

WAKE COUNTY, NC 1346
LAURA M RIDDICK
REGISTER OF DEEDS
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PREPARED BY AND HOLD AFTER RECORDING FOR: AARON D. GARRETT,
ATTORNEY AT LAW (BOX 67).

STATE OF NORTH CAROLINA

COUNTY OF WAKE

SECOND AMENDMENT
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE BLOOMFIELD HOMEOWNERS
ASSOCIATION, INC. AND FOR
BLOOMFIELD SUBDIVISION

This SECOND AMENDMENT to the Declaration Of Covenants, Conditions and Restrictions For The Bloomfield Homeowners Association, Inc. And For Bloomfield Subdivision (hereinafter referred to as the "Second Amendment"), made this 9th day of July, 2002 by MONTCLAIR, LLC, a North Carolina limited liability company (hereinafter referred to as the "Declarant"); and HAYWOOD A. LANE, JR., Trustee for The Fidelity Bank, under those certain two (2) Deeds of Trust recorded in Book 8883, Page 2582, and Book 9259, Page 1731, Wake County Registry (hereinafter referred to as "Trustee"); and THE FIDELITY BANK, a North Carolina banking corporation (hereinafter referred to as the "Bank").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of all of the single-family residential lots, common area and all other real property situated in "Bloomfield Subdivision" as depicted on those certain three (3) plats recorded in the office of the

Register of Deeds of Wake County, North Carolina, in Book of Maps 2001, Pages 2257, 2258 and 2259 (said three maps being hereinafter collectively referred to as the "Plats"); and

WHEREAS, Declarant heretofore executed certain Deeds of Trust to Haywood A. Lane, Jr., Trustee for The Fidelity Bank, recorded in Book 8883, Page 2582 and Book 9259, Page 1731, Wake County Registry (said two deeds of trust being hereinafter collectively referred to as the "Deeds of Trust"), which said Deeds of Trust are presently secured by all of the real property making up "Bloomfield Subdivision"; and

WHEREAS, all of the single-family residential lots and common areas in the abovedescribed "Bloomfield Subdivision" has heretofore been subjected by Declarant to that certain instrument entitled "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BLOOMFIELD HOMEOWNERS ASSOCIATION, INC. AND FOR BLOOMFIELD SUBDIVISION" recorded in Book 9194, Page 1936, as corrected and re-recorded in Book 9298, Page 2271, and as amended by First Amendment recorded in Book 9298, Page 2307, all of the Wake County Registry (hereinafter collectively referred to as the "Declaration"); and

WHEREAS, pursuant to the terms and provisions of Paragraph A of ARTICLE XII of the Declaration, "For so long as the Declarant, its successors and/or assigns, shall own any 'Declarant's Property', Declarant, its successors and/or assigns, shall have the right to revoke and/or amend any of the terms and provisions of the Declaration, so long as such revocation and/or amendment is not in violation of the ordinances of the County of Wake, North Carolina. Any such amendment or revocation shall be effective when duly recorded in the Office of the Register of Deeds of Wake County, North Carolina"; and

WHEREAS, Declarant presently owns portions of "Declarant's Property" in the Subdivision and has the right to amend the Declaration as aforedescribed; and

WHEREAS, Declarant desires to amend the Declaration to meet the requirements of the Department of Housing and Urban Development so that the lots in Bloomfield Subdivision will qualify for HUD/FHA/VA financing and be approved for such by the Department of Housing and Urban Development, and such amendments to the Declaration will not violate any of the ordinances of the County of Wake, North Carolina; and

WHEREAS, the covenants, conditions and restrictions of the Declaration, as amended herein, shall run with all the

lots and other property in Bloomfield Subdivision as shown and depicted on the aforescribed recorded Plats and shall be binding on all parties having any right, title or interest therein, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, Declarant and the Trustee and the Bank, for themselves, their heirs, successors and/or assigns, do hereby covenant and agree that the Declaration is and shall be amended as follows:

1. Paragraph J of ARTICLE I on page 3 of the Declaration is hereby deleted and a new Paragraph J of ARTICLE I which reads as follows is hereby placed in its place and stead:

"J. 'Declarant's Property' shall mean and refer to any real property owned by Declarant, its successors and/or assigns, which (a) is situated in the Subdivision or is adjacent to and adjoins any Lot or PERMANENT OPEN SPACE (COMMON AREA) in the Subdivision, and (b) is subject by the provisions of this Declaration to future assessment by the Association, and (c) has been annexed into the Subdivision and into the Association pursuant to the terms and provisions of this Declaration, or as this Declaration may be amended in the future."

2. Paragraph A of ARTICLE II on page 4 of the Declaration is hereby amended by adding the following sentence at the end of the present Paragraph a: "The foregoing provisions of this Paragraph A are subject to all of the terms and provisions contained in Paragraph F of ARTICLE XII of this Declaration."

3. Paragraph C of ARTICLE II on page 5 of the Declaration is hereby amended by adding the following sentence at the end of the present Paragraph C: "The foregoing provisions of this Paragraph C are subject to all of the terms and provisions contained in Paragraph F of ARTICLE XII of this Declaration."

4. Paragraph D of ARTICLE II on page 5 of the Declaration is hereby amended by adding the following sentence at the end of the present Paragraph D: "The foregoing provisions of this Paragraph D are subject to all of the terms and provisions contained in Paragraph F of ARTICLE XII of this Declaration."

5. Subparagraph 1 of Paragraph A of ARTICLE III which begins on page 5 of the Declaration is amended by deleting

the words "Until such time as Declarant shall no longer be a Class B Member of the Association" from the first line and the beginning of the second line in said Subparagraph 1 of Paragraph A of said ARTICLE III and replacing said words with the following words: "Until such time as Declarant shall no longer own any Declarant's Property (as said term is defined in Paragraph B of ARTICLE V of this Declaration)".

6. Subparagraph 2 of Paragraph A of ARTICLE III on page 6 of the Declaration is amended by removing the words "be a Class B Member of the Association" wherever said words may appear in said Subparagraph 2 of Paragraph A of said ARTICLE III and replacing said words with the following words: "own any Declarant's Property (as said term is defined in Paragraph B of ARTICLE V of this Declaration)".

7. Subparagraph 2 of Paragraph B of ARTICLE IV on page 8 of the Declaration is hereby deleted and a new Subparagraph 2 of Paragraph B of said ARTICLE IV, which reads as follows, is substituted in the place and stead thereof:

"2. The Class B Member shall be the Declarant, its successors and/or assigns. Class B Membership shall cease and be converted to Class A Membership upon the first to occur of the following events:

(a) Written notice by Declarant, its successors and/or assigns, to the Secretary of the Association that the Class B Membership of the Declarant is to be converted to Class A Membership; or

(b) At 5:00 p.m. on February 20, 2012; or

(c) Upon the date when seventy-five percent (75%) of the Lots in the Subdivision have been conveyed to Owners other than Declarant, its successors and/or assigns."

8. Subparagraph 2 of Paragraph C of ARTICLE IV on page 8 of the Declaration is hereby deleted in its entirety and a new Subparagraph 2 of Paragraph C of said ARTICLE IV, which reads as follows, is substituted in the place and stead thereof:

"2. Class B Member shall be entitled to three (3) votes for each Lot owned (whether or not it is under contract to a Contract Seller or Builder)."

9. Subparagraph 1 and Subparagraph 3 of Paragraph B of ARTICLE V on pages 9, 10 and 11 of the Declaration are hereby deleted in their entirety and new Subparagraph 1 and a new Subparagraph 3 of Paragraph B of said ARTICLE V, which reads as follows, are hereby substituted in the places and stead thereof:

"1. For so long as Declarant is a Class B Member of the Association, the number of Directors of the Association shall be two (2) and shall be elected by the Declarant (the Class B Member). Thereafter, the number of Directors shall be increased to five (5), said five (5) Directors to be elected by the Members at a special meeting of the Members of the Association called by the Declarant within one hundred twenty (120) days next immediately following the date upon which Declarant shall cease to be a Class B Member of the Association. At such special meeting of the Members of the Association the Members shall elect one (1) Director to serve a term of one (1) year, two (2) Directors to serve a term of two (2) years, and two (2) Directors to serve a term of three (3) years. The annual meeting of the Members of the Association shall be held each year thereafter on the anniversary of the aforescribed special meeting, unless such date shall fall on a legal holiday, and in such case, on the next business day immediately following such legal holiday."

"3. After the date upon which the Declarant shall cease to be a Class B Member of the Association, the Members of the Association may, by a majority of the votes cast at any duly called annual or special meeting of the Members at which a quorum is present, increase or decrease the number of Directors of the Association, provided, however, that the number of Directors shall not be increased to more than seven (7) or decreased to less than five (5) without amendment of the Bylaws of the Association."

11. Subparagraph 3 of Paragraph A of ARTICLE VI which begins on page 11 of the Declaration is hereby amended by removing the words "(for so long as the Class B Member shall own any Declarant's Property)" in lines 8 and 9 of said Subparagraph 3 and replacing said words with the following

words: "(for so long as Declarant, its successors and/or assigns, shall be a Class B Member)".

12. ARTICLE VI of the Declaration is amended by adding the following three (3) new paragraphs designated Paragraphs D and E and F at the end of the present Paragraph C of ARTICLE VI on page 12 of the Declaration:

"D. Easement Appurtenant.. Each Member's right and easement of enjoyment of the PERMANENT OPEN SPACE (COMMON AREA) as aforescribed is appurtenant to and runs with the title to the Lot(s) owned by such Member."

"E. Ingress/Egress Through Common Area. If ingress or egress to any Lot in the Subdivision is provided through, across or over any PERMANENT OPEN SPACE (COMMON AREA), any conveyance of such burdened PERMANENT OPEN SPACE (COMMON AREA) through which such ingress/egress is given shall be subject to an easement appurtenant to and running with the title to the Lot to which such ingress/egress applies."

"F. Transfer of PERMANENT OPEN SPACE (COMMON AREA) to the Association. The Declarant intends to develop the Subdivision in one or more phases. Upon completion of the development of a phase in the Subdivision and approval by the appropriate governmental authorities, Declarant, its successors and/or assigns, shall convey all of the PERMANENT OPEN SPACE (COMMON AREA) applicable to such phase to the Association, free and clear of all liens and encumbrances, except for general service and utility easements and rights-of-way of record. Upon completion of all development in the Subdivision, Declarant, its successors and/or assigns shall convey to the Association all of the remaining PERMANENT OPEN SPACE (COMMON AREA) then un conveyed, free and clear of all liens and encumbrances, except for general service and utility rights-of-way of record."

13. ARTICLE VIII is amended by adding the following new Paragraph D at the end of the present ARTICLE VIII on page 25 of the Declaration:

"D. OWNERS RIGHTS. The Association and/or each Owner of a Lot in the Subdivision, including the Declarant, shall have the power and absolute

right to enforce the foregoing covenants and restrictions contained in this ARTICLE VIII against any violator of any of such covenants and restrictions by instituting a court action against such violator, including but not limited to an action for specific performance and/or damages, including but not limited to, reasonable attorney fees, court costs and other costs and/or expenses incurred in prosecuting any such action against a violator."

14. ARTICLE XI of the Declaration is amended by adding the following new Paragraph D at the end of the present ARTICLE XI on page 28 of the Declaration:

"D. Payment of Assessment. Owners/holders of a first deed of trust or first mortgage on a Lot in the Subdivision shall not be required to collect Annual and/or Special Assessments. Each Lot Owner shall be responsible for payment of any and all Annual and/or Special Assessments directly to the Association or its designated representative. Failure to pay Annual and/or Special Assessments shall not constitute a default under an insured HUD/FHA/VA mortgage."

15. Paragraph A of ARTICLE XII on page 28 of the Declaration is hereby deleted in its entirety and a new Paragraph A of ARTICLE XII, which reads as follows, is hereby inserted in its place and stead:

"A. This Declaration shall not be revoked, nor shall any of the terms and provisions hereof be amended, revised or modified in any manner, unless and until approved in writing by at least sixty-seven percent (67%) of the Lot Owners in the Subdivision; provided any such revocation, amendment, revision or modification must not be in violation of the ordinances of the County of Wake, North Carolina. Any such revocation, amendment, revision and/or modification shall be effective when duly recorded in the Office of the Register of Deeds of Wake County, North Carolina."

16. ARTICLE XII of the Declaration is amended by adding the following new Paragraph F at the end of the present ARTICLE VII on page 29 of the Declaration:

"F. FHA/HUD/VA Approval. For so long as there is a Class B Membership in the Association, as

Class B Membership is defined in this Declaration, the following actions shall require the prior written approval of the Department of Housing and Urban Development/Veterans Administration (FHA/ HUD/VA) before such actions can be effective:

- (1) The annexation of additional properties and/or PERMANENT OPEN SPACE (COMMON AREA) into the Subdivision and/or the Association;
- (2) The merger and/or consolidation of the Association into or with another entity;
- (3) The dedication of additional PERMANENT OPEN SPACE (COMMON AREA);
- (4) The mortgaging of any PERMANENT OPEN SPACE (COMMON AREA);
- (5) The dissolution of the Association; and
- (6) The amendment of this Declaration."

Except as hereinabove amended in this Second Amendment, all of the remaining terms and provisions of the Declaration, as previously amended, shall remain in full force and effect.

Trustee and Bank execute this Second Amendment only for the following purposes: (1) Trustee and Bank hereby acknowledge and consent to each and every term and provision of this Second Amendment; (2) Trustee and Bank do each hereby subordinate the liens of the aforescribed two (2) Deeds of Trust to all of the terms and provisions of the Declaration, as amended by the First Amendment thereto and this Second Amendment; and (3) Trustee and Bank hereby release from the lien of the aforescribed two (2) Deeds of Trust and forever quitclaim unto the Declarant named herein, its successors and/or assigns, all of the PERMANENT OPEN SPACE as described and depicted on those certain three (3) plats of BLOOMFIELD SUBDIVISION recorded in Book of Maps 2001, Page 2257, Book of Maps 2001, Page 2258, and Book of Maps 2001, Page 2259, Wake County Registry, and further described in "TRACT 4" on the Exhibit A attached to the "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BLOOMFIELD HOMEOWNERS ASSOCIATION, INC. AND FOR BLOOMFIELD SUBDIVISION" recorded in Book 9194, Page 1936, as amended and re-recorded in Book 9298, Page 2271, Wake County Registry. Except as for the property herein released by Trustee and Bank and the subordination as hereinabove described, all of the remaining

terms and provisions of the aforescribed two (2) Deeds of Trust shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and affixed their seals to this First Amendment, this the day and year first above written.

DECLARANT:
MONTCLAIR, LLC,
a North Carolina limited liability company

TRUSTEE:
Haywood A. Lane, Jr. (SEAL)
Haywood A. Lane, Jr.,
Trustee

BY: Thomas C. Hankins
Thomas C. Hankins,
Member/Manager

BANK:

THE FIDELITY BANK, a North Carolina banking corporation

BY: Glenn Futrell
Glenn Futrell,
Member/Manager

BY: Ernest W. Whitley
its _____ President

ATTEST Betty R. Hedgpeth
Secretary
(CORPORATE SEAL)

NORTH CAROLINA
~~WAKE~~ COUNTY FRANKLIN COUNTY

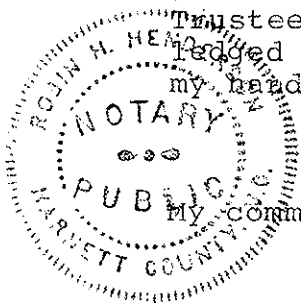
I, the undersigned, a Notary Public for the County and State aforesaid, hereby certify that THOMAS C. HANKINS and GLENN FUTRELL each personally came before me this day and each acknowledged that he is a Member/Manager of MONTCLAIR, LLC, a North Carolina limited liability company, and that each acknowledged the execution of the foregoing instrument for and on behalf of said limited liability company. Witness my hand and notarial seal, this 17 day of July, 2002.

SANDRA S. DANIEL
NOTARY PUBLIC
FRANKLIN COUNTY, NC
EXPIRATION DATE: 11/21/04

Sandra S. Daniel
NOTARY PUBLIC

NORTH CAROLINA
~~WAKE~~ COUNTY HARNETT COUNTY

I, the undersigned, a Notary Public for the County and State aforesaid, hereby certify that HAYWOOD A. LANE, JR., Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and notarial seal, this 23~~rd~~ day of July, 2002.



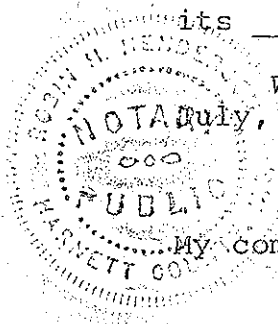
Robin H. Henderson
NOTARY PUBLIC

My commission expires: Sept. 11, 2006

NORTH CAROLINA

~~Harnett~~ WAKE COUNTY

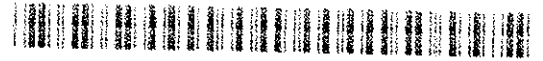
I, the undersigned, a Notary Public for the County and State aforesaid, hereby certify that Betty Hedgepeth, personally came before me this day and acknowledged that he/she is the Corporate Secretary of THE FIDELITY BANK, a North Carolina banking corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its — President, sealed with its corporate seal and attested by him/her as its Corporate Secretary.



Witness my hand and notarial seal, this 23rd day of July, 2002.

Robin H. Henderson
NOTARY PUBLIC

My commission expires: Sept. 11, 2006



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

North Carolina - Wake County

The foregoing certificate 5 of Rob H. Riddick
Nancy S. Daniel

Notary(ies) Public is (are) certified to be correct. This instrument



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



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

North Carolina - Wake County

The foregoing certificate 5 of John H. Warden
Sandra S. Daniel

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

Laura M. Riddick, Register of Deeds

By: Sandra Daniel
Assistant/Deputy Register of Deeds

This Customer Group
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11 # of Pages