

Prepared by and Hold for: Kristoff Law Offices, P.A.

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

**AMENDMENT TO DECLARATION OF
RESTRICTIVE COVENANTS FOR OLE MILL STREAM SUBDIVISION**

THIS AMENDMENT is made on the date hereinafter set forth by GATTIS LEE ENTERPRISES, INC. and lot owners in Ole Mill Stream Subdivision, Phases 1 and 2, hereinafter set forth as "Declarant."

WITNESSETH:

WHEREAS, Gattis Lee Enterprises, Inc., as the original Developer of Ole Mill Stream Subdivision, originally subjected certain property located in Johnston County to that certain Declaration of Restrictive Covenants for Ole Mill Stream Subdivision, Phases One and Two ("Declaration") recorded in Book 1627, Page 738, and re-recorded in Book 1633, Page 601 and Book 1723, Page 720, Johnston County Registry, which Declaration is incorporated herein by reference and reaffirmed, except as hereinafter amended; and

WHEREAS, lots have been sold to the above corporations and individuals who join in signing these amendments as "Declarant;" and

WHEREAS, subsequent to the recordation of the Declaration, Declarant has determined that it would be desirable to the lot owners in Ole Mill Stream Subdivision to form a Homeowner's Association and Swimming Pool Association for Ole Mill Stream Subdivision in order to maintain and protect the common areas, the entrance for said subdivision and a swimming pool for the subdivision; and

WHEREAS, this amendment has been approved by Gattis Lee Enterprises, Inc. and by the undersigned Lot Owners in existence at Ole Mill Stream as of the date hereof.

WHEREAS, Declarant declares and agrees, that the lots owned by the undersigned Lot Owners and all remaining undeveloped property in Ole Mill Stream Subdivision now owned by Gattis Lee Enterprises, Inc., as shown in Plat Book 47, Page 248, Johnston County Registry, shall be held, sold, and conveyed subject to these amendments to the Declaration, which property is as follows:

Declarant is the owner of certain property in Clayton Township, Johnston County, State of North Carolina, which is more particularly described as follows:

BEING the lots in Ole Mill Stream Subdivision, Phase 1, according to a plat recorded in Plat Book 50, Page 247, Johnston County Registry and Ole Mill Stream Subdivision,

Phase 2, according to a plat recorded in Plat Book 52, Page 233, Johnston County Registry and Phase 2A, according to a plat recorded in Plat Book 56, Pages 277 and 278, Johnston County Registry, and all undeveloped property now owned by Gattis Lee Enterprises, Inc. as shown in Plat Book 47, Page 248, Johnston County Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and 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. "Homeowner's Association" shall mean and refer to Ole Mill Stream Homeowners Association, Inc., its successors and assigns.

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

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Homeowner's Association for the common use and enjoyment of the owners in Ole Mill Stream Subdivision.

Section 5. "Swimming Pool" shall mean and refer to the swimming pool to be owned by the Swimming Pool Association and to be constructed upon a Lot or Lots in Ole Mill Stream for the common use and enjoyment of the member of the Swimming Pool Association for Ole Mill Stream Subdivision.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area and Swimming Pool.

Section 7. "Declarant" shall mean and refer to Gattis Lee Enterprises, Inc. and all the undersigned lot owners, their successors, and assigns.

Section 8. "Swimming Pool Association" shall mean and refer to the Ole Mill Stream Swimming Pool Association, Inc., its successors and assigns. The Swimming Pool Association

is the organization which operates and maintains the membership for the swimming pool in Ole Mill Stream Subdivision.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Membership and Easements of Enjoyment.

The undersigned Lot Owners in Phases 1 and 2 of Ole Mill Stream shall have the option to join the Swimming Pool Association. If a Lot Owner in Phases 1 and 2 of Ole Mill Stream Subdivision does not desire to be part of the Swimming Pool Association, then such Lot Owner shall only be part of the Homeowner's Association and shall be subject to the provisions set forth in Section 2 of this Article. All Lot Owners in Phases 1 and 2 of Ole Mill Stream who declare their intent to be a member of the Swimming Pool Association and all future Lot Owners of the undeveloped property (including Phase 2A, Ole Mill Stream Subdivision) now owned by Gattis Lee Enterprises, Inc., as set forth in Plat Book 47, Page 248, Johnston County Registry, who shall automatically become members of the Swimming Pool Association upon conveyance by deed of such lot in a future phase of Ole Mill Stream Subdivision (including Phase 2A, Ole Mill Stream Subdivision), shall also be members of the Homeowner's Association, subject to the provisions set forth in Section 2 of this Article, and shall have a right and easement of enjoyment in and to the Swimming Pool which shall be appurtenant to and shall pass with the title to such Lots and future lots, subject to the following provisions:

- (a) the right of the Swimming Pool Association to charge reasonable admission and to other fees for the use of any recreational facility situated upon the Swimming Pool property;
- (b) the right of the Swimming Pool Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of the Swimming Pool Association to dedicate or transfer all or any part of the Swimming Pool to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Homeowner's Association Easement of Enjoyment. Any Lot Owner who executes this document is a member of the Homeowner's Association and 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 such Lot, subject to the following provisions:

(a) the right of the Homeowner's Association to charge reasonable admission and to other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Homeowner's Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Homeowner's Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 3. Declaration of Use.

Any Owner, who is a member of the Swimming Pool Association and/or the Homeowner's Association may delegate, in accordance with the By-Laws, his or her right of enjoyment to the Common Area and/or the Swimming Pool and related facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Lot Owner who declares its intent to be part of either or both the Homeowner's Association and Swimming Pool Association shall be subject to an assessment. The original Developer, Gattis Lee Enterprises, Inc., shall be a member of both the Homeowner's Association and Swimming Pool Association. Membership in either Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to such assessment.

Section 2. Homeowner's Association. The Homeowner's Association shall have two classes of voting memberships:

Class A. Class A member(s) shall be all the undersigned Lot Owners, with the exception of Gattis Lee Enterprises, Inc., the original Developer, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be Gattis Lee Enterprises, Inc., and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be

converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

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

(b) on January 15, 2002.

Section 3. Swimming Pool Association. The Swimming Pool Association shall have two classes of voting memberships:

Class A. Class A member(s) shall be all of those Lot Owners who declared their intent to be a member of the Swimming Pool Association, with the exception of Gattis Lee Enterprises, Inc., the original Developer, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be Gattis Lee Enterprises, Inc., and shall be entitled to one (1) vote for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

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

(b) on January 15, 2002.

ARTICLE IV

COVENANT FOR ASSESSMENTS FOR THE HOMEOWNER'S ASSOCIATION

Section 1. Creation of the Lien and Personal Obligations of Assessments for the Homeowner's Association.

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

Section 2. Purpose of Assessments.

The assessments levied by the Homeowner's 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 only.

Section 3. Maximum Annual Assessment.

Until January 1, 2001, the maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00) per Lot.

(a) From and after January 1, 2001, 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 of the Homeowner's Association.

(b) From and after January 1, 2001, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Homeowner's 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, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are 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 & 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 nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment.

Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates.

The annual assessments provided for herein shall commence as to all Lots other than those owned by the original developer, Gattis Lee Enterprises, Inc., on the first day of the month following the conveyance of the Common Area or recordation of this Amendment, whichever first occurs. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Homeowner's Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowner's Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Homeowner's Association as to the status of assessments on a Lot is binding upon the Homeowner's Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Homeowner's Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Homeowner's 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 provide for herein by non-use of the Common Area or abandonment of his or her Lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V
COVENANT FOR ASSESSMENTS FOR THE SWIMMING POOL ASSOCIATION

Section 1. Creation of the Lien and Personal Obligations of Assessments for the Swimming Pool Association.

The Declarant, for each Lot owned within the Properties for which such Lot Owner has declared their intent to be a member of the Swimming Pool Association and all lots in the future phases of Ole Mill Stream Subdivision, hereby covenants, and each Owner of any such Lot, now existing or in the future, subject to the Swimming Pool Association, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Swimming Pool Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments.

The assessments levied by the Swimming Pool Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in Ole Mill Stream Subdivision who are members of the Swimming Pool Association and for the improvement and maintenance of the Swimming Pool only.

Section 3. Maximum Annual Assessment.

Until January 1, 2001, the maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00) per Lot.

(a) From and after January 1, 2001, 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 of the Swimming Pool Association.

(b) From and after January 1, 2001, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

