

FOR REGISTRATION JUDITH A. GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2005 FEB 16 10:29 AM  
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INSTRUMENT # 2005028285



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Drawn by and mail to:  
Wallace Pittman & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

FIRST AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HEYDON HALL

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEYDON HALL made this 12<sup>th</sup> day of November, 2004, by HEYDON HALL, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant"; INDIVIDUAL OWNERS of Lots in Heydon Hall listed on Exhibit A attached hereto, and hereinafter collectively referred to as "Individual Owners"; and HEYDON HALL HOMEOWNER'S ASSOCIATION OF MECKLENBURG, INC., a North Carolina non-profit corporation, hereinafter referred to as "Association";

WITNESSETH:

WHEREAS, Declarant and Individual Owners are the owners of at least eighty (80%) percent of the Lots shown on all recorded maps of Heydon Hall subdivision recorded in the Mecklenburg County Public Registry;

WHEREAS, Declarant recorded the Declaration of Covenants, Conditions and Restrictions for Heydon Hall in Book 14813 at page 780 in the Mecklenburg County Public Registry (hereinafter "Declaration");

WHEREAS, Declarant and Individual Owners desire to amend said Declaration to modify certain provisions concerning commencement of annual assessments; changing of Shared Driveways and Shared Driveways Easements to Common Drive and Community Park Easements; clarification of front set back lines applying to front porches, stoops, steps, etc.; changing requirements of liability insurance; and clarification of sidewalk easements; and

WHEREAS, part of the intent and purpose of this First Amendment is to establish and grant to the Association additional Common Areas, both as easements and as fee simple title, in the form of

Common Drive and Community Park Easements and Common Parking Areas for the collective benefit of the Association and the Lot Owners, with the Association assuming sole responsibility for the repair, maintenance and policing of all such additional Common Areas thereby completely relieving all Lot Owners having any Common Drive and Community Park Easements and Common Parking Areas located within portions of their Lots of any express or implied duty or responsibility for the repair, maintenance or policing of the land, improvements, utilities and facilities contained within the Common Drive and Community Park Easements;

NOW, THEREFORE, Declarant, Individual Owners and Association do hereby amend said Declaration as follows:

1. Subparagraph (m) of Section 1 of Article I entitled "Common Area" or "Common Areas" is hereby amended by deleting Subparagraph (m) in its entirety and substituting therefor the following:

"(m) "Common Area" or "Common Areas" shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee or by easement, from time to time by the Association for the common use and enjoyment of the Owners and the Occupants, including, without limitation, the Roadways, which are private roads to be maintained by the Association, Common Drive and Community Park Easements, Common Parking Areas and that property identified and designated as "Common Area," "Common Open Space," "COS," "Park," "Square," "Fields," "Trails," "Storm Water Management Area," "Common Drive and Community Park Easements," "Common Parking Areas," or other different language with similar meaning on any recorded Plat or Plats of the Property or any part of it."

2. Subparagraph (ii) of Section 1 of Article I entitled "Shared Driveway" is hereby amended by deleting Subparagraph (ii) in its entirety and substituting therefor the following:

"(ii) "Common Drive and Community Park Easements" shall mean and refer to the easements reserved by Declarant and granted to the Association and its members in Section 13 of Article XII hereof, such Common Drive and Community Park Easements shall be considered Common Area pursuant to Subparagraph (m) hereof."

3. Subparagraph (jj) of Section 1 of Article I entitled "Shared Driveway Easements" is hereby amended by deleting Subparagraph (jj) in its entirety and substituting therefor the following:

"(jj) "Common Parking Areas" shall mean and refer to the areas located on Common Area or within the Private Road right-of-way which have been improved for overflow parking for use by Owners and guests in Heydon Hall, and in the event, a Common Parking Area encroaches onto a Lot, an easement for such area has been reserved by Declarant and granted (or is hereby granted by the Owner of such Lot by joinder in this First Amendment) to the Association and its members in Section 14 of Article XII hereof, such Common Parking Areas shall be considered Common Area pursuant to Subparagraph (m) hereof."

4. The first two lines of Section 3 of Article IV of the Declaration entitled "Title to Common Area" are hereby amended by deleting the first two lines in their entirety and substituting therefor the following:

"Section 3. Title to Common Areas. Title to the Common Areas shall be conveyed to the Association free and clear of all liens and encumbrances (except that for Common Drive and Community Park Easements and Common Parking Areas, the fee title shall remain in the Owners of Lots containing Common Drive and Community Park Easements and Common Parking Areas); provided, however, that Declarant shall have the"

5. Section 8 of Article V of the Declaration is hereby amended by deleting the first paragraph thereof in its entirety and substituting therefor the following:

"Section 8. Commencement of Annual Assessments. The Annual Assessment for each Lot shall commence on either: (i) the first day of the month following the month of closing of the transfer of a Lot from Declarant to an Owner with a completed house located thereon as evidenced by the issuance of a certificate of occupancy by the Charlotte/Mecklenburg Building Standards Department, or (ii) in the event Declarant conveys an unimproved Lot to an Owner, the earliest of the following events to occur: (a) the first day of the month following the issuance of a certificate of occupancy by the Charlotte/Mecklenburg Building Standards Department or (b) the first day of the month following the one year anniversary date of the closing of the unimproved Lot. The initial Annual Assessment shall be for the calendar year beginning January 1, 2003. The Annual Assessment for Lots which are recorded after January 1, 2003, or during calendar years after 2003 shall be pro-rated for that year, beginning on January 1st of that year. At such time as Declarant transfers ownership of a Lot to an Owner, the new Lot Owner will be responsible for payment of one hundred (100%) percent of the Annual Assessment due for the remainder of the calendar year in which the Lot transfer occurs. All Annual Assessments shall be payable in advance in equal installments as determined by the Board. Failure to mail notices by the dates required shall not affect the rights of the Association to assess Lots as provided herein. "

6. Section 3 of Article VII entitled "Liability Insurance" is hereby amended by deleting Section 3 in its entirety and substituting therefor the following:

"Section 3. Liability Insurance. The Association shall continuously maintain liability insurance of at least \$1,000,000 per occurrence together with umbrella liability insurance coverage of at least \$4,000,000 per occurrence for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. All such liability insurance shall be for the benefit of the Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees and shall provide for payment of all costs and legal expenses of the aforementioned parties. The Association shall provide a certificate of insurance evidencing such insurance to any Owner or Occupant upon written request by such Owner or Occupant."

7. Subparagraph (a) of Section 4 of Article VII entitled "Required Provisions for Property and Liability Insurance" is hereby amended by deleting the word "to" and substituting therefor the word

"of" after the word "extent" and before the word "the" so that said subparagraph (a) will read as follows:

"(a) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest;"

8. The first sentence in Section 2 of Article VIII entitled "Building Setbacks" is hereby amended by deleting the first sentence in its entirety and substituting therefor the following:

"No building shall be erected on any residential Lot nearer to any street line than permitted by applicable City of Charlotte zoning ordinances."

9. The first sentence in Section 1 of Article XI entitled "Maintenance by Association" is hereby amended by deleting the first sentence in its entirety and substituting therefor the following:

"The Association shall repair and maintain the Common Area and all improvements, utilities and facilities located on the Common Area, including the Private Roads and Common Drive and Community Park Easements."

10. The second and third sentences in Section 2 of Article XI entitled "Maintenance by Owners" are hereby amended by deleting the second and third sentences in their entirety and substituting therefor the following:

"Each Lot Owner shall maintain that portion of his driveway serving his Lot located within the Private Road between the Lot boundary line and nearest curb or pavement edge of the Private Road. Each Lot Owner with a driveway connecting to a Common Drive and Community Park Easement shall maintain that portion of his driveway located within the Common Drive and Community Park Easement. In addition, each Lot Owner shall maintain his private mailbox, whether located on his Lot, within a Private Road or within a Common Drive and Community Park Easement."

11. Section 6 of Article XI entitled "Failure to Maintain by Owner" is hereby amended by deleting the following from the fourth and fifth lines of Section 6:

(including responsibility to maintain Shared Driveways and Shared Driveway Easements areas)

12. Subparagraph (iii) of Section 6 of Article XII is hereby amended by deleting the entire subparagraph (iii) and substituting therefor the following:

"(iii) Easements for the use, installation, maintenance, repair and removal of sidewalks, over, across, and under those portions of the Property shown and designated as "Sidewalk Easements" on the plat or wherever physically located on any portion of the Property (herein referred to as the "Sidewalk Easements")."

13. Section 13 of Article XII entitled "Shared Driveway Easements" is hereby amended by deleting the entire Section 13 in its entirety and substituted therefor the following"

"Section 13. Common Drive and Community Park Easements. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association the Owners, their successors and assigns, and to the Occupants of Lots (which granting is joined in by any Owner owning a Lot subject to Common Drive and Community Park Easements) non-exclusive, perpetual easements over, across and under those portions of the Property shown and designated as Common Drive and Community Park Easements on the plats for the installation, maintenance, repair and common use and enjoyment of the driveway, sidewalks, benches, fountains and other improvements and utilities located thereon. The Common Drive and Community Park Easements are a part of the Common Area and shall be maintained by the Association."

14. Article XII is hereby amended by adding the following Section 14:

"Section 14. Common Parking Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association the Owners, their successors and assigns, and to the Occupants of Lots (which granting is joined in by any Individual Owners owning a Lot subject to a Common Parking Area) non-exclusive, perpetual easements over, across and under those portions of the Property shown and designated as Common Parking Areas on the plats for the installation, maintenance, repair and common use and enjoyment of the parking area located thereon for overflow parking; provided, however, that the use of the Common Parking Area located on Lot 134, and that part of the Common Parking Area located within the right of way of Heydon Hall Circle, may not interfere with the use of the driveway for Lot 134 which crosses the Common Parking Area partially located on Lot 134 and connects with the paved portion of Heydon Hall Circle. The use of Common Parking Areas shall be subject to any rules and regulations prescribed by the Association pursuant to subparagraph (i) in Section 1 of Article IV. The Common Parking Area is a part of the Common Area and shall be maintained by the Association except for the driveway on Lot 134 which shall be maintained by the Owner of Lot 134."

15. Section 3 of Article XVI entitled "Amendment" is hereby amended by adding after the first two sentences an additional and new sentence as follows:

"Provided, further, however, the provisions of Sections 3 and 4 of Article VII hereinabove and the provisions of Sections 14 and 15 of Article XVI hereinbelow may not be amended without the written approval of the required percentages of Owners and the unanimous written approval of all Owners of Lots containing any Common Drive and Community Park Easements or Common Parking Areas."

16. Article XVI entitled "General Provisions" is hereby amended by adding a new Section 14 and 15 as follows:

"Section 14. Conveyance of Title to Common Drive and Community Park Easements. Owners of one or more Lots containing Common Drive and Community Park Easements may, from time to time, convey to the Association fee simple title to the land within the Lots covered by the Common Drive and Community Park Easements free of all monetary encumbrances provided that such conveyance is then allowed by the appropriate governmental authorities, whether pursuant to a variance or otherwise. Upon such a conveyance by the applicable Owners of such Lots the Association will

acquiesce in the conveyance and assume the fee simple title as part of the Common Area. The Association shall, upon request, fully cooperate, but at no out-of-pocket expense to the Association, with the efforts of the Owners of such Lots in seeking the appropriate governmental approvals to allow such conveyances.

"Section 15. Association Indemnity for Owners of Lots containing Common Drive and Community Park Easements and Common Parking Areas. The Association, by its joinder in this First Amendment to Declaration hereby indemnifies and holds harmless each Owner or Owners or Occupants of a Lot containing Common Drive and Community Park Easements and/or Common Parking Areas from any and all liability, loss, damage, costs and expenses, including attorney's fees, sustained by such Lot Owner or Owners or Occupants by reason of any claim asserted by any person, firm or corporation for property damage or personal injury, including death, sustained by any person and occurring on or arising out of the Common Drive or Community Park Easements and/or Common Parking Areas to the extent that the Association would be liable as if it were the owner of such areas. Such obligation shall not extend to claims asserted by third parties for injury sustained as a result of gross negligence or intentional acts by the Owner or Owners of such Lot even though the injury may have occurred on the Common Drive or Community Park Easements and/or Common Parking Areas."

17. In all other respects the Declaration shall remain unchanged and is hereby approved ratified and affirmed.

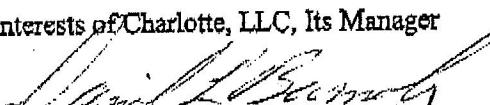
IN WITNESS WHEREOF, Declarant, Individual Owners and Association have caused these presents to be executed as of the day and year first above written.

DECLARANT:

HEYDON HALL, LLC (formerly Ardsley Park, LLC),  
a North Carolina limited liability company

By: Rhein Smithfield, LLC, Its Manager

By: Rhein Interests of Charlotte, LLC, Its Manager

By:   
Its VICE President

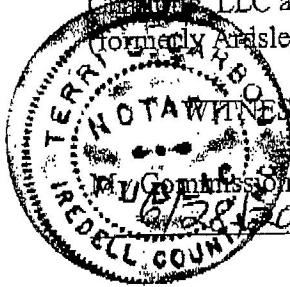
By: Simonini Smithfield, LLC, Its Manager  
 By: Killian/Simonini, LLC, Its Manager

By: *Ray A. Killian*  
 Ray A. Killian, Jr., Manager

By: *Alan C. Simonini*  
 Alan C. Simonini, Manager

STATE OF NORTH CAROLINA,  
 MECKLENBURG COUNTY,

I, a Notary Public for the County and State aforesaid, certify that Daniel L. Barnobi personally came before me this day and acknowledged that he is the Vice President of Rhein Interests of Charlotte, LLC, the Manager of Rhein Smithfield, LLC, itself the manager HEYDON HALL, LLC (formerly Ardsley Park, LLC), a North Carolina limited liability company and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of Rhein Interests of Charlotte, LLC as Manager of Rhein Smithfield, LLC, itself the manager of HEYDON HALL, LLC (formerly Ardsley Park, LLC).



WITNESS my hand and official seal this 4<sup>th</sup> day of October, 2004.

Jeri S. Carbon  
 Notary Public

STATE OF NORTH CAROLINA,  
 MECKLENBURG COUNTY

I, a Notary Public for the County and State aforesaid, certify that Ray A. Killian Jr. and Alan C. Simonini personally came before me this day and acknowledged that they are the Managers of Killian/Simonini, LLC, the Manager of Simonini Smithfield, LLC, itself the Manager of HEYDON HALL, LLC (formerly Ardsley Park, LLC), a North Carolina limited liability company and that they, as Managers, being authorized to do so, executed the foregoing on behalf of Killian/Simonini, LLC, Manager of Simonini Smithfield, LLC, itself the Manager of HEYDON HALL, LLC (formerly Ardsley Park, LLC).

WITNESS my hand and official seal this 4<sup>th</sup> day of October, 2004.

Jeri S. Carbon  
 Notary Public



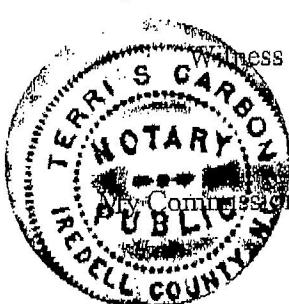
ASSOCIATION:

HEYDON HALL HOMEOWNER'S ASSOCIATION  
OF MECKLENBURG, INC.

By: William Saint  
\_\_\_\_\_  
President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
WILLIAM SAINT personally came before me this day and acknowledged that \_\_\_\_\_ he is \_\_\_\_\_  
President of HEYDON HALL HOMEOWNER'S ASSOCIATION OF MECKLENBURG, INC., a  
North Carolina non-profit 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 4<sup>th</sup> day of October, 2004.  
Terri S. Carbon  
Notary Public

6/28/2006