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NORTH CAROLINA DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
CUMBERLAND COUNTY OF LAKEDALE, SECTION 1,  
SUBDIVISION

THIS DECLARATION, made this the 13th day of July, 2010, by BROADWELL LAND COMPANY, a North Carolina Corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Cross Creek Township, Cumberland County, North Carolina, which is more particularly described as follows:

Lots 1 through 44, inclusive, and Lot 47 of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County Registry.

AND, WHEREAS, the Declarant has submitted a stormwater design plan to the City of Fayetteville as required by the "Stormwater Control Ordinance of Fayetteville, North Carolina" (Sec. 23-20 through Sec. 23-49 of the Code of Ordinances of the City of Fayetteville, North Carolina) and pursuant to Sec. 23-39 of said Code of Ordinances has executed a STORMWATER OPERATION AND MAINTENANCE AGREEMENT that is recorded in Book 8388, pages 151 to 166, in the office of the Cumberland County Register of Deeds; and LAKEDALE PROPERTY OWNERS' ASSOCIATION, INC. is a party and signatory to said agreement and said agreement contains the provisions as set forth in Sec. 23-39(b) of said Code of Ordinances; and

WHEREAS, the Declarant desires:

- (a) to provide for the preservation of the values and amenities of the Lots of the Lakedale, Section 1, subdivision;
- (b) to provide for the maintenance of common properties in said Lakedale, Section 1, subdivision;
- (c) to apply pursuant to Section 23-38 (b) and Section 23-39 (a) of the Stormwater Control Ordinance of Fayetteville, North Carolina for transfer of functional maintenance

responsibilities for the structural stormwater management facility for this single-family detached residential development be transferred to the City of Fayetteville once the stormwater maintenance facility has passed the required inspection;

(d) to provide for operation and maintenance of the Stormwater Maintenance Facilities pursuant to the STORMWATER OPERATION AND MAINTENANCE AGREEMENT agreement recorded in Book 8388, pages 151 to 166, Cumberland County Registry, the provisions of the Stormwater Control Ordinance of Fayetteville, North Carolina, and any other applicable state or federal laws or regulations, to the extent that the maintenance responsibilities are not transferred to the City of Fayetteville;

(e) to provide for establishing and maintaining such escrow accounts that may be required by the Stormwater Control Ordinance of Fayetteville, North Carolina; and

(f) to provide for performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the Lakedale, Section One, subdivision,

all under a general plan or scheme of improvement, and desires to subject said property to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter act forth, hereinafter referred to as the "Covenants" or the "Declaration", all of which are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS, the Declarant deems it desirable to create an agency to which can be delegated and assigned the duties and powers

(a) to provide for the maintenance of common properties in said Lakedale, Section 1, subdivision;

(b) to apply pursuant to Section 23-38 (b) and Section 23-39 (a) of the Stormwater Control Ordinance of Fayetteville, North Carolina for transfer of functional maintenance responsibilities for the structural stormwater management facility for this single-family detached residential development be transferred to the City of Fayetteville once the stormwater maintenance facility has passed the required inspection;

(c) to provide for operation and maintenance of the Stormwater Maintenance Facilities pursuant to the STORMWATER OPERATION AND MAINTENANCE AGREEMENT agreement recorded in Book 8388, pages 151 to 166, Cumberland County Registry, the provisions of the Stormwater Control Ordinance of Fayetteville, North Carolina, and any other applicable state or federal laws or regulations, to the extent that the maintenance responsibilities are not transferred to the City of Fayetteville;

(d) to provide for establishing and maintaining such escrow accounts that may be required by the Stormwater Control Ordinance of Fayetteville, North Carolina; and

(e) to provide for performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the Lakedale, Section One, subdivision;

(f) to promote the health, safety and welfare of the residents of the Lakedale, Section 1, Subdivision, and any additional properties that may be brought with the jurisdiction of the corporation,

and to which can be delegated the power and authority of maintaining and administering and enforcing these covenants and restrictions and collecting and disbursing all assessments and charges necessary for

such maintenance, administration and enforcement; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of North

Carolina, a non-profit corporation, Lakedale Property Owners' Association, Inc., as the agency for exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that Lots 1 through 44, inclusive, and Lot 47 of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry, shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof..

ARTICLE I.  
DEFINITIONS

Section 1. Association. Association shall mean and refer to Lakedale Property Owners' Association, Inc., a non-profit corporation to be formed, its successors and assigns.

Section 2. Declarant. Declarant shall mean and refer to Broadwell Land Company, a North Carolina corporation, 903 Hay Street, Fayetteville, NC 28305-5313, its successors and assigns.

Section 3. Lot and Lots. Lot shall mean and refer to each of Lots 1 through 44, inclusive, and Lot 47 of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc. Lots shall mean and refer collectively to Lots 1 through 44, inclusive, and Lot 47 of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc. Additional building lots shall mean additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc. Lots may include future sections of the Lakedale subdivision as the same may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, except that no future sections of the Lakedale subdivision shall become subject to these covenants until after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration by Declarant which incorporates by reference this Declaration and which expressly makes the new section(s) subject to these covenants herein, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section(s), but such modification shall have no effect on the properties described herein.

Section 4. Assessable Lots. The Assessable Lots shall be determined as of January 1 of each fiscal year of the Association and shall consist of Lots 1 through 44, inclusive, and Lot 47 of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc.

Section 5. Owner. Owner shall mean every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers. The term "Owner" is not intended to include persons or entities that hold an

interest merely as security for the performance of an obligation.

Section 6. Membership in Association. Every Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. Membership shall be pursuant to and may not be separated from ownership of any Lot which is subject by the Declaration to assessment by the Association.

Section 7. Common Area. Common Area includes (a) the STORM WATER POND (0.58 ACRES) Detention Pond(s) as shown on the subdivision plat of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry; (b) the real and personal property comprising the stormwater control and management facilities after such property has been conveyed by Declarant to the Association; (c) the wetlands (Open Space) tracts of 4.68 and 0.50 acres as shown on the plat of LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry; and (d) any other real or personal property that may be acquired by the Association for the common use and/or enjoyment of the Owners of Lots. Common Area does not include the right-of-ways of streets.

Section 8. Declaration. "Covenants" or "Declaration" shall mean this instrument as it may be from time to time amended, supplemented, modified or incorporated by reference.

Section 9. Board of Directors. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 10. Common Expenses. "Common Expenses" shall mean and include:

- (1) Expenses of administration, maintenance, operation, repair, or replacement of the Common Properties and all improvements located thereon for the common benefit of the Subdivision, including, to the extent that such improvements or landscaping are located upon or constitute Common Areas, all private roadways, driveways, pavement, sidewalks, walkways and uncovered parking spaces, all lawns, trees, grass and landscape areas, shrubs and fences located on the Common Areas, any recreational facilities provided by the Association, and any utility services to the Common Areas;
- (2) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (3) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the association to purchase or as the Association may deem appropriate to purchase;
- (4) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;
- (5) Expenses to continuously operate and maintain the stormwater control and management facilities when and to the extent that such operation and maintenance may become the responsibility of the Association;
- (6) Payments into an escrow account as required by the Stormwater Control Ordinance of Fayetteville, North Carolina to the extent that the establishment of such escrow accounts may become the responsibility of the Association;
- (7) The expense of the maintenance of the detention pond as shown on the recorded plat, and maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property to the extent that such operation and maintenance may become the responsibility of the Association;
- (8) The expense of performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the

LAKEDALE, SECTION 1, subdivision as approved by the Letter of Approval dated May 29, 2009, issued to Broadwell Land Company by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section, and General Permit No. NCG01000 To

Discharge Stormwater Under The National Pollutant Discharge Elimination System issued by the State of North Carolina Department of Environment and Natural Resources, Division of Water Quality;

- (9) The expense of maintenance of any roads, streets, easements, landscaping, amenities, taxes or any other expense item associated with any Common Property not located on the Property but permitted to be used by the members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;
- (10) Expenses for maintenance of security devices or personnel;
- (11) Expenses for maintenance and replacement of signage installed by the Declarant for the purpose of designating the property as the Lakedale Subdivision; and,
- (12) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 11. Fiscal Year: Fiscal year shall mean the fiscal year of the Association and shall be from January 1 through December 31.

Section 12. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder of a first mortgage or deed of trust lien on a Lot that has requested notice of certain matters from the Association.

Section 13. Soil Erosion and Sediment Control Plan. Soil Erosion and Sediment Control Plan shall mean the erosion and sedimentation plan for the Lakedale Subdivision, Section One, as approved by the Letter of Approval dated May 29, 2009 issued to Broadwell Land Company by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section, and General Permit No. NCG01000 To Discharge Stormwater Under The National Pollutant Discharge Elimination System issued by the State of North Carolina Department of Environment and Natural Resources, Division of Water Quality.

Section 14. City. Unless otherwise specifically indicated, "City" shall mean the City of Fayetteville, North Carolina.

Section 15. City Engineer. City Engineer shall mean the City Engineer of the City of Fayetteville, North Carolina, or his/her designee.

Section 16. Stormwater Control Ordinance of Fayetteville, North Carolina. Stormwater Control Ordinance or Stormwater Control Ordinance of Fayetteville, North Carolina shall mean Sec. 23-20 through Sec. 23-49 of the Code of Ordinances of the City of Fayetteville, North Carolina, as amended from time to time.

Section 17. Stormwater Management Facilities. Stormwater Management Facilities shall have the meaning as set forth in Sec. 23-21 of the Code of Ordinances of the City of Fayetteville, North Carolina, as amended from time to time, which under the current ordinance is "those structures and facilities that are designed for the collection, conveyance, storage, treatment and disposal of stormwater runoff into and through the drainage system. This includes all stormwater quantity and quality facilities."

Section 18. Stormwater Operation and Maintenance Agreement. Stormwater Operation and Maintenance Agreement shall mean the operation and maintenance agreement required to be executed pursuant to the provisions of Sec. 23-39 of the Code of Ordinances of the City of Fayetteville, North Carolina, as recorded in Book 8388, pages 151 to 166, Cumberland County Registry. The Operation and Maintenance Agreement of stormwater management facility for future sections of the Lakedale subdivision, shall mean the agreement as required by Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, as referenced on the final plat and recorded with the Cumberland County Register of Deeds as required by subsection (a) (1) of Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, as the same may be amended from time to time.

Section 19. Functional Maintenance of Stormwater Management Facilities. Functional Maintenance shall mean any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes set forth in this article, and to prevent structural failure of such facilities. Functional maintenance shall not include actions taken solely for the purpose of enhancing the aesthetics aspects associated with stormwater management facilities.

Section 20. Built-upon area. Built-upon area shall mean that portion of a Lot that is covered by impervious or partially impervious surface including, but not limited to, buildings, pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. Built-upon area does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Section 21. Special Requirement for Homeowners' and Other Associations. Special Requirement for Homeowners' and Other Associations shall mean all of the provisions of Sec. 23-39 (b) of the Code of Ordinances of the City of Fayetteville, North Carolina, as amended from time to time, that are required by said section to be included in the Stormwater Management Operation and Maintenance Agreement when the stormwater management facilities are to be or are owned and maintained by a homeowners' association, property owners' association, or other similar entity.

ARTICLE II.  
PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Initial Properties. The initial properties subject to these covenants are Lots 1 through 44, inclusive, and Lot 47 of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry.

Section 2. Other Additions. Additional building lots may be brought by Declarant under the jurisdiction of these covenants and the Lakedale Property Owners' Association, Inc. within fifteen (15) years after the date of the recording of this instrument as future sections of the Lakedale subdivision may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, except that no Lots of future sections of the Lakedale subdivision shall become subject to these covenants until after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration by Declarant which incorporates by reference this Declaration and which expressly makes the Lots of the new section(s) subject to the covenants herein, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section(s), but such modification shall have no effect on the properties described herein.

Section 3. Special Declarant Rights. Declarant reserves the following special Declarant Rights for the entire Initial Properties and any future sections and phases of its LAKEDALE Subdivision as the same may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, for a period ending January 1, 2020:

- (a) To complete any and all improvements indicated on the plats and plans;
- (b) To construct and maintain any sales office, signs advertising the property or any property which may be added thereto, management office or model on any of the Lots and on the Common Area (other than the present and future stormwater management parcels which shall not be utilized for any

such purposes);

(c) To use easements through the Common Area for the purpose of making improvements within the Property or any property added thereto;

(e) To alter the size of any Lot, combine or merge two or more Lots, and to subdivide Lots or other Property into Common Area; and

(t) To appoint and remove any officer or member of the Association Board.

Section 4. Utilities. Declarant reserves the right to subject all or any portions of the Property to a contract with public utility provider(s) for the installation of overhead and/or 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 such public utility provider by the owner of each Lot. Declarant may devote any lot or portion thereof, not already sold, for any construction and uses which it, in its discretion, deems necessary in order to provide the subdivision with utilities.

Section 5. Utility Easements. Easements for installation and maintenance for utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water. All areas indicated as streets and easements on the recorded plat are hereby dedicated to public use for such uses forever.

### ARTICLE III. PROPERTY RIGHTS

Section 1. Common Area. As soon as practicable after the conveyance by Declarant of the first Lot of the LAKEDALE, SECTION 1, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 126, page 194, Cumberland County, North Carolina, Registry, to a purchaser, Declarant shall convey to the Association, in trust for the uses and purposes set forth in the Charter and By-Laws of the Association, the initial Common Area. At the option of Declarant, Declarant may in the future convey to the Association, in trust, any easements or other property or property rights, including any common area shown on plats of future sections of the Lakedale subdivision.

Section 2. Additional Real or Personal Property. The Association may acquire by gift, purchase or otherwise, and may own, hold, improve, build upon, operate and maintain additional real or personal property in connection with the affairs of the Association to promote the health, safety, recreation and welfare of the residents of the LAKEDALE, SECTION 1, Subdivision, and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. Owners' Easements of Enjoyment. Every Owner of an Assessable Lot shall have a right of easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Assessable Lot. The Common Areas are hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Lots for access, ingress and egress from and to public streets and walkways for enjoyment of the Common Areas and for parking areas.

Section 3. Declarant's Easements in Common Areas. Declarant shall have an easement to enter and to inspect any portion of the Common Area and to make any constructions, adjustments or corrections to the Stormwater Management Facilities, and to perform any and all duties or responsibilities imposed upon Declarant by the provisions of the Stormwater Control Ordinance of Fayetteville, North Carolina, or any other applicable federal or state laws or regulations.

Section 4. Association's Easements in Common Areas. The Association shall have an easement to enter and to inspect any portion of the Common Area and to make any constructions, adjustments or

corrections to the Stormwater Management Facilities, and to perform any and all duties or responsibilities imposed upon Association by the provisions of the Stormwater Control Ordinance of Fayetteville, North Carolina, or any other applicable federal or state laws or regulations.

Section 5. Association's Easements to Perform Maintenance. The Association, acting through its officers, agents and employees, shall have the right of unobstructed access at all reasonable times to all properties of Owners as may be reasonably necessary to perform maintenance, including maintenance, repair and reconstruction of the fences located on or on the border of the common areas, to the Common Area, and to the Storm Water Ponds.

Section 6. City of Fayetteville Easement. The City of Fayetteville and City of Fayetteville personnel shall have a right of enter upon the property of Declarant and of Owners:

- (i) as provided by Section 23-27 of the Fayetteville Code of Ordinances, over the easements designated in the stormwater design plan for inspection and emergency maintenance of the drainage system conveying public water; and
- (ii) as provided by Section 23-39 of the Fayetteville Code of Ordinances, in the event the city engineer has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the stormwater management facility.

Section 7. Party Wall Easements of Adjoining Lot Owners. All common walls of buildings shall be party walls. Any matters concerning party walls which are not covered by the terms of this instrument shall be governed by the general rules of law regarding party walls. The cost of maintaining each party wall shall be borne equally by the owners of the Lots on either side of said party wall. In the event of damage or destruction to any party wall, the owners of the Lots on either side of said party wall shall repair or rebuild said party wall. The cost of such repair or rebuilding shall be borne equally by the owners whose lots adjoin said party wall. Each such owner shall have the right to the full use of said party wall so repaired or rebuilt. If either owner's negligence shall cause damage to or destruction of said party wall, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other party may have such party wall repaired or restored and shall be entitled to have a mechanic's lien on the Lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable. The party having such party wall repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. Neither Lot owner shall alter or change a party wall in any manner, non-structural interior decoration excepted, and such party wall shall remain in the same location as when originally erected. Each adjoining owner to said party wall shall have a perpetual easement in that part of the premises of the other on which said party wall is located, for the purposes of such party wall and any other additional area necessary to repair, replace, and maintain same.

ARTICLE IV.  
OWNERSHIP AND MAINTENANCE OF  
STORMWATER MANAGEMENT FACILITIES

Section 1. The Association, acting through its officers, is authorized and directed, to enter into and become a signatory of an Operation and Maintenance Agreement for the stormwater management facilities that is required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina. Once the Stormwater Management Facility has passed the inspection prescribed by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina, the Association, acting through its officers, is authorized and directed, to enter into a contract(s) to accept the transfer to it of the primary responsibility for carrying out the provisions of the maintenance agreement. The Association,



acting through its officers, is authorized to execute all documents necessary for the release of the performance security of Declarant following the successful inspection(s) as provided by Section 23-37 of the Stormwater Control Ordinance of Fayetteville, North Carolina.

Section 2. The Association, acting through its officers, is authorized and directed, to make any and all applications or petitions for the City to accept functional maintenance responsibility for this single-family detached residential development as provided by Section 23-38 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina, with the Association still being responsible for routine maintenance such as mowing the grass and picking up litter as provided by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina.

Section 3. The Association, acting through its officers, is authorized and directed, to include in the Operation and Maintenance Agreement for the stormwater management facilities the special requirements for homeowners' associations as set forth in Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina.

ARTICLE V.  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Corporation, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be pursuant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 2. Voting Rights. The corporation 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 vote for each Assessable Lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot; and in the absence of an agreement between the persons holding the interests in any lot the vote for the Lot shall be in the same fractions as the ownership.

CLASS B: Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Assessable 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: (a) When the Declarant is no longer the owner of any Assessable Lot; or (b) on January 1, 2020.

ARTICLE VI.  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Determination of Lots to be Assessed. The Lots subject to assessments during a fiscal year of the Association shall be the Assessable Lots as of January 1 of the fiscal year of the Association to which the assessment applies.

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Owner of each Assessable Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay assessments to the Association as follows:

- a. Annual Assessments; and

b. Special Assessments.

All assessments levied by the Association shall be used exclusively for payment of the Common Expenses as defined in Section 10 of Article I.

The Annual Assessments and the Special Assessments on each Assessable Lot, together with interest on delinquent assessments at the rate of six per cent. per annum, costs and reasonable attorney's fees, shall be a charge on and a continuing lien upon the Assessable Lot, and shall also be the personal obligation of the Owner of the Assessable Lot at the time the assessment fell due.

Section 3. Annual Assessments. The Annual Assessments shall be in the amount determined by the Association to be necessary and adequate for the payment of the Common Expenses of the Association. The fiscal year shall commence with the closing of the sale of the first Assessable Lot.

The maximum Annual Assessment levied for the first fiscal year for which an Annual Assessment is levied shall not exceed a rate of \$120.00 for each Assessable Lot and for each calendar year thereafter the rate per acre shall be established by the Board of Directors of the Association and may be increased by the Board of Directors for any calendar year without approval by the Owners by an amount not to exceed twenty percent (20%) of the annual assessment for the previous year; provided that in no event does this limitation reduce the right of the City to recover its costs as set forth in Section 5. of this Article VI or the personal obligation of Owners of the Assessable Lots to pay the ad valorem taxes levied against the Common Areas as set forth in Section 6. of this Article VI. . A majority of the membership by a vote at a regular or special meeting of the Owners may increase the annual assessment without limit.

Section 4. Special Assessment. Special Assessment may be levied by the Association for the purpose of extensive maintenance or replacing or reconstructing all or any part of the Stormwater Management Facilities, to the extent that the Association is responsible for such extensive maintenance or replacement or reconstruction and such extensive maintenance or replacement or reconstruction is not covered by reserves for such purpose or purposes. A majority of the membership by a vote at a regular or special meeting of the Owners may authorize the Special Assessment.

Section 5. Recovery by City of Costs Expended by City. To the extent that the Association may be responsible for such costs, the City shall be allowed to recover from the Association and its members any and all costs the City expends to maintain, repair or reconstruct the stormwater management facilities, as provided by Sec. 23-39(b) of the Code of Ordinances of the City of Fayetteville, North Carolina, as amended from time to time.

Section 6. Association Empowered to Levy Assessment for Taxes; Upon Default Payment is Personal Obligation of Owners. The Association is empowered to levy assessments for the payment of expenditures for ad valorem taxes levied against the Common Area or public or private capital improvements made to or for the benefit of Common Areas located within the development. Upon default by the Association in the payment of any ad valorem taxes levied against the Common Area(s) to the governmental authority entitled thereto, which default continues for a period of six (6) months, each Owner of an Assessable Lot shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes by the total number of Assessable Lots. If not paid by the Owner of the Assessable Lot within thirty (30) days, said sum shall become a continuing lien and the taxing or other governmental authority may either bring an action at law against the Owner personally obligated to pay the same or elect to foreclose the lien.

Section 7. Notice and Quorum. Notice for approval of the Membership in the Association under

Sections 3. and 4. immediately above shall be by written notice of the meeting served upon or mailed to each Member of the Association entitled to vote thereat at such address as appears on the books of the Association, at least ten (10) days but not more than fifty (50) days prior to the meeting.

Over twenty (20) percent of the total Owners of the Assessable Lots of the Association, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at a meeting, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called. If adjournment extends past thirty (30) days, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings.

Section 8. Uniform or Other Rate of Assessment. Both Annual Assessment and Special Assessments shall be fixed at a uniform rate for all Assessable Lots, and shall be payable as determined and ordered by the Association.

Section 9. Date of Commencement of Assessments. The annual assessments provided for herein shall commence as to all Assessments on the first day of the month following the passage of a resolution by the Board duly establishing same. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Assessments shall be paid quarterly or as otherwise ordered by the Board of Directors.

Section 10. Effect of Nonpayment of Assessments and Remedies of the Association. In the event an Owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association may enforce its lien for assessments, or take such other action to recover the sums, charges of assessments to which it is entitled, in accordance with the statutes made and provided. If the Association becomes the owner of a Lot by reason of foreclosure of its lien, it shall offer said Lot for sale, and, at such time as a sale is consummated, it shall deduct from the proceeds of such sale, all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any all expenses incurred in the resale of the Lot, which shall include but not be limited to advertising expenses, real estate brokerage fees, expenses necessary for the repairing and refurbishing of the Lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of the subject Lot.

Section 11. Rights of Eligible Mortgage Holders. Upon the written authorization filed with the Association of an Owner, or upon the written request of an Eligible Mortgage Holder consented to in writing by the involved Owner and filed with the Association, the Association shall notify such Eligible Mortgage Holder of any delinquency in payment of assessments by such Owner that have remained uncured for a period of sixty (60) days.

Section 12. Use of Funds; No Accounting When Owner Ceases to be a Member. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense authorized by this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Owner of an Assessable Lot, the same may be co-mingled with monies paid to the Association by the other Owners of Assessable Lots. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived thereof or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his

membership interest therein. When the Owner of an Assessable Lot shall cease to be a member of the Association by reason of his divestment of ownership of such Assessable Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the payment of proper expenses of the Association.

Section 13. Assessment Payment Status Upon Written Request. Whenever any Assessable Lot may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Assessable Lot shall furnish to the proposed lessee, purchaser, or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Assessable Lot. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

Section 14. Indemnification. The Association may indemnify any director or officer of the Association who is made a party to an action by reason of his being or having been a director or officer of the Association against any reasonable expenses, including attorney's fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the corporation.

#### ARTICLE VI USE RESTRICTIONS

Section 1. All of said "lots" shall be used for residential purposes only and shall not be used for any business or commercial purposes. Group family homes are prohibited. Each "lot" is a single-family detached residential lot as described and provided in Section 23-3 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina, and no dwelling, private garage, out-building, or other structure of any kind shall be constructed on any "lot" that is not permitted in the City's official interpretation of this ordinance. Each "lot" is a single-family detached residential lot as described and provided in Section 23-3 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina, and no occupancy or other use may be made of any "lot" or of the dwelling or other improvements located on the "lot" that under the City's official interpretation of this ordinance would cause the "lot" not to be a single-family detached residential lot as described and provided in said ordinance.

Section 2. All "lots" in the said LAKEDALE, SECTION 1, Subdivision shall be residential lots, and no structure shall be erected, altered, placed or permitted to remain on any of said lots except one detached single family dwelling of not more than two and one-half stories in height, a private garage for not more than three cars, and other out-buildings in the rear of the dwelling house which may be incidental to normal residential use in subdivisions of similar category.

Section 3. No dwelling shall be erected or allowed to remain on any of the said "lots" which shall contain a heated-area living space of less than one thousand (1000) square feet, of which not less than five hundred (500) square feet shall be on the first or ground floor. Heated area living space shall mean the ordinary living space in a house that is designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, furnace room areas, garages, carports, and porches shall not be counted.

Section 4. (a) No building shall be located on any lot nearer to the front lot line than 25 feet from the street right-of-way line.

(b) Lots 1, 13, 32, 37 and 43, these being corner lots, shall observe front yard setbacks along each of the two intersecting streets along the lot. As provided by Section 30-195 of the Code, residential structures on corner lots which observe the front yard requirements on each of the two intersecting streets may reduce the required rear yard by 15 feet

(c) Buildings on lots on the periphery of this LAKEDALE, SECTION 1, Subdivision shall observe the applicable setbacks for the side and rear lot lines that are provided for the applicable zoning district along the boundary.

(d) The side line restriction of lots shall be the minimum side line distance as set forth in the deed from Broadwell Land Company to the purchaser; and if no side distance is so specified, then the distance shall be five (5) feet.

(e) The rear line restriction of lots of this LAKEDALE, SECTION 1 subdivision including lots contiguous to other zero lot line sections of this subdivision (and not on the periphery of the overall subdivision) shall be the minimum rear distance as set forth in the deed from Broadwell Land Company to the purchaser; and if no rear distance is so specified, then the distance shall be 30 feet.

(f) For the purpose of this covenant, eaves, steps, and decks without roofs shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. Open fire escapes, outside stairways, the ordinary projections of chimneys and flues, swimming pools, flag poles, decorative fountains, and other similar items may be erected in required yards when placed so as not to obstruct light and ventilation necessary for the structure.

(g) In the event the side yard setback or the rear yard setback is zero, then a minimum five feet wide maintenance easement will be provided on the adjoining lot, which maintenance easement is to be maintained by the owner of the lot having the zero lot line.

Section 5. The maximum "building area" as set in Section 30-154 of the Code on any lot shall be 35 percent of the total lot area. The maximum "Built-upon area" as defined in Section 23-21 of the Code on any lot shall not cover more than fifty percent of the total lot area.

Section 6. Easements for drainage and for drainage swales, and for installation and maintenance of drainage facilities, including pipelines, are reserved as shown on the recorded plat; and, additionally, ten (10') foot easements for all of such purposes are reserved along all interior "lot" lines, such ten (10') foot easements being five (5') feet on each side of each interior "lot" line of each of the aforesaid "lots"; provided, that if Declarant at the time of the initial conveyance of any lot or lots of said subdivision shall change the size or shape of any building lot by adding a strip of land to a "lot", or by deleting a strip of land from a "lot", then the ten ( 10' ) foot easement herein reserved shall be five (5') feet on each side of the common, interior lot line of the lot as initially conveyed by Declarant.

Section 7. Prior to December 31, 2020, no building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing location of the structure on the individual Lot have been approved in writing by Broadwell Land Company, or its designees, as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. No construction may be constructed with an exterior wall finish of material of concrete or cinder block type construction or shall be finished in asbestos siding shingles.

Section 8. (a) No chain link fences shall be erected on "lot" within this subdivision, except that Developer or the Association may erect chain link fence(s) on the rear of Lots 17 through 28 along the

railroad right-of-way. Developer or the Association may erect chain link fence(s) to contain the Storm Water Pond and along any property lines, or within, any Open Space owned, or to be owned, by the Association.

(b) No wire or solid panel fences may be erected on "lots" closer to any street line than the corner of houses and the street lines, but such fences may be erected on the rear portion of the lots and may extend no closer to streets than the rear corners of houses on the lots. Ornamental fences (i. e., split rail fences, or fences through which there is at least 75% visibility) not to exceed three (3') feet in height may be constructed within the areas between the houses and the street lines. Wire fences made of what is commonly referred to as "welded wire" may be placed behind the "ornamental fences" referred to above in this subsection (b), but shall not exceed the height of the ornamental fence. No fence, wall, or hedge higher than six feet shall be erected or maintained on any lot.

Section 9. All lots as shown on the aforesaid recorded plat are approved as to size and shape. No lot shall be re-subdivided in any manner so as to create any new or revised lot having a width of less than 60 feet at the minimum setback line or having an area of less than 9,000 square feet.

Section 10. All areas indicated as streets and easements on the aforesaid recorded plat are hereby dedicated to public use forever. The Landscape Easements located on the rear of Lots 17 through 28 shall remain open and shall be used only for landscaping purposes, and any perimeter fences installed by Declarant along the railroad right-of-way shall not be removed by the "lot" owners.

Section 11. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 12. Large television satellite dish antennas placed in yards are prohibited. Small television satellite antennas attached to the rear of houses are permitted.

Section 13. No sign or signs other than a "For Sale" or "For Rent" sign shall be displayed on the property within the subdivision. Mail boxes placed at the streets shall be of a uniform design as approved or specified by Broadwell Land Company, or its designee.

Section 14. No automobile or motor vehicle may be dismantled or stored on any lot; and no mechanically defective automobile, motor vehicle, mechanical machine, or machinery, shall be placed or allowed to remain on any lot or any street right-of-way for over thirty (30) days. Notwithstanding the above, these restrictions shall not apply if such vehicle is kept in an enclosed garage on a lot. No commercial trucks shall be permitted to be parked on any lot or on any street right-of-way except in the course of delivery, pick up or discharge of a specific commercial duty.

Section 15. The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited on any "lot", except that the keeping of not more than two (2) orderly domestic pets (dogs or cats) shall be permitted; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding; and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the "lot" upon ten (10) days written notice from Declarant, or its designee. All pets shall be inoculated as required by law. No dangerous dogs, including, but not limited to, pit bulls, rottweilers, Dobermans and chows, shall be permitted on the premises of any "lot" of this subdivision.

Section 16. Declarant reserves the right to subject the real property in this entire subdivision to a contract with the provider of electrical service for the installation of underground electric cables and/or the installation of street lighting, either or both, of which will require an initial payment and/or a

continuing monthly payment to the provider of electric service by each residential customer having service in the subdivision, and which charge may be included in the regular bill for residential electric service.

Section 17. Notwithstanding the foregoing provisions requiring residential use of the lots in this subdivision, Declarant and its successors in title may devote any lot or portion thereof, not already sold, for any constructions and uses which it, in its discretion, deems necessary in order to provide the subdivision with utilities; and Declarant, and its successors in title, may devote any lot or portion thereof, not already sold, or once sold but later reacquired by Declarant, for street purposes for access to any adjoining properties now owned, or hereafter acquired, by Declarant.

Section 18. It is understood and agreed that these restrictions are made for the mutual benefit of the grantors and grantees and any and all subsequent grantees, and all such parties shall be deemed to have a vested interest in these restrictions and the right to enforce same.

Section 19. The invalidation of any one or more or any part of any one or more of the covenants and conditions set forth herein shall not affect or invalidate the remaining covenants or portions thereof.

#### ARTICLE VIII. GENERAL PROVISIONS

Section 1. ENFORCEMENT. 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 any Owner to enforce any covenants 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 wise affect any other provisions which shall remain in full force and effect.

Section 3. LOTS SUBJECT TO DECLARATION. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with, the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of the Declaration shall inure to the benefit of and be enforceable by the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 4. AMENDMENT OF DECLARATION. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by a written instrument to such effect signed by not less than fifty (50%) percent of the Lot Owners and recorded; and such termination shall become effective at the end of the initial twenty (20) year period, or the subsequent ten (10) years term during which the termination instrument is recorded.

While Broadwell Land Company remains as the owner of (or holds a purchase money deed of trust on) one or more "lots" of this subdivision, the covenants and restrictions of this Declaration may be released, changed, modified, or amended, to make the covenants less restrictive, with respect to all "lots", or with respect to one or more specific "lots", by an instrument executed by Broadwell Land Company and recorded. After Broadwell Land Company is no longer the owner of (nor holds a purchase money

deed of trust on) any "lot" or "lots" within said subdivision, the covenants and restrictions of this Declaration may be released, changed, modified, or amended, to make the covenants less restrictive, with respect to all "lots", or with respect to one or more specific "lots", by an instrument to such effect signed by the Owners of not less than fifty (50%) percent of the "lots" and recorded.

Provided, that the provisions set forth as Sections 4(a), 4(b) and 4(c) of ARTICLE VII may be released, changed, modified, or amended only with the additional approval or consent of the Fayetteville City Planning Board.

Any revocation or amendment of these covenants must be recorded.

Section 5. LAW CONTROLLING. This development is being undertaken pursuant to the provisions of Chapter 47A of the North Carolina General Statutes and Section 25-31, Subsection (9) of the Fayetteville Code of Ordinances, both of which are incorporated by reference. In the event of any conflict between the Statute and Ordinance cited, then the Statute shall control.

IN WITNESS WHEREOF, BROADWELL LAND COMPANY, the Declarant herein, has caused this Declaration to be signed in its name the day and year first above written.

(CORPORATE SEAL)

BROADWELL LAND COMPANY

By: *Dohn B. Broadwell Jr.*  
Dohn B. Broadwell, Jr., President

NORTH CAROLINA  
CUMBERLAND COUNTY

I, a Notary public of North Carolina, certify that Dohn B. Broadwell, Jr. (who is personally known to me) personally came before me this day and acknowledged that he is President of Broadwell Land Company, a corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this 13th day of July, 2010.

(Seal or Stamp)

My Commission Expires: 04/09/2011



*Ellen P. Newton*  
Ellen P. Newton  
Notary Public

(N.P. SEAL)



FILED  
 CUMBERLAND COUNTY NC  
 J. LEE WARREN, JR.  
 REGISTER OF DEEDS

FILED	May 15, 2017
AT	03:36:34 pm
BOOK	10091
START PAGE	0850
END PAGE	0863
INSTRUMENT #	15305
RECORDING	\$26.00
EXCISE TAX	(None)

RA

Prepared by: J. Duane Gilliam. Attorney at Law, 3340 Quarry Drive, Fayetteville, NC 28303-4695  
 Mail to: Broadwell Land Company, P. O. Box 53587, Fayetteville, NC 28305-3587

Return

NORTH CAROLINA

DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS  
 OF LAKEDALE, SECTION TWO, PART ONE,  
 SUBDIVISION

CUMBERLAND COUNTY

THIS DECLARATION, made this the 12th day of May, 2017, by BROADWELL LAND COMPANY, a North Carolina Corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Cross Creek Township, Cumberland County, North Carolina, which is more particularly described as follows:

Lots 4 through 11, inclusive, Lot 58, Lot 65 and Lots 70 through 80, inclusive, of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry.

WHEREAS, the Declarant desires to provide

- (a) for the preservation of the values and amenities of the Lots of the Lakedale, Section Two, Part One, subdivision;
- (b) for the maintenance of common properties in said Lakedale, Section Two, Part One, subdivision;
- (c) for the operation and management of the Stormwater management facilities of the Lakedale, Section Two, Part One, subdivision;
- (d) for establishing and maintaining an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the Stormwater management facilities pursuant to and as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina; and
- (e) for performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the Lakedale, Section Two, Part One, subdivision,

all under a general plan or scheme of improvement, and desires to subject said property to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth, hereinafter referred to as the "Covenants" or the "Declaration", all of which is hereby declared to be for the benefit of said

property and each and every owner of any and all parts thereof; and

WHEREAS, the Declarant deems it desirable to create an agency to which can be delegated and assigned the duties and powers

- (a) to provide for the maintenance of common properties in said Lakedale, Section Two, Part One, subdivision, and any additional properties that have been brought or may be brought within the jurisdiction of the corporation;
- (b) to provide for the operation and management of the stormwater management facilities of the Lakedale, Section Two, Part One, subdivision, and any additional properties that have been brought or may be brought within the jurisdiction of the corporation;
- (c) to establish and maintain an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the Stormwater management facilities pursuant to and as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina;
- (d) to provide for performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the Lakedale, Section Two, Part One, subdivision, and any additional properties that have been brought or may be brought within the jurisdiction of the corporation; and
- (e) to promote the health, safety and welfare of the residents of the Lakedale, Section Two, Part One, Subdivision, and any additional properties that have been brought or may be brought within the jurisdiction of the corporation,

and to which can be delegated the power and authority of maintaining and administering and enforcing these covenants and restrictions and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, Lakedale Property Owners' Association, Inc., as the agency for exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that Lots 4 through 11, inclusive, Lot 58, Lot 65 and Lots 70 through 80, inclusive, of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry, shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof..

#### ARTICLE I. DEFINITIONS

Section 1. Association. Association shall mean and refer to Lakedale Property Owners' Association, Inc., a non-profit corporation, its successors and assigns.

Section 2. Declarant. Declarant shall mean and refer to Broadwell Land Company, a North

Carolina corporation, 903 Hay Street, Fayetteville, NC 28305-5313, its successors and assigns.

Section 3. Lot and Lots. Lot shall mean and refer to each of Lots 4 through 11, inclusive, Lot 58, Lot 65 and Lots 70 through 80, inclusive, of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc. Lots shall mean and refer collectively to Lots 4 through 11, inclusive, Lot 58, Lot 65 and Lots 70 through 80, inclusive, of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Owners Association, Inc. Additional building lots shall mean additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc. Lots may include future sections of the Lakedale subdivision as the same may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, except that no future sections of the Lakedale subdivision shall become subject to these covenants until after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration by Declarant which incorporates by reference this Declaration and which expressly makes the new section(s) subject to these covenants herein, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section(s), but such modification shall have no effect on the properties described herein.

Section 4. Assessable Lots. The Assessable Lots shall be determined as of January 1 of each fiscal year of the Association and shall consist of Lots 4 through 11, inclusive, Lot 58, Lot 65 and Lots 70 through 80, inclusive, of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Property Owners' Association, Inc.

Section 5. Owner. Owner shall mean every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers. The term "Owner" is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 6. Membership in Association. Every Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. Membership shall be pursuant to and may not be separated from ownership of any Lot which is subject by the Declaration to assessment by the Association.

Section 7. Common Area. Common Area includes (a) the PERMANENT WET DETENTION POND 60,913 sf (1.40 AC) (COMMON AREA) (OPEN SPACE) as shown on the subdivision plat of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry; (b) the real and personal property comprising the stormwater control and management facilities after such property has been conveyed by Declarant to the Association; and (c) any real property that may be acquired by the Association for the common use and enjoyment of the Owners of Lots. Common Area does not include the right-of-ways of streets.

Section 8. Declaration. "Covenants" or "Declaration" shall mean this instrument as it may be

from time to time amended, supplemented, modified or incorporated by reference.

Section 9. Board of Directors. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 10. Common Expenses. "Common Expenses" shall mean and include:

- (1) Expenses of administration, maintenance, repair, or replacement of the Common Properties;
- (2) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (3) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the association to purchase or as the Association may deem appropriate to purchase;
- (4) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;
- (5) Expenses to continuously operate and maintain the stormwater control and management facilities after such operation and maintenance become the responsibility of the Association;
- (6) Payments into an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities pursuant to and as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina;
- (7) The expense of the maintenance of the detention pond as shown on the recorded plat, and maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property;
- (8) The expense of performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the LAKEDALE, SECTION 1, and any other subsequent additions to the subdivision as approved by the Letter of Approval issued to Broadwell Land Company by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section, and General Permit No. NCG01000 To Discharge Stormwater Under The National Pollutant Discharge Elimination System issued by the State of North Carolina Department of Environment and Natural Resources, Division of Water Quality;
- (9) The expense of maintenance any roads, streets, easements, landscaping, amenities, taxes or any other expense item associated with any Common Property not located on the Property but permitted to be used by the members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;
- (10) Expenses for maintenance of security devices or personnel; and,
- (11) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 11. Fiscal Year. Fiscal year shall mean the fiscal year of the Association and shall be from January 1 through December 31.

Section 12. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder of a first mortgage or deed of trust lien on a Lot that has requested notice of certain matters from the Association.

Section 13. Soil Erosion and Sediment Control Plan. Soil Erosion and Sediment Control Plan shall mean the erosion and sedimentation plan for the Lakedale, Section 1, and any other subsequent additions to the subdivision, as approved by the Letter of Approval issued to Broadwell Land Company by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section, and General Permit No. NCG01000 To Discharge Stormwater Under The National Pollutant Discharge Elimination System issued by the State of North Carolina Department of Environment and Natural Resources, Division of Water Quality.

Section 14. Stormwater Control Ordinance of Fayetteville, North Carolina. "Stormwater Control Ordinance of Fayetteville, North Carolina" shall mean Sec. 23-20 through Sec. 23-49 of the Code of Ordinances of the City of Fayetteville, North Carolina, as amended from time to time.

Section 15. Operation and Maintenance Agreement of stormwater management facility. The Operation and Maintenance Agreement of stormwater management facility for the Lakedale Subdivision, Section Two, Part One, Book of Plats 139, page 107, Cumberland County Registry, shall mean the agreement recorded in Book 10050, pages 151 to 165, Cumberland County Registry as required by Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, and referenced on the final plat and recorded with the Cumberland County Register of Deeds as required by subsection (a) (1) of Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina. The Operation and Maintenance Agreement of stormwater management facility for future sections of the Lakedale subdivision, shall mean the agreement as required by Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, as referenced on the final plat and recorded with the Cumberland County Register of Deeds as required by subsection (a) (1) of Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, as the same may be amended from time to time.

## ARTICLE II.

### PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Initial Properties. The initial properties subject to these covenants are Lots 4 through 11, inclusive, Lot 58, Lot 65 and Lots 70 through 80, inclusive, of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry.

Section 2. Other Additions. Additional building lots may be brought by Declarant under the jurisdiction of these covenants and the Lakedale Property Owners' Association, Inc. within fifteen (15) years after the date of the recording of this instrument as future sections of the Lakedale subdivision may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, except that no Lots of future sections of the Lakedale subdivision shall become subject to these covenants until after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration by Declarant which incorporates by reference this Declaration and which expressly makes the Lots of the new section(s) subject to the covenants herein, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section(s), but such modification shall have no effect on the properties described herein.

## ARTICLE III.

### PROPERTY RIGHTS

Section 1. Common Area. As soon as practicable after the conveyance by Declarant of the first Lot of the LAKEDALE, SECTION TWO, PART ONE, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 139, page 107, Cumberland County Registry to a purchaser, Declarant shall convey to the Association, in trust for the uses and purposes set forth in the Charter and By-Laws of the Association, the initial Common Area. At the option of Declarant, Declarant may in the future convey to the Association, in trust, any easements or other property or property rights, including any common area shown on plats of future sections of the Lakedale subdivision.

Section 2. Additional Real or Personal Property. The Association may acquire by gift, purchase or otherwise, and may own, hold, improve, build upon, operate and maintain additional real or personal property in connection with the affairs of the Association to promote the health, safety and welfare of the residents of the LAKEDALE, SECTION 1, Subdivision, and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 2. Owners' Easements of Enjoyment. Every Owner of an Assessable Lot shall have a right of easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Assessable Lot.

Section 3. Access Easement over Property of Declarant and Lots of Owners.

(a) The Association, acting through its officers, agents and employees, shall have the right of unobstructed access at all reasonable times to all properties of Owners as may be reasonably necessary to perform maintenance, including maintenance, repair and reconstruction of the fences located on or on the border of the common areas, to the Common Area.

(b) The City of Fayetteville and City of Fayetteville personnel shall have a right of enter upon the property of Declarant and of Owners:

(i) as provided by Section 23-27 of the Fayetteville Code of Ordinances, over the easements designated in the stormwater design plan for inspection and emergency maintenance of the drainage system conveying public water;

(ii) as provided by Section 23-39 of the Fayetteville Code of Ordinances, in the event the city engineer has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the stormwater management facility.

ARTICLE IV.  
STORMWATER MANAGEMENT FACILITIES

Section 1. The Association, acting through its officers, is authorized and directed, to enter into a contract(s) to accept ownership from Declarant of the stormwater management facilities of the Lakedale, Section 1, subdivision and for future sections of the Lakedale subdivision that are brought by Declarant under the jurisdiction of the Association and to execute all documents necessary for the release of the performance security of Declarant following the successful inspection(s) as provided by Section 23-37 of the Stormwater Control Ordinance of Fayetteville, North Carolina.

Section 2. The Association, acting through its officers, is authorized and directed, to enter into an Operation and Maintenance Agreement for the stormwater management facilities that, as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina, includes all of the following provisions:

**"Sec. 23-39. Operation and maintenance agreement.**

" . . .

"(b) *Special requirement for homeowners' and other associations.* For all stormwater management facilities required pursuant to this article and that are to be or are owned and

maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

"(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

"(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities. If stormwater management facilities are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater management facilities, provided that the city shall first consent to the expenditure.

"(3) Both developer and homeowners' association contributions shall fund the escrow account. Prior to the release of the installation performance security as outlined in Section 23-41, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the stormwater management facilities. Two-thirds (2/3) of the total initial construction cost shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the stormwater management facilities. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the escrow account budget.

"(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

"(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater management facilities.

"(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the stormwater management facilities or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

"(7) A statement that this agreement shall not obligate the city to maintain or

repair any stormwater management facilities, and the city shall not be liable to any person for the condition or operation of stormwater management facilities.

"(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

"(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the stormwater management facility, unless the city has agreed in writing to assume the maintenance responsibility for the stormwater management facility and has accepted dedication of any and all rights necessary to carry out that maintenance."

ARTICLE V.  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Corporation, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be pursuant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 2. Voting Rights. The corporation 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 vote for each Assessable Lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot; and in the absence of an agreement between the persons holding the interests in any lot the vote for the Lot shall be in the same fractions as the ownership.

CLASS B: Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Assessable 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: (a) When the Declarant is no longer the owner of any Assessable Lot; or (b) on January 1, 2020.

ARTICLE VI.  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Determination of Lots to be Assessed. The Lots subject to assessments during a fiscal year of the Association shall be the Assessable Lots as of January 1 of the fiscal year of the Association to which the assessment applies.

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Owner of each Assessable Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant and agree to pay assessments to the Association as follows:

- a. Annual Assessments; and
- b. Special Assessments.



All assessments levied by the Association shall be used exclusively for payment of the Common Expenses as defined in Section 10 of Article I.

The Annual Assessments and the Special Assessments on each Assessable Lot, together with interest on delinquent assessments at the rate of six per cent. per annum, costs and reasonable attorney's fees, shall be a charge on and a continuing lien upon the Assessable Lot, and shall also be the personal obligation of the Owner of the Assessable Lot at the time the assessment fell due.

Section 3. Annual Assessments. The Annual Assessments shall be in the amount determined by the Association to be necessary and adequate for the payment of the Common Expenses of the Association.

The maximum Annual Assessment levied for the first fiscal year for which an Annual Assessment is levied shall not exceed \$120 per Assessable Lot and for each calendar year thereafter the rate per lot shall be established by the Board of Directors of the Association and may be increased by the Board of Directors for any calendar year without approval by the Owners by an amount not to exceed twenty percent (20%) of the annual assessment for the previous year.

Section 4. Special Assessment. A Special Assessment may be levied by the Association for the purpose of repaying to the City of Fayetteville any and all costs the city expends to maintain or repair the Stormwater management facilities or to correct any operational deficiencies of the Stormwater management facilities and which is not covered by the escrow account for that purpose. Any Special Assessment levied in any fiscal year of the Association that exceeds will require approval of a majority of the Owners by a vote at a regular or special meeting of the Members of the Association.

Section 5. Notice and Quorum. Notice for approval of the Membership in the Association under Sections 3. and 4. immediately above shall be by written notice of the meeting served upon or mailed to each Member of the Association entitled to vote thereat at such address as appears on the books of the Association, at least ten (10) days but not more than fifty (50) days prior to the meeting.

Over twenty (20) percent of the total Owners of the Assessable Lots of the Association, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at a meeting, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called. If adjournment extends past thirty (30) days, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings.

Section 6. Uniform Rate of Assessment. Both Annual Assessment and Special Assessments shall be fixed at a uniform rate for all Assessable Lots, and shall be payable as determined and ordered by the Association.

Section 7. Date of Commencement of Assessments. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the passage of a resolution by the Board duly establishing same. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

Section 8. Effect of Nonpayment of Assessments and Remedies of the Association. In the event an Owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association may enforce its lien for assessments, or take such other action to recover the sums, charges of assessments to which it is entitled, in accordance with the statutes made and provided. If the Association becomes the owner of a Lot by reason of foreclosure of its lien, it shall offer said Lot for sale, and, at such time as a sale is consummated, it shall deduct from the proceeds of such sale, all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any all expenses incurred in the resale of the Lot, which shall include but not be limited to advertising expenses, real estate brokerage fees, expenses necessary for the repairing and refurbishing of the Lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of the subject Lot.

Section 9. Rights of Eligible Mortgage Holders. Upon the written authorization filed with the Association of an Owner, or upon the written request of an Eligible Mortgage Holder consented to in writing by the involved Owner and filed with the Association, the Association shall notify such Eligible Mortgage Holder of any delinquency in payment of assessments by such Owner that have remained uncured for a period of sixty (60) days.

Section 10. Indemnification. The Association may indemnify any director or officer of the Association who is made a party to an action by reason of his being or having been a director or officer of the Association against any reasonable expenses, including attorney's fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the corporation.

#### ARTICLE VI USE RESTRICTIONS

1. All of said "lots" shall be used for residential purposes only and shall not be used for any business or commercial purposes. Group family homes are prohibited.
2. All "lots" in the said LAKEDALE, SECTION TWO, PART ONE, Subdivision shall be residential lots, and no structure shall be erected, altered, placed or permitted to remain on any of said lots except one detached single family dwelling of not more than two and one-half stories in height, a private garage for not more than three cars, and other out-buildings in the rear of the dwelling house which may be incidental to normal residential use in subdivisions of similar category.
3. No dwelling shall be erected or allowed to remain on any of the said "lots" which shall contain a heated-area living space of less than one thousand five hundred (1500) square feet, of which not less than seven hundred fifty (750) square feet shall be on the first or ground floor. Heated area living space shall mean the ordinary living space in a house that is designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, furnace room areas, garages, carports, and porches shall not be counted.
4. (a) No building shall be located on any lot nearer to the front or rear lot lines or nearer to a side street line than the minimum building setback lines and dimensions as are set out in the R-10 Residential Zone of the Fayetteville City Zoning Ordinance as of the date of recording of these restrictions. For the purpose of this covenant, eaves, steps, and decks without roofs shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion

of a building on a lot to encroach upon another lot. Open fire escapes, outside stairways, the ordinary projections of chimneys and flues, swimming pools, flag poles, decorative fountains, and other similar items may be erected in required yards when placed so as not to obstruct light and ventilation necessary for the structure.

(b) The side line restriction of "lots" shall be the minimum side line distance as set forth in the deed from Broadwell Land Company to the purchaser; and if no side distance is so specified, then the distance shall be five (5) feet. The rear line restriction of "lots" contiguous to zero lot lines of other sections of this subdivision shall be the minimum rear distance as set forth in the deed from Broadwell Land Company to the purchaser; and if no rear distance is so specified, then the distance shall be thirty-five (35) feet.

(c) Lots 9, 73, 74, 76, 58 and 65, these being corner lots, shall observe front yard setbacks along each of the two intersecting streets along the lot.

(d) All lots on the periphery of this LAKEDALE, SECTION TWO, PART ONE, Subdivision shall observe the applicable setbacks for the side and rear lot lines that are provided by for the R10 Residential zone of the Fayetteville City Zoning Ordinance.

(e) In the event the side yard setback or the rear yard setback is zero, then a minimum five feet wide maintenance easement will be provided on the adjoining lot, which maintenance easement is to be maintained by the owner of the lot having the zero lot line.

5. Easements for drainage and for drainage swales, and for installation and maintenance of drainage facilities, including pipelines, are reserved as shown on the recorded plat; and, additionally, ten (10') foot easements for all of such purposes are reserved along all interior "lot" lines, such ten (10') foot easements being five (5') feet on each side of each interior "lot" line of each of the aforesaid "lots"; provided, that if Declarant at the time of the initial conveyance of any lot or lots of said subdivision shall change the size or shape of any building lot by adding a strip of land to a "lot", or by deleting a strip of land from a "lot", then the ten ( 10' ) foot easement herein reserved shall be five (5') feet on each side of the common, interior lot line of the lot as initially conveyed by Declarant.

6. Prior to December 31, 2020, no building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing location of the structure on the individual Lot have been approved in writing by Broadwell Land Company, or its designees, as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. No construction may be constructed with an exterior wall finish of material of concrete or cinder block type construction or shall be finished in asbestos siding shingles.

7. (a) No chain link fences shall be erected within this subdivision.

(b) No wire or solid panel fences may be erected on "lots" closer to any street line than the corner of houses and the street lines, but such fences may be erected on the rear portion of the lots and may extend no closer to streets than the rear corners of houses on the lots. Ornamental fences (i. e., split rail fences, or fences through which there is at least 75% visibility) not to exceed three (3') feet in height may be constructed within the areas between the houses and the street lines. Wire fences made of what is commonly referred to as "welded wire" may be placed behind the "ornamental fences" referred to above in this subsection (b), but shall not exceed the height of the ornamental fence. No fence, wall, or hedge higher than six feet shall be erected or maintained on any lot.

8. All lots as shown on the aforesaid recorded plat are approved as to size and shape. No lot shall be re-subdivided in any manner so as to create any new or revised lot having a width of less than 80 feet at the minimum setback line or having an area of less than 10,000 square feet.

9. All areas indicated as streets and easements on the aforesaid recorded plat are hereby dedicated to public use forever.

10. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

11. Large television satellite dish antennas placed in yards are prohibited. Small television satellite antennas attached to the rear of houses are permitted.

12. No sign or signs other than a "For Sale" or "For Rent" sign shall be displayed on the property within the subdivision. Mail boxes placed at the streets shall be of a uniform design as approved or specified by Broadwell Land Company, or its designee.

13. No automobile or motor vehicle may be dismantled or stored on said property; and no mechanically defective automobile, motor vehicle, mechanical machine, or machinery, shall be placed or allowed to remain on said property for over thirty (30) days. Notwithstanding the above, these restrictions shall not apply if such vehicle is kept in an enclosed garage. No commercial trucks shall be permitted to be parked on any lot except in the course of delivery, pick up or discharge of a specific commercial duty.

Section 14. No animals or poultry of any kind, except common pets, shall be placed or kept on any part of the premises. No breed of dogs that may be perceived by members of the general public as being dangerous or having a propensity for being dangerous, including, but not limited to, pitbulls, Rottweilers, Dobermans, chows and German shepherds, nor any dog whose lineage includes any part of any of said breeds, nor any dog that has at any time bitten a person, nor any dog that has been trained as an attack dog, shall be permitted on the premises unless such dog is at all times confined within fencing as follows: on all sides of the confinement area by a privacy fence (i.e., a fence of solid type construction through which a person cannot see) not less than five feet (5') in height. The fence shall extend from the rear corners of the principal dwelling structure out to the side lot lines, thence back for a distance of not less than fifty feet from the principal dwelling structure, and closed with a fence parallel to the rear of said structure. Or, the fence may extend for a distance less than the total distance from said structure to the side lot line in which event it shall extend for a distance outwardly from the rear corners of the principal dwelling structure parallel to the front property line and thence back and parallel to the side lot lines for a distance of not less than fifty feet (50') and closed with a fence parallel to the rear of said structure. A chain link fence not less than five feet (5') in height may be built around the remaining perimeter of the Lot. On improved corner lots, no such fencing may be placed any closer to the street than the back, rear corner of the principal dwelling structure closest to the street, or, on vacant lots, closer to any street than the setback line, and in no event closer than thirty feet (30') to any street. Any dog house or dog containment structure or system must be located to the rear of the principal dwelling structure and must be located within thirty feet (30') of the rear of the main structure. No such permitted dog house or dog containment structure or system shall be placed, erected or maintained closer to any street than the rear corner or side of the principal dwelling structure on improved lots or closer to any street than the setback line on any vacant lot, and in no event closer to any street than thirty feet (30'). On improved corner lots, no dog house or dog containment structure or system shall be placed any closer to the street than the rear corner of the principal dwelling structure closest to the street, or, on vacant lots, closer to any street than

the setback line, and in no event closer to any street than thirty feet (30').

15. Declarant reserves the right to subject the real property in this entire subdivision to a contract with the provider of electrical service for the installation of underground electric cables and/or the installation of street lighting, either or both, of which will require an initial payment and/or a continuing monthly payment to the provider of electric service by each residential customer having service in the subdivision, and which charge may be included in the regular bill for residential electric service.

16. Notwithstanding the foregoing provisions requiring residential use of the lots in this subdivision, Declarant and its successors in title may devote any lot or portion thereof, not already sold, for any constructions and uses which it, in its discretion, deems necessary in order to provide the subdivision with utilities; and Declarant, and its successors in title, may devote any lot or portion thereof, not already sold, or once sold but later reacquired by Declarant, for street purposes for access to any adjoining properties now owned, or hereafter acquired, by Declarant.

17. It is understood and agreed that these restrictions are made for the mutual benefit of the grantors and grantees and any and all subsequent grantees, and all such parties shall be deemed to have a vested interest in these restrictions and the right to enforce same.

18. The invalidation of any one or more or any part of any one or more of the covenants and conditions set forth herein shall not affect or invalidate the remaining covenants or portions thereof.

ARTICLE VIII.  
GENERAL PROVISIONS

Section 1. ENFORCEMENT. 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 any Owner to enforce any covenants 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 wise affect any other provisions which shall remain in full force and effect.

Section 3. LOTS SUBJECT TO DECLARATION. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with, the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of the Declaration shall inure to the benefit of and be enforceable by the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 4. AMENDMENT OF DECLARATION. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty {20} years from the date of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by a written instrument to such effect signed by not less than fifty (50%) percent of the

Lot Owners and recorded; and such termination shall become effective at the end of the initial twenty (20) year period, or the subsequent ten (10) years term during which the termination instrument is recorded.

While Broadwell Land Company remains as the owner of (or holds a purchase money deed of trust on) one or more "lots" of this subdivision, the covenants and restrictions of this Declaration may be released, changed, modified, or amended, to make the covenants less restrictive, with respect to all "lots", or with respect to one or more specific "lots", by an instrument executed by Broadwell Land Company and recorded. After Broadwell Land Company is no longer the owner of (nor holds a purchase money deed of trust on) any "lot" or "lots" within said subdivision, the covenants and restrictions of this Declaration may be released, changed, modified, or amended, to make the covenants less restrictive, with respect to all "lots", or with respect to one or more specific "lots", by an instrument to such effect signed by the Owners of not less than fifty (50%) percent of the "lots" and recorded.

Provided, that the provisions set forth as paragraphs 4(c), 4(d) and 4(e) of ARTICLE VII may be released, changed, modified, or amended only with the additional approval or consent of the Fayetteville City Planning Board.

Any revocation or amendment of these covenants must be recorded.

Section 5. LAW CONTROLLING. This development is being undertaken pursuant to the provisions of Chapter 47A of the North Carolina General Statutes and Section 25-31, Subsection (9) of the Fayetteville Code of Ordinances, both of which are incorporated by reference. In the event of any conflict between the Statute and Ordinance cited, then the Statute shall control.

IN WITNESS WHEREOF, BROADWELL LAND COMPANY, the Declarant herein, has caused this Declaration to be signed in its name the day and year first above written.

(CORPORATE SEAL)

BROADWELL LAND COMPANY

By: *Dohn B. Broadwell, Jr.*  
Dohn B. Broadwell, Jr., President

NORTH CAROLINA  
CUMBERLAND COUNTY

I, a Notary public of North Carolina, certify that Dohn B. Broadwell, Jr. (who is personally known to me) personally came before me this day and acknowledged that he is President of Broadwell Land Company, a corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESSED my hand and official seal, this 15<sup>th</sup> day of May, 2017.  
*Ellen P. Newton*  
(Signature of Notary Public)  
Ellen P. Newton  
Ellen P. Newton  
Notary Public

(Seal of Notary Public)  
**(N.P. SEAL)**

My Commission Expires: 05/16/2021

FILED	Sep 24, 2020
AT	12:42:50 PM
BOOK	10884
START PAGE	0123
END PAGE	0136
INSTRUMENT #	35063
RECORDING	\$26.00
EXCISE TAX	\$0.00

Prepared by: William Lockett Tally, Tally and Tally, Attorney and Counselors at Law, PLLC

NORTH CAROLINA

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

CUMBERLAND COUNTY

OF LAKEDALE, SECTION TWO, PARTS 2-3  
SUBDIVISION

THIS DECLARATION, made this the 9th day of September 2020, by BROADWELL LAND COMPANY, a North Carolina Corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Cross Creek Township, Cumberland County, North Carolina, which is more particularly described as follows:

Lots 12 through 24, inclusive, and Lots 91 through 106, inclusive, and Lots 123 through 129, inclusive, of the LAKEDALE, SECTION TWO, PARTS 2-3 Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry.

WHEREAS, the Declarant desires to provide

- (a) for the preservation of the values and amenities of the Lots of the Lakedale, Section Two, Parts 2-3, subdivision;
- (b) for the maintenance of common properties in said Lakedale, Section Two, Parts 2-3, subdivision;
- (c) for the operation and management of the Stormwater management facilities of the Lakedale, Section Two, Parts 2-3, subdivision;
- (d) for establishing and maintaining an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the Stormwater management facilities pursuant to and as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina; and
- (e) for performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the Lakedale, Section Two, Parts 2-3, subdivision,

all under a general plan or scheme of improvement, and desires to subject said property to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth, hereinafter referred to as the "Covenants" or the "Declaration", all of which is hereby declared to be for the benefit of said

property and each and every owner of any and all parts thereof; and

WHEREAS, the Declarant deems it desirable to create an agency to which can be delegated and assigned the duties and powers

- (a) to provide for the maintenance of common properties in said Lakedale, Section Two, Parts 2-3, subdivision, and any additional properties that may be brought within the jurisdiction of the corporation;
- (b) to provide for the operation and management of the stormwater management facilities of the Lakedale, Section Two, Parts 2-3, subdivision, and any additional properties that may be brought within the jurisdiction of the corporation;
- (c) to establish and maintain an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the Stormwater management facilities pursuant to and as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina;
- (d) to provide for performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the Lakedale, Section Two, Parts 2-3, subdivision, and any additional properties that may be brought within the jurisdiction of the corporation; and
- (e) to promote the health, safety, and welfare of the residents of the Lakedale, Section Two, Parts 2-3, Subdivision, and any additional properties that may be brought with the jurisdiction of the corporation,

and to which can be delegated the power and authority of maintaining and administering and enforcing these covenants and restrictions and collecting and disbursing all assessments and charges necessary for such maintenance, administration, and enforcement; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of North Carolina, a non-profit corporation, Lakedale Owners Association, Inc., as the agency for exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that Lots 12 through 24, inclusive, Lot 58, Lots 91 through 106, inclusive, and Lots 123 through 129, inclusive, of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry, shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### ARTICLE I. DEFINITIONS

Section 1. Association. Association shall mean and refer to Lakedale Owners Association, Inc., a non-profit corporation, its successors, and assigns.

Section 2. Declarant. Declarant shall mean and refer to Broadwell Land Company, a North Carolina corporation, 903 Hay Street, Fayetteville, NC 28305-5313, its successors, and assigns.



Section 3. Lot and Lots. Lot shall mean and refer to each of Lots 12 through 24, inclusive, Lots 91 through 106, inclusive and Lots 123 through 129, inclusive, of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Owners Association, Inc. Lots shall mean and refer collectively to Lots 12 through 24, inclusive, Lots 91 through 106, inclusive, and Lots 123 through 129, inclusive, of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Owners Association, Inc. Additional building lots shall mean additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Owners Association, Inc. Lots may include future sections of the Lakedale subdivision as the same may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, except that no future sections of the Lakedale subdivision shall become subject to these covenants until after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration by Declarant which incorporates by reference this Declaration and which expressly makes the new section(s) subject to these covenants herein, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section(s), but such modification shall have no effect on the properties described herein.

Section 4. Assessable Lots. The Assessable Lots shall be determined as of January 1 of each fiscal year of the Association and shall consist of Lots 12 through 24, inclusive, Lots 91 through 106, inclusive, and Lots 123 through 129, inclusive, of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry, and such additional building lots as are brought by Declarant under the jurisdiction of the Lakedale Owners Association, Inc.

Section 5. Owner. Owner shall mean every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers. The term "Owner" is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 6. Membership in Association. Every Owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. Membership shall be pursuant to and may not be separated from ownership of any Lot which is subject by the Declaration to assessment by the Association.

Section 7. Common Area. Common Area includes (a) the PERMANENT WET DETENTION POND 79,279 sf (1.82 AC) (COMMON AREA) (OPEN SPACE) as shown on the subdivision plat of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 41, Cumberland County Registry; (b) the real and personal property comprising the stormwater control and management facilities after such property has been conveyed by Declarant to the Association; and (c) any real property that may be acquired by the Association for the common use and enjoyment of the Owners of Lots. Common Area does not include the rights-of-way of streets.

Section 8. Declaration. "Covenants" or "Declaration" shall mean this instrument as it may be from time to time amended, supplemented, modified, or incorporated by reference.

Section 9. Board of Directors. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 10. Common Expenses. "Common Expenses" shall mean and include:

- (1) Expenses of administration, maintenance, repair, or replacement of the Common Properties;
- (2) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (3) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the association to purchase or as the Association may deem appropriate to purchase;
- (4) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;
- (5) Expenses to continuously operate and maintain the stormwater control and management facilities after such operation and maintenance become the responsibility of the Association;
- (6) Payments into an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities pursuant to and as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina;.
- (7) The expense of the maintenance of the detention pond as shown on the recorded plat, and maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property;
- (8) The expense of performing all duties and filing all required reports subsequent to the completed initial construction and inspection(s) relative to the installed erosion and sedimentation plan for the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision as approved by the Letter of Approval issued to Broadwell Land Company by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section, and General Permit No. NCG01000 To Discharge Stormwater Under The National Pollutant Discharge Elimination System issued by the State of North Carolina Department of Environment and Natural Resources, Division of Water Quality;
- (9) The expense of maintenance any roads, streets, easements, landscaping, amenities, taxes or any other expense item associated with any Common Property not located on the Property but permitted to be used by the members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement by the Association with the adjoining land owner;
- (10) Expenses for maintenance of security devices or personnel; and,
- (11) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 11. Fiscal Year: Fiscal year shall mean the fiscal year of the Association and shall be from January 1 through December 31.

Section 12. Eligible Mortgage Holder. Eligible Mortgage Holder shall mean a holder of a first mortgage or deed of trust lien on a Lot that has requested notice of certain matters from the Association.

Section 13. Soil Erosion and Sediment Control Plan. Soil Erosion and Sediment Control Plan shall mean the erosion and sedimentation plan for the Lakedale Subdivision, Section One, as approved by the Letter of Approval issued to Broadwell Land Company by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section, and General Permit No. NCG01000 To Discharge Stormwater Under The National Pollutant Discharge Elimination System issued by the State of North Carolina Department of Environment and Natural Resources, Division of Water Quality.

Section 14. Stormwater Control Ordinance of Fayetteville, North Carolina. "Stormwater Control Ordinance of Fayetteville, North Carolina" shall mean Sec. 23-20 through Sec. 23-49 of the Code of Ordinances of the City of Fayetteville, North Carolina, as amended from time to time.

Section 15. Operation and Maintenance Agreement of stormwater management facility. The Operation and Maintenance Agreement of stormwater management facility for the Lakedale Subdivision, Section Two, Parts 2-3, Book of Plats 145, page 43, Cumberland County Registry, shall mean the agreement recorded in Book 10878, pages 878 to 888, Cumberland County Registry as required by Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, and referenced on the final plat and recorded with the Cumberland County Register of Deeds as required by subsection (a) (1) of Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina. The Operation and Maintenance Agreement of stormwater management facility for future sections of the Lakedale subdivision, shall mean the agreement as required by Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, as referenced on the final plat and recorded with the Cumberland County Register of Deeds as required by subsection (a) (1) of Section 23-39 of the Stormwater Control Ordinance of Fayetteville, North Carolina, as the same may be amended from time to time.

## ARTICLE II. PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Initial Properties. The initial properties subject to these covenants are Lots 12 through 24, inclusive, Lot 291 through 106, inclusive, and Lots 123 through 129, inclusive, of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry.

Section 2. Other Additions. Additional building lots may be brought by Declarant under the jurisdiction of these covenants and the Lakedale Owners Association, Inc. within fifteen (15) years after the date of the recording of this instrument as future sections of the Lakedale subdivision may be developed from time to time by Declarant from the tract of land conveyed to Broadwell Land Company by C C of Fayetteville, LLC, by a deed dated 05/12/2008, recorded in Book 7889, page 793, Cumberland County Registry, except that no Lots of future sections of the Lakedale subdivision shall become subject to these covenants until after the recording of the plat or plats for said future section(s) and the recording of a Supplemental Declaration by Declarant which incorporates by reference this Declaration and which expressly makes the Lots of the new section(s) subject to the covenants herein, or portions of same. The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect the different character, if any, of the new section(s), but such modification shall have no effect on the properties described herein.

## ARTICLE III. PROPERTY RIGHTS

Section 1. Common Area. As soon as practicable after the conveyance by Declarant of the first Lot of the LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision, a "ZERO LOT LINE" Development, Book of Plats 145, page 43, Cumberland County Registry to a purchaser, Declarant shall convey to the Association, in trust for the uses and purposes set forth in the Charter and By-Laws of the Association, the initial Common Area. At the option of Declarant, Declarant may in the future convey to the Association, in trust, any easements or other property or property rights, including any common area shown on plats of future sections of the Lakedale subdivision.

Section 2. Additional Real or Personal Property. The Association may acquire by gift, purchase or otherwise, and may own, hold, improve, build upon, operate and maintain additional real or personal property in connection with the affairs of the Association to promote the health, safety and welfare of the residents of the LAKEDALE, SECTION 1, Subdivision, and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 2. Owners' Easements of Enjoyment. Every Owner of an Assessable Lot shall have a right of easement of enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Assessable Lot.

Section 3. Access Easement over Property of Declarant and Lots of Owners.

(a) The Association, acting through its officers, agents and employees, shall have the right of unobstructed access at all reasonable times to all properties of Owners as may be reasonably necessary to perform maintenance, including maintenance, repair and reconstruction of the fences located on or on the border of the common areas, to the Common Area.

(b) The City of Fayetteville and City of Fayetteville personnel shall have a right of entry upon the property of Declarant and of Owners:

(i) as provided by Section 23-27 of the Fayetteville Code of Ordinances, over the easements designated in the stormwater design plan for inspection and emergency maintenance of the drainage system conveying public water;

(ii) as provided by Section 23-39 of the Fayetteville Code of Ordinances, in the event the city engineer has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the stormwater management facility.

#### ARTICLE IV. STORMWATER MANAGEMENT FACILITIES

Section 1. The Association, acting through its officers, is authorized and directed, to enter into a contract(s) to accept ownership from Declarant of the stormwater management facilities of the Lakedale, Section 1, subdivision and for future sections of the Lakedale subdivision that are brought by Declarant under the jurisdiction of the Association and to execute all documents necessary for the release of the performance security of Declarant following the successful inspection(s) as provided by Section 23-37 of the Stormwater Control Ordinance of Fayetteville, North Carolina.

Section 2. The Association, acting through its officers, is authorized and directed, to enter into an Operation and Maintenance Agreement for the stormwater management facilities that, as required by Section 23-39 (b) of the Stormwater Control Ordinance of Fayetteville, North Carolina, includes all of the following provisions:

**"Sec. 23-39. Operation and maintenance agreement.**

" . . .

"(b) *Special requirement for homeowners' and other associations.* For all stormwater management facilities required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity,

the required operation and maintenance agreement shall include all of the following provisions:

"(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

"(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater management facilities. If stormwater management facilities are not performing adequately or as intended or are not properly maintained, the city, in its sole discretion, may remedy the situation, and in such instances the city shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater management facilities, provided that the city shall first consent to the expenditure.

"(3) Both developer and homeowners' association contributions shall fund the escrow account. Prior to the release of the installation performance security as outlined in Section 23-41, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the stormwater management facilities. Two-thirds (2/3) of the total initial construction cost shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the stormwater management facilities. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the escrow account budget.

"(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the city depending on the design and materials of the stormwater control and management facility.

"(5) Granting to the city a right of entry to inspect, monitor, maintain, repair, and reconstruct stormwater management facilities.

"(6) Allowing the city to recover from the association and its members any and all costs the city expends to maintain or repair the stormwater management facilities or to correct any operational deficiencies. Failure to pay the city all of its expended costs, after 45 days' written notice, shall constitute a breach of the agreement. In case of a deficiency, the city shall thereafter be entitled to bring an action against the association and its members to pay or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

"(7) A statement that this agreement shall not obligate the city to maintain or repair any stormwater management facilities, and the city shall not be liable to any

person for the condition or operation of stormwater management facilities.

"(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the city to enforce any of its ordinances as authorized by law.

"(9) A provision indemnifying and holding harmless the city for any costs and injuries arising from or related to the stormwater management facility, unless the city has agreed in writing to assume the maintenance responsibility for the stormwater management facility and has accepted dedication of any and all rights necessary to carry out that maintenance."

ARTICLE V.  
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Corporation, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be pursuant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

Section 2. Voting Rights. The corporation 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 vote for each Assessable Lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot; and in the absence of an agreement between the persons holding the interests in any lot the vote for the Lot shall be in the same fractions as the ownership.

CLASS B: Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Assessable 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: (a) When the Declarant is no longer the owner of any Assessable Lot; or (b) on January 1, 2021.

ARTICLE VI.  
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Determination of Lots to be Assessed. The Lots subject to assessments during a fiscal year of the Association shall be the Assessable Lots as of January 1 of the fiscal year of the Association to which the assessment applies.

Section 2. Creation of the Lien and Personal Obligation of Assessments. The Owner of each Assessable Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, is deemed to covenant, and agree to pay assessments to the Association as follows:

- a. Annual Assessments; and
- b. Special Assessments.

All assessments levied by the Association shall be used exclusively for payment of the Common Expenses as defined in Section 10 of Article I.

The Annual Assessments and the Special Assessments on each Assessable Lot, together with interest on delinquent assessments at the rate of six per cent. per annum, costs, and reasonable attorney's fees, shall be a charge on and a continuing lien upon the Assessable Lot, and shall also be the personal obligation of the Owner of the Assessable Lot at the time the assessment fell due.

Section 3. Annual Assessments. The Annual Assessments shall be in the amount determined by the Association to be necessary and adequate for the payment of the Common Expenses of the Association.

The maximum Annual Assessment levied for the first fiscal year for which an Annual Assessment is levied shall not exceed \$150 per Assessable Lot and no Annual Assessment for any fiscal thereafter shall exceed \$150 per Assessable Lot without approval of a majority of the Membership by a vote at a regular or special meeting of the Members.

Section 4. Special Assessment. A Special Assessment may be levied by the Association for the purpose of repaying to the City of Fayetteville any and all costs the city expends to maintain or repair the Stormwater management facilities or to correct any operational deficiencies of the Stormwater management facilities and which is not covered by the escrow account for that purpose. Any Special Assessment levied in any fiscal year of the Association that exceeds \$100 per Assessable Lot will require approval of a majority of the Owners by a vote at a regular or special meeting of the Members of the Association.

Section 5. Notice and Quorum. Notice for approval of the Membership in the Association under Sections 3. and 4. immediately above shall be by written notice of the meeting served upon or mailed to each Member of the Association entitled to vote thereat at such address as appears on the books of the Association, at least ten (10) days but not more than fifty (50) days prior to the meeting.

Over twenty (20) percent of the total Owners of the Assessable Lots of the Association, present in person or represented by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at a meeting, the members entitled to vote thereat, present in person or represented by written proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting originally called. If adjournment extends past thirty (30) days, notice of the date on which the adjourned meeting is to be reconvened shall be given as herein provided for regular meetings.

Section 6. Uniform Rate of Assessment. Both Annual Assessment and Special Assessments shall be fixed at a uniform rate for all Assessable Lots and shall be payable as determined and ordered by the Association.

Section 7. Date of Commencement of Assessments. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the passage of a resolution by the Board duly establishing same. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

Section 8. Effect of Nonpayment of Assessments and Remedies of the Association. In the event an Owner does not pay any sums, charges, or assessments required to be paid to the Association by the due date, the Association may enforce its lien for assessments, or take such other action to recover the sums, charges of assessments to which it is entitled, in accordance with the statutes made and provided. If the Association becomes the owner of a Lot by reason of foreclosure of its lien, it shall offer said Lot for sale, and, at such time as a sale is consummated, it shall deduct from the proceeds of such sale, all sums of money due it for assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, funds necessary to discharge any liens or mortgages of record, and any all expenses incurred in the resale of the Lot, which shall include but not be limited to advertising expenses, real estate brokerage fees, expenses necessary for the repairing and refurbishing of the Lot in question. All monies remaining after deducting the foregoing items of expenses, costs and other deductions shall be returned to the former owner of the subject Lot.

Section 9. Rights of Eligible Mortgage Holders. Upon the written authorization filed with the Association of an Owner, or upon the written request of an Eligible Mortgage Holder consented to in writing by the involved Owner and filed with the Association, the Association shall notify such Eligible Mortgage Holder of any delinquency in payment of assessments by such Owner that have remained uncured for a period of sixty (60) days.

Section 10. Indemnification. The Association may indemnify any director or officer of the Association who is made a party to an action by reason of his being or having been a director or officer of the Association against any reasonable expenses, including attorney's fees actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, except in relation to such matters as to which such director or officer is adjudged to have been guilty of gross negligence or misconduct in the performance of his duty to the corporation.

#### ARTICLE VI USE RESTRICTIONS

1. All of said "lots" shall be used for residential purposes only and shall not be used for any business or commercial purposes. Group family homes are prohibited.

2. All "lots" in the said LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision shall be residential lots, and no structure shall be erected, altered, placed or permitted to remain on any of said lots except one detached single family dwelling of not more than two and one-half stories in height, a private garage for not more than three cars, and other out-buildings in the rear of the dwelling house which may be incidental to normal residential use in subdivisions of similar category.

3. No dwelling shall be erected or allowed to remain on any of the said "lots" which shall contain a heated-area living space of less than one thousand five hundred (1500) square feet, of which not less than seven hundred fifty (750) square feet shall be on the first or ground floor. Heated area living space shall mean the ordinary living space in a house that is designed and constructed so as to be capable of being heated for regular living use in cold weather. In the computation of floor space, furnace room areas, garages, carports, and porches shall not be counted.

4. (a) No building shall be located on any lot nearer to the front or rear lot lines or nearer to a side street line than the minimum building setback lines and dimensions as are set out in the R-10 Residential Zone of the Fayetteville City Zoning Ordinance as of the date of recording of these restrictions. For the purpose of this covenant, caves, steps, and decks without roofs shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion



of a building on a lot to encroach upon another lot. Open fire escapes, outside stairways, the ordinary projections of chimneys and flues, swimming pools, flag poles, decorative fountains, and other similar items may be erected in required yards when placed so as not to obstruct light and ventilation necessary for the structure.

(b) The side line restriction of "lots" shall be the minimum side line distance as set forth in the deed from Broadwell Land Company to the purchaser; and if no side distance is so specified, then the distance shall be five (5) feet. The rear line restriction of "lots" contiguous to zero lot lines of other sections of this subdivision shall be the minimum rear distance as set forth in the deed from Broadwell Land Company to the purchaser; and if no rear distance is so specified, then the distance shall be thirty-five (35) feet.

(c) Lots 99, 100, 105, 106, 123 and 129, these being corner lots, shall observe front yard setbacks along each of the two intersecting streets along the lot.

(d) All lots on the periphery of this LAKEDALE, SECTION TWO, PARTS 2-3, Subdivision shall observe the applicable setbacks for the side and rear lot lines that are provided by for the R10 Residential zone of the Fayetteville City Zoning Ordinance.

(e) In the event the side yard setback or the rear yard setback is zero, then a minimum five feet wide maintenance easement will be provided on the adjoining lot, which maintenance easement is to be maintained by the owner of the lot having the zero lot line.

5. Easements for drainage and for drainage swales, and for installation and maintenance of drainage facilities, including pipelines, are reserved as shown on the recorded plat; and, additionally, ten (10') foot easements for all of such purposes are reserved along all interior "lot" lines, such ten (10') foot easements being five (5') feet on each side of each interior "lot" line of each of the aforesaid "lots"; provided, that if Declarant at the time of the initial conveyance of any lot or lots of said subdivision shall change the size or shape of any building lot by adding a strip of land to a "lot", or by deleting a strip of land from a "lot", then the ten (10') foot easement herein reserved shall be five (5') feet on each side of the common, interior lot line of the lot as initially conveyed by Declarant.

6. Prior to December 31, 2020, no building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing location of the structure on the individual Lot have been approved in writing by Broadwell Land Company, or its designees, as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. No construction may be constructed with an exterior wall finish of material of concrete or cinder block type construction or shall be finished in asbestos siding shingles.

7. (a) No chain link fences shall be erected within this subdivision.

(b) No wire or solid panel fences may be erected on "lots" closer to any street line than the corner of houses and the street lines, but such fences may be erected on the rear portion of the lots and may extend no closer to streets than the rear corners of houses on the lots. Ornamental fences (i. e., split rail fences, or fences through which there is at least 75% visibility) not to exceed three (3') feet in height may be constructed within the areas between the houses and the street lines. Wire fences made of what is commonly referred to as "welded wire" may be placed behind the "ornamental fences" referred to above in this subsection (b) but shall not exceed the height of the ornamental fence. No fence, wall, or hedge higher than six feet shall be erected or maintained on any lot.

8. All lots as shown on the aforesaid recorded plat are approved as to size and shape. No lot shall be re-subdivided in any manner so as to create any new or revised lot having a width of less than 80 feet at the minimum setback line or having an area of less than 10,000 square feet.

9. All areas indicated as streets and easements on the aforesaid recorded plat are hereby dedicated to public use forever.

10. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

11. Large television satellite dish antennas placed in yards are prohibited. Small television satellite antennas attached to the rear of houses are permitted.

12. No sign or signs other than a "For Sale" or "For Rent" sign shall be displayed on the property within the subdivision.

13. No automobile or motor vehicle may be dismantled or stored on said property; and no mechanically defective automobile, motor vehicle, mechanical machine, or machinery, shall be placed or allowed to remain on said property for over thirty (30) days. Notwithstanding the above, these restrictions shall not apply if such vehicle is kept in an enclosed garage. No commercial trucks shall be permitted to be parked on any lot except in the course of delivery, pick up or discharge of a specific commercial duty.

Section 14. No animals or poultry of any kind, except common pets, shall be placed or kept on any part of the premises. No breed of dogs that may be perceived by members of the general public as being dangerous or having a propensity for being dangerous, including, but not limited to, pit bulls, Rottweilers, Dobermans, chows and German shepherds, nor any dog whose lineage includes any part of any of said breeds, nor any dog that has at any time bitten a person, nor any dog that has been trained as an attack dog, shall be permitted on the premises unless such dog is at all times confined within fencing as follows: on all sides of the confinement area by a privacy fence (i.e., a fence of solid type construction through which a person cannot see) not less than five feet (5') in height. The fence shall extend from the rear corners of the principal dwelling structure out to the side lot lines, thence back for a distance of not less than fifty feet from the principal dwelling structure, and closed with a fence parallel to the rear of said structure, or the fence may extend for a distance less than the total distance from said structure to the side lot line in which event it shall extend for a distance outwardly from the rear corners of the principal dwelling structure parallel to the front property line and thence back and parallel to the side lot lines for a distance of not less than fifty feet (50') and closed with a fence parallel to the rear of said structure. A chain link fence not less than five feet (5') in height may be built around the remaining perimeter of the Lot. On improved corner lots, no such fencing may be placed any closer to the street than the back, rear corner of the principal dwelling structure closest to the street, or, on vacant lots, closer to any street than the setback line, and in no event closer than thirty feet (30') to any street. Any dog house or dog containment structure or system must be located to the rear of the principal dwelling structure and must be located within thirty feet (30') of the rear of the main structure. No such permitted dog house or dog containment structure or system shall be placed, erected or maintained closer to any street than the rear corner or side of the principal dwelling structure on improved lots or closer to any street than the setback line on any vacant lot, and in no event closer to any street than thirty feet (30'). On improved corner lots, no dog house or dog containment structure or system shall be placed any closer to the street than the rear corner of the principal dwelling structure closest to the street, or, on vacant lots, closer to any street than the setback line, and in no event closer to any street than thirty feet (30').

15. Declarant reserves the right to subject the real property in this entire subdivision to a contract with the provider of electrical service for the installation of underground electric cables and/or the installation of street lighting, either or both, of which will require an initial payment and/or a continuing monthly payment to the provider of electric service by each residential customer having service in the subdivision, and which charge may be included in the regular bill for residential electric service.

16. Notwithstanding the foregoing provisions requiring residential use of the lots in this subdivision, Declarant and its successors in title may devote any lot or portion thereof, not already sold, for any constructions and uses which it, in its discretion, deems necessary in order to provide the subdivision with utilities; and Declarant, and its successors in title, may devote any lot or portion thereof, not already sold, or once sold but later reacquired by Declarant, for street purposes for access to any adjoining properties now owned, or hereafter acquired, by Declarant.

17. It is understood and agreed that these restrictions are made for the mutual benefit of the grantors and grantees and any and all subsequent grantees, and all such parties shall be deemed to have a vested interest in these restrictions and the right to enforce same.

18. The invalidation of any one or more or any part of any one or more of the covenants and conditions set forth herein shall not affect or invalidate the remaining covenants or portions thereof.

ARTICLE VIII.  
GENERAL PROVISIONS

Section 1. ENFORCEMENT. 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 any Owner to enforce any covenants 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 wise affect any other provisions which shall remain in full force and effect.

Section 3. LOTS SUBJECT TO DECLARATION. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with, the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of the Declaration shall inure to the benefit of and be enforceable by the Owner of any lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 4. AMENDMENT OF DECLARATION. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by a written instrument to such effect signed by not less than fifty (50%) percent of the Lot Owners and recorded; and such termination shall become effective at the end of the initial twenty (20) year period, or the subsequent ten (10) years term during which the termination instrument is recorded.

While Broadwell Land Company remains as the owner of (or holds a purchase money deed of trust on) one or more "lots" of this subdivision, the covenants and restrictions of this Declaration may be released, changed, modified, or amended, to make the covenants less restrictive, with respect to all "lots", or with respect to one or more specific "lots", by an instrument executed by Broadwell Land Company and recorded. After Broadwell Land Company is no longer the owner of (nor holds a purchase money deed of trust on) any "lot" or "lots" within said subdivision, the covenants and restrictions of this Declaration may be released, changed, modified, or amended, to make the covenants less restrictive, with respect to all "lots", or with respect to one or more specific "lots", by an instrument to such effect signed by the Owners of not less than fifty (50%) percent of the "lots" and recorded.

Provided, that the provisions set forth as paragraphs 4(c), 4(d) and 4(e) of ARTICLE VII may be released, changed, modified, or amended only with the additional approval or consent of the Fayetteville City Planning Board.

Any revocation or amendment of these covenants must be recorded.

Section 5. LAW CONTROLLING. This development is being undertaken pursuant to the provisions of Chapter 47A of the North Carolina General Statutes and Section 25-31, Subsection (9) of the Fayetteville Code of Ordinances, both of which are incorporated by reference. In the event of any conflict between the Statute and Ordinance cited, then the Statute shall control.

IN WITNESS WHEREOF, BROADWELL LAND COMPANY, the Declarant herein, has caused this Declaration to be signed in its name the day and year first above written.

(CORPORATE SEAL)

BROADWELL LAND COMPANY

By: [Signature]  
Dohn B. Broadwell, Jr., President

NORTH CAROLINA  
CUMBERLAND COUNTY

I, Ellen P. Newton, a Notary public of North Carolina, certify that Dohn B. Broadwell, Jr. (who is personally known to me) personally came before me this day and acknowledged that he is President of Broadwell Land Company, a corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

ELLEN P. NEWTON  
NOTARY PUBLIC  
ROBERSON COUNTY, N. C.  
(Seal Stamp)

WITNESS my hand and official seal, this 27<sup>th</sup> day of September 2020.

[Signature]  
(Signature of Notary Public)

Ellen P. Newton  
Notary Public

My Commission Expires: 05/16/2021