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DATE 11/17/2009TIME: 1:36 PMBOOK 2160PAGE 275ELAINE N. HARMON  
REGISTER OF DEEDS  
LINCOLN COUNTY, NC

Prepared by &amp; Return to KENNEDY &amp; WULFHORST, P.A. Denver, NC

STATE OF NORTH CAROLINA AMENDMENT TO RESTRICTIVE COVENANTS

COUNTY OF LINCOLN

KILLIAN CROSSING SUBDIVISION

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KILLIAN CROSSING SUBDIVISION (the "Amendment") is made and entered into this 22<sup>nd</sup> day of July, 2009, by HECHT DEVELOPMENT CO., a North Carolina Corporation, THE SCHREINER GROUP, LLC, a North Carolina limited liability company, LEEWARD INVESTMENT, LLC, a North Carolina limited liability company ("Declarant") and the undersigned being a majority of the then owners of the lots in Killian Crossing Subdivision. The lot owners are:

<u>Name</u>	<u>Lot</u>	<u>Deed</u>
Declarant	Lot 1	Book 1662, Page 857
Timothy J Looper, Deborah F Looper	Lot 2	Book 1914, Page 175
Corrie E Stott, Alison W Stott	Lot 3	Book 1915, Page 311
Richard C Guyer, Jane E Guyer	Lot 4	Book 1883, Page 379
Thomas V Carnaggio and Robbie P Carnaggio	Lot 5	Book 1943, Page 497
J.S. Testa Homes at Killian Crossing, LLC	Lot 6	Book 1956, Page 777
Eric H Morgan, Lori R Morgan	Lot 7	Book 2040, Page 287
Common Space		Book 2084, Page 899
Anil J Patel, Hansa A Patel	Lot 9	Book 1956, Page 780
Kenneth V Hipp, Timothy D Setzer	Lot 10	Book 1942, Page 685
Andrew J Scriven	Lot 11	Book 2083, Page 138
Michael Feraca, Janet Feraca and Madeline Gimmarinaro	Lot 12	Book 2050, Page 647
Common Space		Book 2084, Page 899
Declarant	Lot 14	Book 1778, Page 109
Declarant	Lot 15	Book 1778, Page 109
Declarant	Lot 16	Book 1778, Page 109
Declarant	Lot 17	Book 1778, Page 109
Common Space		Book 2084, Page 899
Common Space		Book 2084, Page 899
Declarant	Lot 20	Book 1778, Page 109
Declarant	Lot 21	Book 1778, Page 109
Declarant	Lot 22	Book 1778, Page 109

Declarant	Lot 23	Book 1778, Page 109
Declarant	Lot 24	Book 1778, Page 109
Declarant	Lot 25	Book 1778, Page 109
Declarant	Lot 26	Book 1778, Page 109
Declarant	Lot 27	Book 1778, Page 109
Declarant	Lot 28	Book 1778, Page 109
Phase IV - future development	Lot 29	Book 1888, Page 402
Phase IV - future development	Lot 30	Book 1888, Page 402
Phase IV - future development	Lot 31	Book 1888, Page 402
Phase IV - future development	Lot 32	Book 1888, Page 402
Phase IV - future development	Lot 33	Book 1888, Page 402
Phase IV - future development	Lot 34	Book 1888, Page 402
Phase IV - future development	Lot 35	Book 1888, Page 402
Phase IV - future development	Lot 36	Book 1888, Page 402
Phase IV - future development	Lot 37	Book 1888, Page 402
Phase IV - future development	Lot 38	Book 1888, Page 402
Phase IV - future development	Lot 39	Book 1888, Page 402
Phase IV - future development	Lot 40	Book 1888, Page 402
Phase IV - future development	Lot 41	Book 1888, Page 402
Phase IV - future development	Lot 42	Book 1888, Page 402
Declarant	Lot 43	Book 1888, Page 402
Declarant	Lot 44	Book 1888, Page 402
Declarant	Lot 45	Book 1888, Page 402
Declarant	Lot 46	Book 1888, Page 402
Declarant	Lot 47	Book 1888, Page 402
J. Ken Williams Co., Inc.	Lot 48	Book 2125, Page 788
Declarant	Lot 49	Book 1888, Page 402
Barbara C Helms	Lot 50	Book 2121, Page 2
J.S. Testa Homes at Killian Crossing, LLC	Lot 51	Book 2128, Page 552
Does not exist	Lot 52	no deed reference
Does not exist.	Lot 53	no deed reference
Declarant	Lot 54	Book 1888, Page 402
Does not exist	Lot 55	no deed reference
Jayne Wolge	Lot 56	Book 2093, Page 43
Emmitt R Moss, Nancy J Moss	Lot 57	Book 2068, Page 233
Corey R Cornacchio, Sabrina Cornacchio	Lot 58	Book 2049, Page 829
Shane Seagle, Kimberly A Seagle	Lot 59	Book 2073, Page 263
Robert Duncan M Charnell	Lot 60	Book 2098, Page 836
Eric Bassani, Amy Bassani	Lot 63	Book 2064, Page 267
Declarant	Lot 64	Book 1778, Page 109
Declarant	Lot 65	Book 1778, Page 109
Declarant	Lot 66	Book 1778, Page 109
Common Space		Book 2084, Page 899
Declarant	Lot 68	Book 1778, Page 109
Declarant	Lot 69	Book 1778, Page 109
Steven K Cobb, Bridget L Cobb	Lot 70	Book 1778, Page 109
Andrew Joseph Beach and Tracy Christine Beach	Lot 71	Book 2074, Page 885
Nicholas W Clapham, Hazel Clapham	Lot 72	Book 2109, Page 539
Dennis E Lancona, Dolores M Lancóna	Lot 74	Book 2055, Page 411 Book 2056, Page 839

Declarant	Lot 75	Book 1778, Page 109
Declarant	Lot 76	Book 1778, Page 109
Declarant	Lot 77	Book 1778, Page 109
John S Fuller, Tamara J Fuller	Lot 78	Book 2044, Page 167
Does not exist		
Does not exist		
Does not exist		
Declarant	Lot 82	Book 1888, Page 402
Does not exist		
Phase IV - future development	Lot 84	Book 1888, Page 402
Phase IV - future development	Lot 85	Book 1888, Page 402
Phase IV - future development	Lot 86	Book 1888, Page 402
Phase IV - future development	Lot 87	Book 1888, Page 402
Phase IV - future development	Lot 88	Book 1888, Page 402
Phase IV - future development	Lot 89	Book 1888, Page 402
Phase IV - future development	Lot 90	Book 1888, Page 402
Phase IV - future development	Lot 91	Book 1888, Page 402
Phase IV - future development	Lot 92	Book 1888, Page 402
Phase IV - future development	Lot 93	Book 1888, Page 402
Phase IV - future development	Lot 94	Book 1888, Page 402
Declarant	Lot 95	Book 1778, Page 109
Declarant	Lot 96	Book 1778, Page 109
Declarant	Lot 97	Book 1778, Page 109
Declarant	Lot 98	Book 1778, Page 109
Declarant	Lot 99	Book 1778, Page 109
Todd K. Uhl, Michele M. Uhl	Lot 100	Book 2150, Page 001
Joseph F Keever, Brenda B Keever	Lot 101	Book 1992, Page 547
Lori C Cogan	Lot 102	Book 1953, Page 233
Jeanette A Lezama	Lot 103	Book 1923, Page 773
Peter D Mileta, Kimberly B Willinsky	Lot 104	Book 1946, Page 227
Jeffery L Patterson, Kellie Clark Patterson	Lot 105	Book 1954, Page 481
Common Space		Book 2084, Page 899
James L Cady, Susan M Cady	Lot 107	Book 1952, Page 63
Bradley A Brown, Robbie Brown	Lot 108	Book 1913, Page 549
James Douglas Burchardt and		
Deborah Jean Burchardt	Lot 109	Book 2059, Page 49
James E Fossler, Ann C Fossler	Lot 110	Book 1905, Page 323
Roland Keck, Laura K Keck	Lot 111	Book 1952, Page 695
Robert G Swadley, Kelly G Swadley	Lot 112	Book 1919, Page 725
Kristin R Parker	Lot 113	Book 2040, Page 837
Michael J Testa, Douglas R Testa	Lot 114	Book 1900, Page 505
Donald F DePasquale, Olga DePasquale	Lot 115	Book 2046, Page 291
Frank C Brown, Hildalee M Brown	Lot 116	Book 2072, Page 709
Common Space		Book 2084, Page 899
Declarant	Lot 118	Book 1662, Page 857
Declarant	Lot 119	Book 1662, Page 857
Dane R Vander Haar,		
Amanda R Vander Haar,		
R William Vander Haar and		
Gabriele Vander Haar	Lot 120	Book 1973, Page 553

Chip D Stoller, Stephanie J Stoller	Lot 121	Book 1977, Page 481
Jamie M Silva, Michelle L Silva	Lot 122	Book 2095, Page 139
Carlos M Bonet, Cindy Bonet	Lot 123	Book 2022, Page 811
Allan M Oracion, Laurie S Oracion	Lot 124	Book 1940, Page 373
Joseph L Sloan, Amanda L Combs	Lot 125	Book 1947, Page 1
John T Cunningham, Toni B Cunningham	Lot 126	Book 1955, Page 771
Lauryn Y Trickett	Lot 127	Book 1889, Page 649
Victor M Jones, Natasha Lee Jones	Lot 128	Book 1952, Page 85
Zonia Cardently	Lot 129	Book 1971, Page 343
Randall E Rose, Megan G Devine	Lot 130	Book 1933, Page 881
Declarant	Lot 131	Book 1662, Page 857

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions - Killian Crossing, dated May 3, 2006 and recorded in Book 1811, Page 585 in the Office of Register of Deeds of Lincoln County, Supplemental Declaration dated October 5, 2006, recorded in Book 1862, Page 593, Supplemental Declaration dated October 29, 2007 recorded in Book 1979, Page 844, and Supplemental Declaration dated October 5, 2008 recorded in Book 2072, Page 88 (as amended and supplemented from time to time, the "Declaration"), Declarant subjected certain real property located in Lincoln County, North Carolina, to the protective covenants, conditions and restrictions set forth in the Declaration; and

WHEREAS, Declarant pursuant to Article XIII, Section 3 of the Declaration, has the right to amend the Delcaration with a majority of the then owners of the lots in Killian Crossing Subdivision; and

WHEREAS, Declarant desires to amend the Declaration to clarify the definition of certain terms.

NOW, THEREFORE, in consideration of the premises and for the purposes aforesaid, the undersigned for themselves, their successors and assigns and the future Grantees and Lessees, do hereby declare that the Restrictions set out in that certain Declaration of Covenants, Conditions and Restrictions Killian Crossing recorded in Book 1811 at Page 585 and as amended thereafter from time to time, are hereby amended as follows:

**AMENDMENT**

**Article I of the Declaration is hereby amended as follows:**

Section 31. "Architectural Changes Committee" shall have the meaning set forth in Article XIV, Section 11 hereof.

Section 32. "Architectural and Landscape guidelines" shall have the meaning as set forth in Article XIV, Section 3 hereof

Section 33. "Featured Builder" shall mean the builder or builders that have been selected by Declarant to construct homes in Killian Crossing. A lot owner in Killian Crossing may have a house constructed only by a builder on the developer "featured builder" list. No other builder may construct a home within Killian Crossing

Section 34. "Guidelines" shall mean and refer to the Architectural and Landscape guidelines.

Article IV of the Declaration is hereby amended as follows:

**Section 3. Relinquishment of Control.** Notwithstanding anything contained herein to the contrary, the Class B membership shall cease and be converted to the Class A membership upon the earliest to occur of (a) the date on which Declarant no longer owns any part of the Property (b) the date Declarant shall elect, in its sole discretion that the Class B membership shall cease and be converted to the Class A membership (which election may be made, if at all, upon Declarant giving written notice of the election to the Board); or (c) December 31, 2014. The earliest to occur of (a), (b) or (c) above shall herein be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A member.

Article VIII of the Declaration is hereby amended as follows:

**Section 3. Garages.** There must be a total minimum distance of twenty-two (22) feet between the side entry garage opening and the adjacent side lot boundary line. Notwithstanding the foregoing requirements, the Declarant shall have the right (but not the obligation), because of lot width or other circumstances, to allow variances from such minimum side lot setback requirements of up to ten percent (10%) by granting a specific written variance. Driveways and sidewalks cannot be any closer than two (2) feet off the side property line.

**Section 4. Roofs.** All roof structures, such as attic vents, plumbing vents, etc. shall be treated or painted to blend with the roof shingles, except that flashing applied to vertical surfaces may be painted to blend with the vertical materials where more appropriate.

**Section 12. Fences and Walls.** No wooden fences, or brick or stone walls, greater than six (6) feet in height are permitted. Chain link or welded wire fencing is not permitted, with the exception of 4 inch box-type fencing used in conjunction with split rail in the rear yard only, and wrought iron fencing.

**Section 14. Temporary Structures; Structure Materials.** Accessory structures less than a 1,000 square feet in size may be ten (10) feet from the property line. If an accessory structure is over 1,000 square feet then the structure must be a minimum of twenty (20) from property line.

With respect to a corner lot, no storage, shop outbuilding or other accessory structure may be located less than twenty-five (25) feet from the side street lot line, unless otherwise approved in advance in writing by the Declarant or Owners Association Board of Directors.

All accessory or recreational structures must be located in the rear yard area, and subject to approval by the Declarant or Owners Association Board of Directors.

**Section 19. Combination or Subdivision of Lots.** If two lots are owned by the same Owner, and a house is built solely on one lot and constructed in accordance with the covenants, conditions and restrictions, the adjacent vacant lot may not be used for the construction of any structure other than a single-family residential dwelling which would individually meet the covenants, conditions and restrictions. This shall prohibit any structure from being constructed on the adjacent vacant lot of a recreational nature, fence or other non-residential use. Structure shall be defined as any man-made and/or non-natural object placed upon a vacant lot, including, but not limited to basketball courts, tennis courts, swimming pools or gazebos.

Section 25. Landscaping. Landscape plan to be submitted and approved per Article XIV.

Section 39. Approval of Plans prior to construction. All house plans, as well as plans for other structures, fences, storage buildings, landscaping, etc. shall be submitted to and approved by the Declarant or Owners Association Board of Directors prior to commencement of construction. Plans and specifications shall be submitted to Declarant at Declarant's office, along with a proposed site plan to show the house location, driveway, well location and septic location and with final colors and materials to be used.

**Article XII of the Declaration is hereby amended as follows:**

Section 12. Right of Declarant to Repurchase. If, after the second anniversary of the closing date of the Lot as evidenced by recording of the deed at the Lincoln County Register of Deeds, Grantee has not begun vertical construction of improvements on the property, Declarant shall have the right but not the obligation, to repurchase the property for the original purchase price minus the cost to remove any liens and/or encumbrances placed on the property by Grantee (the "Repurchase Price"). The parties hereto acknowledge that the Repurchase Price might be a negative number that would require Grantee to pay Declarant money sufficient to remove any liens or encumbrances placed on the property by Grantee. If Declarant elects to exercise its Right to Repurchase, Declarant shall give written notice of its election to Grantee and conveyance of the property by special warranty deed shall occur no later than sixty (60) days thereafter. Unless exercised by Declarant, this Right to Repurchase shall automatically terminate on the fifth anniversary of the closing date as described above. The Right to Repurchase shall also automatically terminate, without written notice to any party or any other action by Grantee, upon the commencement of vertical construction on the property by Grantee or its designee. This provision shall run with the property and shall be enforceable against Grantee's heirs, agents, assigns or successors in interest.

Said Right to Repurchase shall be evidenced by the language above being incorporated into the deed, and by the following provision be included after the legal description in the deed of conveyance: "Title to the above-referenced property is conveyed subject to a right of first refusal contained in covenants, conditions and restrictions for Killian Crossing, recorded in Book \_\_\_\_, Page \_\_\_\_ in the Lincoln County Public Registry."

#### ARTICLE XIV ARCHITECTURAL AND LANDSCAPE GUIDELINES

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, or any landscaping or cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Article XIV hereof, until: (a) Declarant or Owner Association Board of Directors, has approved the plans and specifications therefore and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Guidelines; (b) the fees set forth in or contemplated in this Article XIV have been paid; and (c) the contracts identified in this Article XIV have been executed. The provisions of this Article XIV shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas.

Section 2. Composition of Architectural Control Committee. So long as Declarant owns any Lot or other portion of the Property, in lieu of an Architectural Control Committee, the Declarant or Owners

Association Board of Directors will perform all the functions of the Architectural Control Committee, including but not limited to review of all proposed house plans, landscaping, additions, etc. The Architectural Control Committee shall be defined as the Declarant or the Owner Association Board of Directors. At such time as Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be the Owner Association Board of Directors or a separate committee appointed by the Board.

### Section 3. Architectural and Landscape Guidelines

(a) The Declarant or Owner Association Board of Directors, shall, from time to time, publish and promulgate Architectural and Landscape guidelines (the "Architectural and Landscape Guidelines"). The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Declarant or Owner Association Board of Directors, in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the Architectural Control Committee and the fees to be imposed by the Declarant or Owner Association Board of Directors, as more specifically described in Section 8 hereof. In any event, the Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Declarant or Owner Association Board of Directors, in its sole discretion, and shall not constitute, in every event the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the Declarant or Owner Association or Board of Directors, for approval.

(b) The Guidelines shall also be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Declarant or Owner Association Board of Directors, in reviewing plans and specifications for landscape Improvements. In addition, the Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Declarant or Owner Association Board of Directors, of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot or other portion of the Property shall be based upon the conformity of such plan or improvement with the Guidelines.

(c) The Declarant or Owner Association Board of Directors, is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

(d) The Declarant or Owner Association Board of Directors, may issue and amend the Guidelines from time to time and may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

**Section 4. Definition of "Improvements".** The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; pet "runs", lines and similar tethered or enclosures; landscaping (including cutting trees); hedges; mass plantings; irrigation equipment, apparatus and systems; driveways; signs; site preparation; changes in grade or slope; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Declarant or Owner Association Board of Directors, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Declarant or Owner

**Section 5. Enforcement**

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Development and to help preserve values of properties in the Development. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Development and to Declarant, and to the values of their respective properties in the Development, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article XIV by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Declarant or Owner Association Board of Directors, whether there exists any construction of any Improvement which violates the terms of any approval by the Declarant or Owners Association Board of Directors, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Declarant or Owners Association Board of Directors in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

**Section 6. Failure of the Declarant or Owner Association Board of Directors to Act.** If the Declarant or Owner Association Board of Directors, fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof and of the Guidelines or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the Declarant or Owner Association Board of Directors, and provided the Declarant or Owner Association Board of Directors, shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after additional written request to act on such items is delivered to the Declarant or Owner Association Board of Directors, following the passage of such first above-described thirty (30) business day period, it shall be conclusively presumed that the Declarant or Owner Association Board of Directors, has approved such conforming plans and specifications and other submittals, EXCEPT that the Declarant or Owners Association Board of Directors shall not be deemed to have waived any of the requirements set forth in Section 8, Section 9 or Section 10 hereof. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Declarant or Owner Association Board of Directors, may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The Declarant or Owner Association Board of Directors, is authorized to request the submission of samples of proposed construction materials.

**Section 7. Variances.** Upon submission of a written request for same, the Declarant or Owner Association Board of Directors, may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Declarant or Owner Association Board of Directors, has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Declarant or Owner Association Board of Directors, shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Declarant or Owner Association Board of Directors, right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner.

**Section 8. Fees Required by the Declarant or Owner Association Board of Directors.** The Declarant or Owner Association Board of Directors, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Declarant or Owners Association Board of Directors pay one or more fees to construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Declarant or Owner Association Board of Directors, and shall be set forth in the Guidelines.

**Section 9. No Construction Without Payment of Fees.** Notwithstanding anything contained in this Article XIV to the contrary, plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the Declarant or Owner Association Board of Directors, to be paid in connection with such Improvements, as provided in Section 8 above, shall have been paid to the Declarant or Owner Association or Board of Directors as required.

**Section 10. Notices and Submittals.** Notices and submittals to the Declarant or Owner Association Board of Directors, shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

**Section 11. Separate Committee for Changes to Existing Improvements.** The Board shall have the right, power and authority, in its sole discretion, to appoint a committee separate and apart from the Declarant or Owners Association Board of Directors to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot or other portion of the Property (herein, the "Architectural Changes Committee"). Should the Board appoint such an Architectural Changes Committee, then the Declarant or Owner Association Board of Directors, shall relinquish to the Architectural Changes Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Changes committee shall be solely responsible for review and approval of the same. The composition of the Architectural Changes Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Changes Committee shall be set forth in the Guidelines. Notwithstanding the foregoing, nothing herein shall be deemed to obligate the Board to appoint an Architectural Changes Committee, and until an Architectural Changes Committee is appointed, the Declarant or Owner Association Board of Directors, shall be responsible for reviewing and approving or disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this Article XIV and the Guidelines.

**Section 12. Limitation of Liability.** No member of the Declarant or Owner Association Board of Directors, or the Architectural Changes Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant

to this Article XIV. Neither the Declarant or Owner Association Board of Directors, nor the Architectural Changes Committee (if applicable), nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or other wise to anyone submitting plans and specifications and other submissions for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or on connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Declarant or Owner Association Board of Directors, or the Architectural Changes Committee (if applicable) shall not be deemed or construed as a representation or warranty of the Declarant or Owners Association Board of Directors or the Architectural Changes Committee (as the case may be), Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefore is hereby disclaimed. Every person who submits plans and specifications, and every Owner, Declarant or Owner Association Board of Directors, the Architectural Changes Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration and no other person, firm or entity, including, with limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

**Section 13. Miscellaneous.** Members of the Declarant or Owner Association Board of Directors, and, if applicable, the Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Declarant or Owner Association Board of Directors, and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of Declarant or Owner Association Board of Directors, and the Architectural Changes Committee (if applicable), including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Section 5 of this Article XIV.

#### ARTICLE XV FEATURED BUILDER PROGRAM

**Section 1. Definition.** The Declaration of Covenants, Conditions and Restrictions for the residential development known as Killian Crossing ("Killian Crossing") provide that (with limited exceptions) only builders then in good standing under Killian Crossing's Featured Builder Program may construct homes and related improvements on Lots in Killian Crossing. To qualify as a Featured Builder under the Featured Builder Program, a builder must satisfy certain criteria and requirements established by Killian Crossing's developer, Hecht Development Co. (the "Developer"), and the satisfaction of such criteria must be reconfirmed from time to time as provided in the contract between such Featured Builder and Developer. Admission of a builder to the Featured Builder Program does not assure that the builder will remain in the Featured Builder Program for any specific tenure, and any builder may be removed by the Developer from the Featured Builder Program at any time in the exercise of the Developer's sole and absolute discretion and no reason or cause need be given or established for any such removal.

**Section 2. Contract Submittal.** The Declarant (or Developer) may require, in its sole discretion, as a part of Article VIII, Section 39, "Approval of Plans Prior to Construction" that each Person submitting

plans and specifications also submit to the Declarant or Developer a copy of a fully signed contract (for the construction of such Improvements) between the Owner of the relevant Lot and a builder who is featured by the Developer, in its sole discretion (herein, a "Featured Builder", collectively, the "Featured Builders"), as a condition to the commencement of construction of any such Improvements.

**Section 3. List of Featured Builders.** The Declarant or Developer shall provide a list of Featured Builders in accordance with the Covenants, Conditions and Restrictions. To qualify as a Featured Builder, a builder must satisfy certain criteria and requirements established by the Declarant and Developer. However, the criteria and requirements established by the Declarant and Developer for a builder to qualify as a Featured Builder are solely for the Declarant's and Developer's protection and benefit and are not intended to, and shall not be construed to, benefit any Owner or any other party whatsoever. The Declarant and Developer make no representation, express or implied, to any Owner or any other party whatsoever with regard to the Featured Builders, including, without limitation, the existence, nature and extent (including coverage amounts and deductibles) of insurance policies that may be maintained by the Featured Builders from time to time, the solvency or financial status of the Featured Builders from time to time, the nature and amount of any bonds that may be maintained by the Featured Builders from time to time, the performance (or the ability to perform) by the Featured Builders of their contractual obligations (including any contractual obligations of any of the Featured Builders in favor of any Owner or any other party whatsoever), the compliance by the Featured Builders with building codes and other requirements, rules, laws and ordinances of federal, state and local governmental and quasi-governmental bodies and agencies relating to the construction of homes and other activities engaged in by the Featured Builders from time to time, the use of any substance or material, including, without limitation, any stucco or synthetic material by the Featured Builders in connection with the construction of homes, the compliance by any Featured Builder with any licensing requirements imposed by federal, state and local governmental and quasi-governmental bodies and agencies from time to time, including, without limitation, the maintenance of any required builder's and/or contractor's license, and the failure or alleged failure of any Featured Builder to comply with any industry standard or any other reasonable standard or practice with respect to such builder's work or materials used in the construction of houses and other activities engaged in by such Featured Builders at Killian Crossing. Furthermore, neither the Declarant nor Developer, nor the officers, directors, members, employees, agents or affiliates of either of them, shall have any responsibility whatsoever for any sum that any Owner or any other party may deposit with a Featured Builder, including, without limitation, any earnest money or other deposit that any Owner may deliver to a Featured builder. The selection of a Featured Builder by an Owner shall be conclusive evidence that such Owner is independently satisfied with regard to any and all concerns such Owner may have about the Featured Builder's work product and/or qualifications. Owners shall not rely on the advice or representations of the Declarant, Developer or the officers, directors, members, employees, agents or affiliates of either of them in that regard.

**Section 4. No Construction Without Use of a Featured Builder.** Notwithstanding anything contained in this Article XV to the contrary, plans and specifications for Improvements to be constructed on a Lot, Tract or other portion of the Property shall not be deemed to have been properly submitted unless and until a copy of a fully signed contract between the Owner of the relevant Lot and a Featured Builder for construction of such Improvements (if required by the Declarant, and/or Owner Association Board of Directors) shall have been submitted to the Declarant and/or Owner Association Board of Directors.

The Bylaws of the Declaration are hereby amended as follows:

**EXHIBIT "B"**  
**BYLAWS**  
**AMENDMENT**

Article 3 of the Bylaws is hereby amended as follows:

Section 3.7. Quorum. The presence at the meeting of Members entitled to cast, or of proxies

entitled to cast, TWENTY percent (20%) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws

Article 4 of the Bylaws is hereby amended as follows:

Section 4.2 Initial Directors. The Initial Board of Directors shall be appointed by Declarant. Such initial Board of Directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Lincoln County until such time as their successors are duly appointed in accordance with Section 4.1, or duly elected and qualified, as described in Section 4.5.

The names of the persons who shall serve on the initial Board of Directors are as follows:

Robert V. Hecht	Stephen M. Schreiner	Tammie Kralovic
885 Highway 16	403 Gilead Road Suite H	885 Highway 16
Denver, NC 28037	Huntersville, NC 28078	Denver, NC 28037

Linda Whicker	Lot Owner at Large
P. O. Box 95	
Sherrills Ford, NC 28673	

Except as herein amended, the restrictive covenants shall remain in full force and effect.

IN WITNESS WHEREOF the undersigned individuals as lot owners in Killian Crossing Subdivision, for the purpose of modifying and changing its restrictions have hereunto set their hands and seals this ~~20~~<sup>30</sup> day of July, 2009.

HECHT DEVELOPMENT CO., a North Carolina corporation

By: *Robert V. Hecht*  
Robert V. Hecht, President

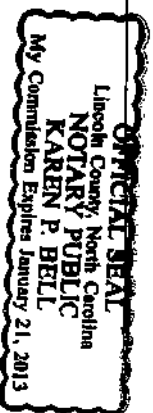
NORTH CAROLINA  
LINCOLN COUNTY

I, the undersigned, a Notary Public for said County and State aforesaid, certify that Robert V. Hecht personally appeared before me this day and acknowledged that he is President of Hecht Development Co., a North Carolina Corporation; the foregoing instrument was signed in its name by its President on behalf of the corporation.

WITNESS my hand and official stamp or seal, this 30<sup>th</sup> day of July, 2009.

*Karen P. Biele*  
Notary Public

My Commission Expires:



LEEWARD INVESTMENT, LLC, a North Carolina limited liability company

By: *Linda M. Whicker*  
Linda M. Whicker, Member/Manager

NORTH CAROLINA  
Lincoln COUNTY

I, the undersigned, a Notary Public for said County and State aforesaid, certify that Linda M. Whicker personally appeared before me this day and acknowledged that he is Member/Manager of LEEWARD INVESTMENT, LLC, a North Carolina Limited Liability Corporation; the foregoing instrument was signed in its name by its Member/Manager on behalf of the company.

WITNESS my hand and official stamp or seal, this 22<sup>nd</sup> day of July, 2009.

My Commission Expires: 01-21-2015

*Karen P. Bell*  
Notary Public



THE SCHREINER GROUP, LLC, a North Carolina limited liability company

By: *Stephen M. Schreiner*  
Stephen M. Schreiner, Member/Manager

NORTH CAROLINA  
Lincoln COUNTY

I, the undersigned, a Notary Public for said County and State aforesaid, certify that Stephen M. Schreiner personally appeared before me this day and acknowledged that he is Member/Manager of THE SCHREINER GROUP, LLC, a North Carolina Limited Liability Corporation; the foregoing instrument was signed in its name by its Member/Manager on behalf of the company.

WITNESS my hand and official stamp or seal, this 27<sup>th</sup> day of July, 2009

My Commission Expires: \_\_\_\_\_  
Notary Public



*Sandra R. Gustafson*  
Witness:

*Lori A. Cogan*  
Lori A. Cogan (SEAL)

*Sandra R. Gustafson*  
Witness:

*Peter L. Cogan*  
Peter L. Cogan (SEAL)

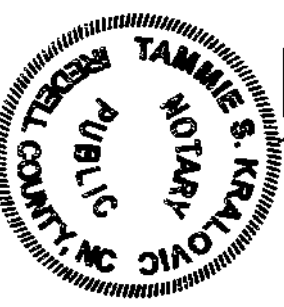
STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

*Tammie Skralovic*, a Notary Public for the County and State aforesaid, certify that *Sandra R. Gustafson* personally appeared before me this day and being duly sworn, stated that in her presence *Lori A. Cogan &* executed the foregoing instrument and acknowledged the due execution thereof. *Peter L. Cogan*

Witness my hand and seal this 5 day of October, 2009.

My Commission Expires: December 26, 2011  
*Tammie Skralovic*  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN



I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Seal \_\_\_\_\_  
My commission expires: \_\_\_\_\_ Notary Public \_\_\_\_\_

Lot 115

*Sandra R. Gustafson*  
Witness:

*Donald F. DePasquale* (SEAL)  
Donald F. DePasquale

*Michelle M. Gustafson*  
Witness:

*Olga DePasquale* (SEAL)  
Olga DePasquale

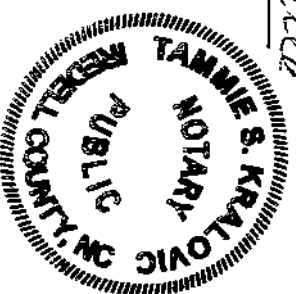
STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

*Tammie S. Kralovic*, a Notary Public for the County and State aforesaid, certify that  
*Sandra R. Gustafson* personally appeared before me this day and being duly sworn, stated  
that in her presence Donald F. DePasquale & *Olga DePasquale* executed the foregoing instrument and acknowledged the due  
execution thereof.

Witness my hand and seal this 5 day of October, 2009.

My Commission Expires: December 26, 2011

*Tammie S. Kralovic*  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before  
me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Seal  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

*Sandra Hueston*  
Witness:

*James L. Cady* (SEAL)  
James L. Cady

*Sandra Hueston*  
Witness:

*Susan M. Cady* (SEAL)  
Susan M. Cady

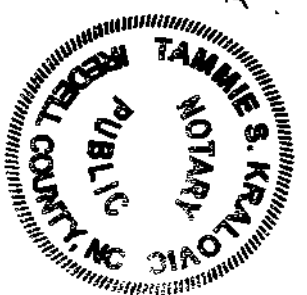
STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

*Tammie Skralovic*, a Notary Public for the County and State aforesaid, certify that *Sandra K. Gustafson* personally appeared before me this day and being duly sworn, stated that in his presence James L. Cady, Susan M. Cady, executed the foregoing instrument and acknowledged the due execution thereof.

Witness my hand and seal this 5 day of October, 2009.

My Commission Expires: December 26, 2011

*Tammie Skralovic*  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before me this day and acknowledged the due execution of the forgoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Seal  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Witness: [Signature]

James Douglas Burchardt  
James Douglas Burchardt (SEAL)

Witness: [Signature]

Deborah Jean Burchardt  
Deborah Jean Burchardt (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

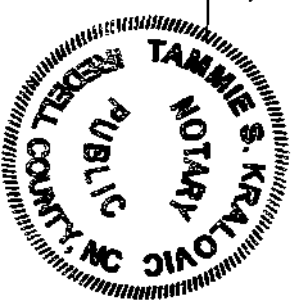
I, Tammie S. Kralovic a Notary Public for the County and State aforesaid, certify that  
Sandra R. Gustafson personally appeared before me this day and being duly sworn, stated that  
in his presence James Douglas Burchardt and Deborah Jean Burchardt, executed the foregoing instrument  
and acknowledged the due execution thereof.

Witness my hand and seal this 5 day of October, 2009.

My Commission Expires: December 26, 2011

[Signature]  
Notary Public

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN



I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before  
me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Seal  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Witness: \_\_\_\_\_  
Michael J. Testa (SEAL)

Witness: \_\_\_\_\_  
Michele Testa (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

I, Karen P. Bell, a Notary Public for the County and State aforesaid, certify that that in his presence Michael J. Testa and Michele Testa, executed the foregoing instrument and acknowledged the due execution thereof.

Witness my hand and seal this \_\_\_ day of \_\_\_\_\_, 2009.

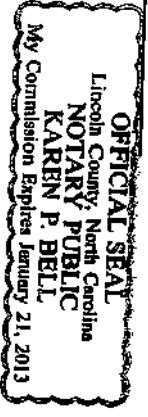
My Commission Expires: \_\_\_\_\_  
Notary Public \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, a Notary Public of said County and State aforesaid, do hereby certify that Michael J. Testa personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 3rd day of September, 2009.

Notary Seal  
My commission expires: \_\_\_\_\_  
Karen P. Bell  
Notary Public



Witness: \_\_\_\_\_

Michael J. Testa (SEAL)

Witness: *Debra N. Jensen*

\* *Michele Testa* (SEAL)  
Michele Testa

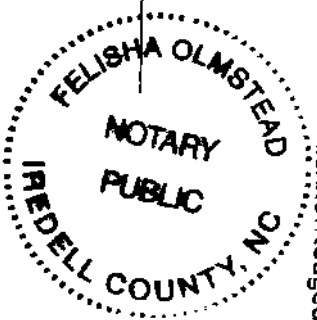
STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

I, *Felisha Olmstead*, a Notary Public for the County and State aforesaid, certify that *Michael Testa* that in his presence *Michael J. Testa* and *Michele Testa*, executed the foregoing instrument and acknowledged the due execution thereof.

Witness my hand and seal this *4* day of *September*, 2009.

My Commission Expires: *1-17-2013*

*Felisha Olmstead*  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Seal  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Lot 114

Witness: \_\_\_\_\_

Douglas R. Testa (SEAL)  
Douglas R. Testa

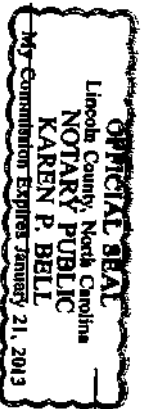
Witness: Veronica Testa

Vera Testa (SEAL)  
Vera Testa

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

I, Karen P. Bell, a Notary Public for the County and State aforesaid, certify that Douglas R. Testa personally appeared before me this day and ~~being duly sworn~~ stated that in his presence ~~Douglas R. and Vera Testa~~, executed the foregoing instrument and acknowledged the due execution thereof.

Witness my hand and seal this 9<sup>th</sup> day of September, 2009.

My Commission Expires: \_\_\_\_\_  
  
Notary Public Karen P. Bell

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

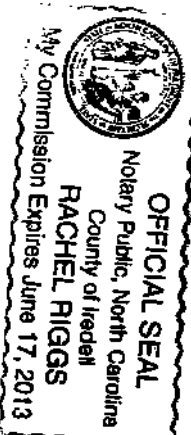
VERA TESTA

I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before me this day and acknowledged the due execution of the forgoing instrument.

Witness my hand and official seal this the 3<sup>rd</sup> day of September, 2009.

Notary Seal  
My commission expires: June 17 2013

Rachel Riggs  
Notary Public



Lot 122

Witness: Sandra R. Gustafson

Jamie M. Silva (SEAL)  
Jamie M. Silva

Witness: Sandra R. Gustafson

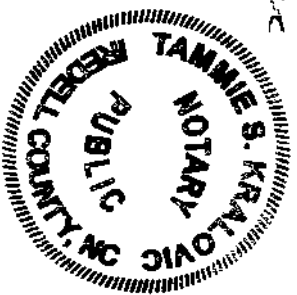
Michelle L. Silva (SEAL)  
Michelle L. Silva

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

Tammie S. Kralovic a Notary Public for the County and State aforesaid, certify that in his presence Jamie M. Silva and Michelle L. Silva, executed the foregoing instrument and acknowledged the due execution thereof.

Witness my hand and seal this 5 day of October, 2009.

My Commission Expires: December 26, 2011  
Tammie S. Kralovic  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, a Notary Public of said County and State aforesaid, do hereby certify that / personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Notary Seal \_\_\_\_\_  
My commission expires: \_\_\_\_\_ Notary Public \_\_\_\_\_

J. Ken Williams, Co., Inc.  
John Williams, President

\_\_\_\_\_  
(SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN

I, Karen P. Bell, Notary Public, certify that John Williams, personally came before me this day and acknowledged that he is President, of J. Ken Williams Co., Inc., a North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 21<sup>st</sup> day of July, 2009.

Karen P. Bell  
Notary Public

My commission expires: \_\_\_\_\_



STATE OF NORTH CAROLINA  
COUNTY OF LINCOLN.

J.S. Testa Homes at Killian Crossing, LLC  
By: *Michael J. Testa* (SEAL)  
Michael J. Testa, Member/Manager

I, the undersigned, a Notary Public for said County and State aforesaid, certify that Michael J. Testa personally appeared before me this day and acknowledged that he is Member/Manager of J.S. Testa Homes at Killian Crossing, LLC, the foregoing instrument was signed in its name by its Member/Manager on behalf of the company.

WITNESS my hand and official stamp or seal, this 1<sup>st</sup> day of November, 2009.

*Karen P. Bell*  
Notary Public

My Commission Expires: \_\_\_\_\_

