containers shall be kept in the back yard and shall not be visible from the street or an adjacent lot except on the designated trash collection days. Garbage containers should be removed from the street on the day of collection.

(N) No owner may display or sell personal property in any location other than the owner's individual lot and said location must have approval from the Architectural Control Committee.

(O) Fences may be maintained on portions of the lots only with the written consent of the Architectural Control Committee as to location, material and height. The decision of the Architectural Control Committee to approve or reject a fence is conclusive. The Architectural Control Committee reserves the right to have a uniform fence requirement for all lots. Chain link fences are prohibited except with Architectural Control. Example-small chain link fence inside of main fence for dog.

(P) Gasoline, propane or any other storage tanks located on any lot must be either buried or screened in such a manner that the tank cannot be visible from any adjoining lot prior to occupancy.

(Q) No discharge of firearms will be allowed within the boundaries of Ashton Glen of Wake County Subdivision except for protection.

Section 3. Parking Rights. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of motor vehicles owned by such Owner, and Owners of Lots shall not be permitted to park their automobiles on the streets of the Properties. **Owners of Lots shall not be permitted to park boats, trailers, campers and all other similar property on the streets in the development, and such property shall be parked in a garage or area screened from the street and adjoining Lot view and approved by the Architectural Control Committee. In no case shall recreational vehicle parking be allowed in front of or beside a house.** Any recreational vehicle parked in the rear of a house shall be adequately screened from view of the street and adjoining Lots. No inoperative, abandoned, unlicensed vehicle or any vehicle displaying an invalid inspection sticker, shall be parked or stored on any Lot or on the streets in the Properties.

Section 4. Negative Activities. The pursuit of activities which might tend to cause disorderly, unsightly or unkept conditions shall not permitted or undertaken on any part of any Lot or Common Area.

Section 5. Required Land Area. No single family residential Lot may be subdivided or recombined by sale or otherwise so as to reduce the total area thereof below that as shown on any recorded subdivision map of the Properties, unless approved by the Architectural Control Committee and unless the resulting lot(s) is(are) in compliance with Wake County.

Section 6. Animals and Pets. Except as is hereinafter stated, no animals , livestock, or poultry of any kind shall be kept or maintained on any lot or in any dwelling. Household pets are limited to two (2) household cats or two (2) domesticated dogs or one (1) of each for a maximum number of two (2) pets. Said pet(s) may be kept or maintained provided that they are not kept or maintained for commercial purposes. Said pet(s) are not allowed to disturb or annoy residents or guests. Pitt Bulls and Rottweilers, or any partial breeds of these dogs are not allowed. No animal is allowed that displays vicious tenancies. All pets must be kept under the direct control of the owner by fence, (which must first be approved by the Architectural Control Committee) leash, or harness, and may not run freely at any time. Pet owners are required to clean up after their dog when in Common Areas. Violators will be subject to a fine and/or legal action.

Section 7. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. Each owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each owner shall keep and maintain his Lot in a neat, orderly and well kept manner. No industry or trade of any kind shall be permitted on any Lot or any Common Area, except that Declarant, and/or its assigns, may use any unsold Lots of the Property for sales or display purposes.

Section 8. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 9. Limitation of Liability. The Developer, the Declarant, the Board of Directors of the Homeowners' Association and the Architectural Control Committee assume no liability for any claims arising on the sign easements, landscape easements,

access easements or any other common area. Each lot owner assumes full responsibility for themselves, their children and their guests.

ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require approval from the appropriate governmental authority, and shall be required to occur within twenty-five (25) 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 contain a minimum

of four (4) acres, be contiguous to the property described in Article I hereof or property previously annexed. Provided further, that no annexation of additional property shall have the effect of placing the original development in violation of the appropriate governmental ordinances.

Section 2. 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 governmental authority.

Section 3. Prior to the conveyance of the first lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Permanent Common Open Space within the lands annexed.

ARTICLE IX INSURANCE

Section 1. Any insurance coverage obtained by the Association on the Property shall be governed by the following provisions:

- (A) **Ownership of Policies.** All insurance policies upon the common area shall be purchased by the Association for the benefit of all the Association and the Owners.

- (B) **Coverage.** All buildings and improvements and all personal property included in the Permanent Common Open Space and facilities shall be insured in an amount equal to one hundred (100%) percent insurable replacement value, as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
- (i) Loss or damage by fire and other hazards covered by the standard coverage endorsement.
 - (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, if any.
 - (iii) Such policies shall contain clauses providing for waiver of subrogation.
- (C) **Liability.** Public liability insurance may be secured by the Association when 70% of the lots in the Subdivision have been issued a certificate of occupancy with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- (D) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V.
- (E) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust

for the purposes stated herein or stated in the By-Laws and for the benefit of the Owners and their mortgagees in the following shares:

- (i) Proceeds on account of damage to Permanent Common Open Space and facilities held for the Association.
- (ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustees shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- (A) **Expense of the Trust.** All expenses of the insurance trustees shall be first paid or provisions made therefor.
- (B) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.
- (C) **Fidelity Insurance or Bond.** All persons responsible for or authorized to expend funds, or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. These covenants and restrictions shall run with, burden, 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 during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot owners. Article II, Section 8J cannot be amended without express written consent of the U.S. Army Corps of Engineers, Wilmington District.

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 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.)
- (B) 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 OF ASHTON GLEN OF WAKE COUNTY SUBDIVISION HOMEOWNERS ASSOCIATION, INC.

**ASHTON GLEN OF WAKE
COUNTY HOMEOWNERS
ASSOCIATION, INC.**

BY: _____
PRESIDENT

Section 4. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company manager for the purpose of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer or management by Declarant to the Association.

Section 5. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

ARTICLE XI ELECTRICAL SERVICE

Declarants reserve the right to subject the above-described Property to a contract with Progress Energy for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy by the Owner of each Lot within said Property. The subdivision may contain landscape lights which will be on a separate meter and will be billed directly to the Homeowners' Association, with the monthly cost of said lights being included in the Homeowners' Association Dues.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed, by the authority of its Board of Directors, this 12th day of February, 2007.

DECLARANT: JOHNNY WATSON BUILDERS, INC.

By: *Johnny Watson* (SEAL)
President

ASHTON GLEN OF WAKE COUNTY HOMEOWNERS ASSOCIATION, INC.

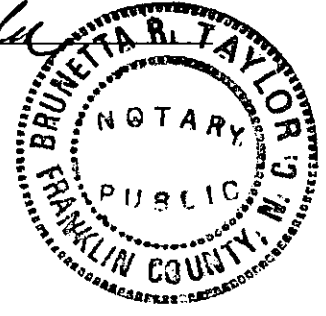
By: *Johnny Watson* (SEAL)
President

STATE OF NORTH CAROLINA
COUNTY OF

I, a Notary Public of the County and State aforesaid, certify that **Johnny Watson**, personally came before me this day and acknowledged that he is President of **Johnny Watson Builders, Inc.**, a North Carolina corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation
WITNESS my hand and official stamp or seal this 12th day of February, 2007.

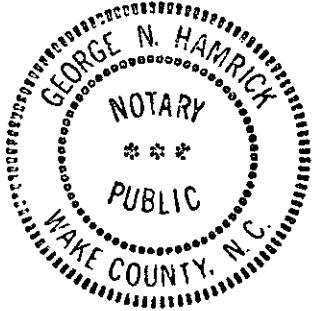
My commission expires: 5/26/08

Brunetta R. Taylor
Notary Public



STATE OF NORTH CAROLINA
COUNTY OF

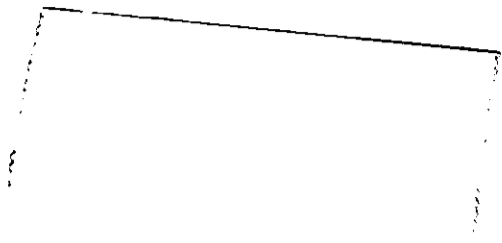
I, a Notary Public of the County and State aforesaid, certify that Johnny Watson, personally came before me this day and acknowledged that he is President of **Ashton Glen of Wake County Homeowners Association, Inc.**, a North Carolina corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation



WITNESS my hand and official stamp or seal this 12th day of February, 2007.

My commission expires: 5-21-12

George N. Harrick
Notary Public



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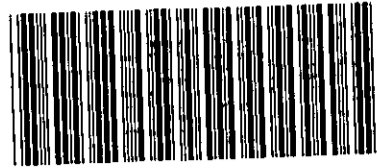
**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
25 # of Pages



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**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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This Document
_____ New Time Stamp
24 # of Pages