

Prepared by and return to: Philip G. Carson
Adams, Hendon, Carson, Crow & Saenger, P.A.
P.O. Box 2714
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**AMENDMENT TO MASTER DECLARATION OF COVENANTS,
RESTRICTIONS, CONDITIONS AND RESTRICTIONS**

**FOR
BILTMORE PARK**

THIS AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BILTMORE PARK is made and entered into this the 8th day of December, 2000, by BILTMORE PARK ASSOCIATION, INC., a North Carolina nonprofit corporation with its principal offices in Buncombe County, North Carolina, (hereinafter referred to as the "Master Association") and consented to by BILTMORE FARMS, INC., a North Carolina corporation with its principal office in Buncombe County, North Carolina, (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant and the Master Association Members are the owners of that certain real property located in Buncombe County, North Carolina, and more particularly described in the Master Declaration of Covenants, Conditions and Restrictions for Biltmore Park (hereinafter referred to as the "Master Declaration") recorded on April 17, 1995, in Deed Book 1845 at Page 53 in the Office of the Register of Deeds for Buncombe County, North Carolina, and in the Supplementary Declaration of Covenants, Conditions and Restrictions for Biltmore Park (hereinafter referred to as the "Supplementary Declaration") recorded August 30, 2000, in Book 2331 at Page 28 in the Office of the Register of Deeds for Buncombe County, North Carolina (the "Property"), which Property is being developed by Declarant as a mixed use community to be known as Biltmore Park ("Biltmore Park");

WHEREAS, in the Master Declaration and Supplementary Declaration, Declarant has provided for the preservation and enhancement of property values, amenities and opportunities in Biltmore Park and for the maintenance of the Property and improvements thereon, and to this end has subjected those portions of the Property which are developed into Single Dwelling Lots to the easements, covenants, conditions, restrictions, charges and liens described in the Master Declaration;

WHEREAS, Article XV, Section 2 of the Master Declaration provides for the amendment of the Master Declaration by the affirmative vote of at least fifty-one percent (51%) of all votes entitled to be cast by Master Association Members at a duly held meeting of the Master Association Members at which a quorum is present, provided that such amendment is consented to

by Declarant so long as it owns any Lot or other portion of the Property and provided that the amendment is executed by the Master Association Members or contains a certification of the Secretary of the Master Association stating that the amendment has been voted on and approved by the requisite number of votes of the Master Association Members;

WHEREAS, Article XV, Section 2 of the Master Declaration further provides that an amendment of the Master Declaration shall become effective upon the recording of the amendment in the Office of the Register of Deeds for Buncombe County, North Carolina,

WHEREAS, at a duly held meeting of the Master Association Members at which a quorum was present, the Master Association Members, by a vote of at least fifty-one percent (51 %) of all votes entitled to be cast by Master Association Members, voted to amend the Master Declaration pursuant to Article XV, Section 2 of the Master Declaration.

WHEREAS, the Master Association and Declarant desire to amend the Master Declaration and the Supplemental Declaration as set forth below;

NOW, THEREFORE, Declarant and the Master Association hereby amend the Master Declaration as follows:

**ARTICLE I
DEFINITIONS**

All capitalized terms when used in this Amendment to Declaration (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in Article I, Definitions, of the Master Declaration, except for Single Dwelling Lots as defined in Article I, Section 41, which shall be deleted in its entirety and replaced with the following:

Section 41. "Single Dwelling Lots" shall mean lots of various sizes as shall be shown on plats of portions of the Property recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, and specifically designated as being subject to the Master Declaration, as amended, upon which lots shall be located no more than one single family residence and ancillary structures or buildings serving the single family residence as allowed pursuant to Article III of this Amendment to Declaration.

**ARTICLE II
PROPERTY**

The property made subject to this Amendment to Declaration shall be the Property described in the Master Declaration of Covenants, Conditions and Restrictions for Biltmore Park recorded on April 17, 1995, in Deed Book 1845 at Page 53 in the Office of the Register of Deeds for Buncombe County, North Carolina, and in the Supplementary Declaration of Covenants,

Conditions and Restrictions for Biltmore Park recorded August 30, 2000, in Book 2331 at Page 28 in the Office of the Register of Deeds for Buncombe County, North Carolina

**ARTICLE III
RESTRICTIONS**

Article IX, Restrictions, of the Master Declaration is hereby amended by deleting Paragraph b and Paragraph c of Section 2 in their entireties and replacing them with the following:

b. Residential Use. With the exception of community facilities, clubs, or other uses developed by Declarant or the Master Association for use by the Master Association, all Lots shall be used, improved, and devoted exclusively to residential use. No buildings shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling with approved ancillary structures such as garages, guest houses, or other improvements that are for the benefit of the principal single-family dwelling. All approved ancillary structures shall be built within the areas and to a standard specified by the Board of Directors and in the Design and Development Guidelines and in accordance with the restrictions for ancillary structures set forth in the Design and Development Guidelines. No rental of less than the entire single-family dwelling or for less than six months is permitted. No separate rental of any ancillary structure is allowed for any time period or for any purpose.

c. Restriction on Further Subdivision. With the exception of Lots owned by Declarant or with the express written consent of the Declarant, no Lot may be subdivided by sale or otherwise as to reduce the total area of the Lot as shown on the recorded plat of the subdivision. Where a residence has been erected on a plot consisting of two or more Lots and the residence and improvements (including ancillary structures) are located on both or all Lots, the Lots shall thereafter be considered for all purposes as one Lot and the side setback lines shall be measured from the outside lines of the combined Lot. Notwithstanding the foregoing, the Declarant reserves the absolute right to replat, divide, or reconfigure Lots belonging to the Declarant in order to facilitate the overall development objectives of the Single Dwelling Lot Areas or other residential areas of Biltmore Park, including, where deemed appropriate, the division of Single Dwelling Lots into two or more lots for residential use.

**ARTICLE IV
EASEMENTS AND OTHER RIGHTS**

Article XI, Easements and Other Rights, of the Master Declaration is hereby amended by deleting Section 8 in its entirety and replacing it with the following:

Section 8. Utility and Drainage Easements. The Single Dwelling Lots and Single Dwelling Lot Areas shall be subject to all easements and rights-of-way for utilities and drainage

shown on the Single Dwelling Lot Area plats including but not limited to those certain easements shown and designated on said plats as:

- a. "Utility Easement;"
- b. "Public Storm Drainage Easement;"
- c. "Sanitary Sewer Easement;"
- d. "Sanitary Sewer Right-of-Way;"
- e. "Waterline Easement;" and
- f. "Cable TV and Other Communication Lines."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Master Association, its successors and assigns,

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Master Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along a ten-foot strip of land adjacent to the front, side and rear boundary lines on all Lots within the Single Dwelling Lot Areas for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone services, cable service, water, sanitary sewer and drainage facilities, storm drainage and/or other utilities or services. Provided, however, it the minimum set back line in a Single Dwelling Lot Area is less than ten feet, the above-described easement shall be the width of the minimum set back line. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

**ARTICLE V
MISCELLANEOUS PROVISIONS**

Section 1. Duration. This Amendment to Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date the Master Declaration was recorded in the Office of the Register of Deeds of Buncombe County, North Carolina, April 17, 1995. At the end of such thirty (30) year period, the covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the

expiration of a respective period, by two-thirds (2/3) vote of the Master Association Members, there shall be adopted a resolution to terminate this Amendment to Declaration. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting.

Section 2. Enforcement. The Declarant shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Amendment to Declaration. Enforcement of this Amendment to Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate this Amendment to Declaration, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Declarant to enforce this Amendment to Declaration shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

Section 3. Titles. The titles, headings and captions which have been used throughout this Amendment to Declaration are for convenience only and are not to be used on construing this Amendment to Declaration or any part thereof

Section 4. No Exemption. No Owner or other party may exempt himself or herself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or the Common Areas.

**ARTICLE VI
EFFECT OF AMENDMENT**

Except as the same shall have been expressly modified by this Amendment to Declaration, the covenants, conditions, and restrictions contained in the Master Declaration and the Supplementary Declaration shall remain in full force and effect. The Declarant and the Master Association Members hereby subject the Property to the amended covenants, conditions, and restrictions hereinabove set forth and declare that the Property shall be held, sold and conveyed subject to the covenants, conditions, and restrictions of this Amendment to Declaration all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. Subject to the rights of Declarant described in the Master Declaration and in this Amendment to Declaration, such covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property and shall inure to the benefit of each owner of a Lot located within the Property or any part thereof.

ARTICLE VII
SECRETARY'S CERTIFICATE

Pursuant to Article XV, Section 2 of the Master Declaration, the undersigned Secretary of Biltmore Park Association, Inc., hereby certifies that an affirmative vote of at least fifty-one percent (51%) of Master Association Members entitled to vote was received in favor of this Amendment to Declaration at a duly constituted and called meeting on the 8th day of December, 2000, at which a quorum was present.

[Corporate Seal]

BILTMORE PARK ASSOCIATION, INC.

BY: Richard A. Lilla
Secretary

IN WITNESS WHEREOF, the Biltmore Park Association, Inc., has caused this Amendment to Declaration and to be executed by its duly authorized officers and its corporate seal to be hereunto affixed the day and year first above written.

[Corporate Seal]

BILTMORE PARK ASSOCIATION, INC.

By: [Signature]
President

ATTEST:

Richard A. Lilla
Secretary

The Declarant hereby Consents to this Amendment to Declaration and causes it to be executed by its Officers thereunto duly authorized and its corporate seal to be hereunto affixed the day and year first above written.

[Corporate Seal]

DECLARANT: BILTMORE FARMS, INC.
A North Carolina Corporation

By: [Signature]
John F.A.V. Cecil, President

Attest: [Signature]
Secretary

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify that Richard A. Sills personally appeared before me this day and acknowledged that he/~~she~~ is Secretary of Baltimore Park Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him/~~her~~ as its Secretary.

Witness my hand and official stamp or seal, this 8th day of December, 2000.

[Notarial Seal]

Carolyne Jensen
Notary Public

My commission expires:

12-7-03

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify PHILIP G. CARSON personally appeared before me this day and acknowledged that he is Secretary of BILTMORE FARMS, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and official stamp or seal, this 11th day of December, 2000.

[Notarial Seal]

Myra A. Kuykendall
Notary Public

My commission expires:

10-9-2005



State of North Carolina, County of Buncombe
Each of the foregoing certificates, of Myra Kuykendall

is hereby certified to be correct Filed for registration on this the
13th day of December, 2000
OTTO W. DEBRUHL By: Debra D. Diage
Register of Deeds By: Deputy Phillips