

Prepared by and return to: Philip S. Adkins, P.O. Box 52393, Durham, NC 27717

AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
RED MOUNTAIN SUBDIVISION

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions for Red Mountain Subdivision were recorded in the Durham County Registry on July 25, 1986, in Book 1296, Page 932; amended by Amendment to Clarify Declaration of Covenants, Conditions and Restrictions recorded on August 4, 1986, in Book 1300, Page 63; and further amended by Amendment recorded on August 21, 1986, in Book 1304, Page 626; and further amended by Amendment recorded on November 29, 1990, in Book 1628, Page 555 ("Declaration"); and additional lots were subjected to said Declaration and Amendments by Declarations of Annexation recorded in the Durham County Registry on October 30, 1987, at Book 1411, Page 655, and on November 30, 1992, at Book 1796, Page 377, respectively, and further amended by Amendment recorded on May 9, 2005, in Book 4787, Page 295.

WHEREAS, property owners have expressed a desire to make and agree to covenants between and among themselves, and

WHEREAS, the North Carolina Planned Community Act allows a planned community to adopt the Planned Community Act by an affirmative vote of at least 67% of those qualified to vote, and

WHEREAS, more than 75% of those property owners qualified to vote as members of Red Mountain Owners, Inc. agree that it is in their best interest to adopt the following Restrictive Covenants in order to address the current needs and desires of the Red Mountain community,

NOW, THEREFORE, the property owners declare that:

All property located in Red Mountain Subdivision, as defined in Exhibit A, is and shall be subject to these Restrictive Covenants, and

These Amended and Restated Declaration of Covenants, Conditions and Restrictions, (herein after "Restrictive Covenants") will replace the existing Restrictive Covenants in their entirety, and

These Restrictive Covenants shall run with the land, and

These Restrictive Covenants shall be binding on all parties having or acquiring any right, title or interest in real estate in the Red Mountain Subdivision.

ARTICLE I PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Red Mountain Subdivision and its Lots, as defined in Exhibit A, are subject to this Amended and Restated Declaration.

Section 2. With this Amendment, the Red Mountain Subdivision is adopting Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act in its entirety.

ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to the Red Mountain Owners, Inc.

Section 2. "Owner" shall mean and refer to a person who owns a Lot in the Red Mountain Subdivision, but does not include a person having an interest in a lot solely as security for an obligation.

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 5. "Lot" shall mean a physical portion of the planned community designated for separate ownership or occupancy by a lot owner.

Section 6. "Buildable Lot" shall mean a lot that meets the minimum requirements for the construction of a residential dwelling according to governing regulations.

Section 7. "Non-buildable Lot" shall mean a lot that does not meet the minimum requirements for the construction of a residential dwelling according to governing regulations.

Section 8. "Executive Board" shall refer to the body established pursuant to the By-Laws to act on behalf of the association.

ARTICLE III PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract

purchasers who reside on the property.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot, as described in Exhibit A, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A members shall be all Owners of Buildable Lots, and shall be entitled to one (1) vote for each Lot owned. When more than one person owns a Lot, all such persons shall be members of the association. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The association shall be allowed the presumption that a person or entity has been authorized by all the owners when they cast a vote for a lot.

Class B. Class B members shall consist of all Owners of Non-buildable Lots, and shall not be entitled to the voting privileges accorded to Class A members, nor are the Class B members entitled to the use of the Common Areas.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, as defined in Exhibit A, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment.

(a) The maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) The maximum annual assessment may be increased above ten percent (10%) by a vote of sixty-seven percent (67%) of the votes of each voting lot owner who is voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Executive Board may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the

purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or other common expenses provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each voting lot owner who is voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of lot owners or of proxies entitled to cast sixty percent (60%) of all the votes of the lot owners shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Annual assessments, as well as any special assessments, must be fixed at a uniform rate for all Buildable Lots and may be collected on a monthly basis. No assessments will be charged for Non-buildable Lots.

Section 7. Annual Assessments. The Executive Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

ARTICLE VI EXTERIOR CONDITIONS

Section 1. Architectural Controls. All Lots shall be used for single family, residential purposes exclusively, except Lots used for a well house. Activities such as a home office or home-based business that are consistent with use as residential property are permitted. Such use shall not interfere with or be a nuisance to other property owners.

No structure, fence or wall shall be erected or placed or altered on any tract until the construction plans and specifications and a plan showing location of said structure or fence have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony with external design with existing structures, and as to location with respect to topography and finished grade elevation.

The Architectural Control Committee shall be composed of three (3) or more representatives appointed by the Executive Board of the Association. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Approvals by the Architectural Control Committee are not transferable to subsequent lot owners.

Construction must begin within twelve (12) months of obtaining Architectural Control Committee approval and the project must be completed within eighteen (18) months after the construction has been started. If construction is not started within twelve (12) months of ACC approval, the approval shall automatically expire and the lot owner must submit a new request for approval.

Section 2. Structures. No structure, except those constructed before January 1, 1990 or as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling having a minimum of 1,900 habitable, heated square feet of living area, if a one story dwelling, or a minimum of 1,000 habitable, heated square feet of living area on the first floor, and a minimum total of 1,900 habitable square feet of living area, if a two story dwelling, and such other accessory buildings allowed by the Architectural Control Committee. No structure except a fence may be constructed prior to construction of the main building. Additionally, no structure of temporary character, trailer, camper, basement, tent, shack, garage, barn, stable, or other outbuilding may be used on any lot, other than common areas, at any time as a residence, either temporarily or permanently.

Section 3. Setback Lines. No dwelling or building of any kind, other than a well house, shall be located on any Lot nearer than seventy-five (75) feet to the front Lot line nor nearer than thirty (30) feet to the rear Lot line. No building shall be located nearer than twenty (20) feet to an interior side Lot line nor nearer than forty (40) feet to a corner side Lot line, where these setback lines are found to be impractical for the utility of a particular Lot. These setback lines may be changed by written consent of the Architectural Control Committee.

Section 4. Condition of Buildings and Grounds. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or of the specific area. Non-operating cars, unused objects or apparatus, or any portion thereof, shall not be permitted to remain on any Lot. All Lots shall be kept clean and free of garbage, junk, trash, debris, or any substance that might contribute a health hazard or the breeding and habitation of snakes, rats, insects, etc. Each purchaser of a respective Lot shall cause each lawn to be mowed as needed, cause the maintenance and protection of landscaping, insuring proper drainage of the Lot so as to prevent soil erosion, and cause the maintenance of any other structure or improvement located upon said Lot. Unless otherwise approved by the Architectural Control Committee, all cutting of trees outside the building sites will be in such manner so as to leave the lot wooded.

Section 5. Noxious Activity. No offensive or noxious activity shall be carried upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants, devices or things of any sort, whose normal activity or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof.

Section 6. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than 24" x 24" and one sign of not more than six (6) square feet advertising the property during the construction and sale.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes, unless allowed by the Association, and provided that such household pets do not attack horses or horsemen. All horses must be stabled and maintained at the facility provided by the Association.

Section 8. Garbage. Each Owner shall provide receptacles for garbage in an area not generally visible from public street view, or provide underground garbage receptacles or a similar facility in accordance with reasonable standards.

Section 9. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house, within any other structure, buried underground, or otherwise

hidden from view.

Section 10. Satellite Dishes and Antennas. Satellite dishes and antennas designed for receiving television and radio transmissions are permitted only after written approval from the Architectural Control Committee is obtained by the Owner in the manner set out in Article VI, Section 1 herein.

Section 11. Sewer. Sewage disposal shall be by means of an individual septic tank system at the Owner's expense, upon approval of said system by the appropriate public authority.

Section 12. Exterior Conditions. Each property owner shall, within six (6) months after occupancy, construct a paved apron that begins at the edge of the paved street and extends to the property line and serves as that portion of the driveway.

ARTICLE VII GENERAL PROVISIONS

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

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

Section 3. Annexation. Annexation of additional property shall take place as follows:

(a) Annexation of additional property shall require the assent of sixty-seven percent (67%) of the voting lot owners at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of lot owners or of proxies entitled to cast sixty percent (60%) of the votes of the voting lot owners shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that sixty-seven percent (67%) of the voting lot owners are not present in person or by proxy, lot owners entitled to vote but not present may give their written assent to the action taken thereat.

(b) Annexation of additional Properties shall be accomplished by recording in the Durham County Register of Deeds office a Declaration of Annexation, duly executed by Executive Board pursuant to subparagraph (a) above, describing the lands annexed and incorporating the provisions of these Restrictive Covenants, either by reference or by fully setting out said provisions of these Restrictive Covenants. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation

(c) All additional lands annexed pursuant to this Section 3 shall be subject to assessment for their proportionate share of Association expenses.

Section 4. Subdivision and Recombination of Lots.

- (a) A Lot may be subdivided provided that:
- a. a plat is recorded in the Durham County Register of Deeds office showing the subdivided lots,
 - b. all subdivided lots fully meet all relevant federal, state and local laws, ordinances, or regulations,
 - c. in no case, shall a subdivided lot be less than three (3) acres,
 - d. approval must be obtained from all abutting Red Mountain Subdivision Lot Owners, and
 - e. the lot subdivision is approved by seventy-five percent (75%) of the members of the Executive Board.
- (b) Two or more Lots may be recombined provided that:
- a. a plat is recorded in the Durham County Register of Deeds office showing the recombined lot,
 - b. no more than one Buildable Lot is included in the recombined lot,
 - c. the recombined lot fully meets all relevant federal, state, and local laws, ordinances, or regulations, and
 - d. the recombination is approved by seventy-five percent (75%) of the members of the Executive Board.
- (c) The Executive Board must respond in writing to any request by a Lot Owner to have a Lot subdivided or to have one or more Lots recombined within sixty (60) days of the request with either approval or with the reasons for rejection. The lot owner must request approval pursuant to Article VI, Section 1 of these Restrictive Covenants before any improvements can be made to the subdivided or recombined Lot.

Section 5. Controlling Precedent. In the case of any conflict between the Planned Community Act, the Restrictive Covenants, the By-Laws and the Articles of Incorporation, these documents take precedence in the following order:

- a. The Planned Community Act
- b. The Restrictive Covenants
- c. The Articles of Incorporation
- d. The By-Laws

Section 6. Amendment. This Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the voting lot owners. Any amendment, to be effective, must be recorded at the Durham County Register of Deeds Office.

Section 7. Rules and Regulations. The Association shall set and shall promulgate such rules and regulations as it shall deem necessary.

Exhibit A

Being all of Lots 8, 9, 12, 13, 56, 57, 58, 60, 61, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, and 115 as shown on plat of Survey of Red Mountain Section 1-A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 142 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 106 (which is the recombination of Lots 106 and 107 as shown on plat of Survey of Red Mountain Section 1-A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 142) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 135 at Page 171 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 114 (which is the recombination of Lots 113 and 114 as shown on plat of Survey of Red Mountain Section 1-A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 142) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 125 at Page 41 to which plat reference is hereby made for a more particular description of same.

Being all of Lots 62, 65, 66, 67, 68, 70, 71, 74, 75, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94 and 95 as shown on plat of Survey of Red Mountain Section 1-B, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 143 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 64 (which is the recombination of Lots 63 and 64 as shown on plat of Survey of Red Mountain Section 1-B, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 143) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 159 at Page 33 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 73 (which is the recombination of Lots 72 and 73 as shown on plat of Survey of Red Mountain Section 1-B, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 143) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 155 at Page 79 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 77 (which is the recombination of Lots 69, 76 and 77 as shown on plat of Survey of Red Mountain Section 1-B, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 143) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 137 at Page 75 to which plat reference is hereby made for a more particular description of same.

Being all of Lots 14, 15, 16, 48, 49, 54 and 55 as shown on plat of Survey of Red Mountain Section 2A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 116 at Page 10 to which plat reference is hereby made for a more particular description of same.

Being all of Lots 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 as shown on plat of Survey of Red Mountain Section 2, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 128 at Page 13 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 19 (which includes Lot 7 as shown on plat of Survey of Red Mountain Section 1-A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 142) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 148 at Page 59 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 19A (which includes Lot 23 as shown on plat of Survey of Red Mountain Section 2A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 116 at Page 10) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 128 at Page 13 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 30 (which is the recombination of Lots 50, 51, 52 and 53 as shown on plat of Survey of Red Mountain Section 2A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 116 at Page 10) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 128 at Page 13 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 17 (which is the recombination of Lots 10 and 11 as shown on plat of Survey of Red Mountain Section 1-A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 111 at Page 142, and Lots 17 and 18 as shown on plat of Survey of Red Mountain Section 2A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 116 at Page 10) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 128 at Page 13 to which plat reference is hereby made for a more particular description of same.

Being all of Lot 18 (which is the recombination of Lots 19, 20, 21 and 22 as shown on plat of Survey of Red Mountain Section 2A, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 116 at Page 10) as shown on plat of Survey, as per plat and survey thereof now on file in the Office of the Register of Deeds in Durham County in Plat Book 127 at Page 179 to which plat reference is hereby made for a more particular description of same.

CERTIFICATION OF VALIDITY OF AMENDMENT AND RATIFICATION

By authority of its Board of Directors, Red Mountain Owners, Inc. hereby certifies that the foregoing instrument has been duly executed by the owners of _____ percent of the lots in the Red Mountain Subdivision and is, therefore, a valid amendment to the existing Declaration and Ratification of Declarations of Annexation.

This the _____ day of _____, 2005.

RED MOUNTAIN OWNERS, INC.

By: _____
President

[CORPORATE SEAL]

NORTH CAROLINA

DURHAM COUNTY

Personally came before me, _____, Notary Public for Durham County, North Carolina, _____, who, being by me duly sworn, says that he is President of the Red Mountain Owners, Inc., a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said _____ acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official seal, this the _____ day of _____, 2005.

[Official Seal]

Notary Public

My Commission expires: _____