

Highlands at Queens Creek Covenants Transcription

Article I: Definitions

Section 1. "Association" shall mean and refer to Highlands at Queens Creek Homeowners Association, its successors and assigns.

Section 2. "Owners" 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 part of the property, including contract sellers and builders, 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 hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the roadway and the lake.

Section 5. "Declarant" shall mean and refer to Northern Investors Group, LLC, its successors and assigns if such successors or assigns should acquire more than five undeveloped lots from the Declarant for the purpose of development.

Article II: Residential Use

Such Lots, and each and every one thereof, are for the residential purposes only and exclusively for the construction of single family residence. Only one (1) residence shall be allowed upon any Lot, together with appurtenant outbuildings of the same quality and color. No lot shall be re-subdivided.

Article III: Construction Standards

Only site-built homes will be allowed. No dwelling of any type shall be permitted which has less than 1,400 square feet of heated living space for a one-story dwelling. or less than 600 square feet of heated living space on the ground floor of a two-story dwelling. Garages, decks, terraces, open porches, basements and like areas shall not be included in square footage for the purpose of this Article.

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Article IV: Roadways, Easements

Every owner shall have a right of easement for ingress, egress, regress, access, utility and drainage purposes in and over the roadway(s) shown on said recorded plat, and such easement shall be appurtenant to and shall pass with the title to every Lot, whether or not specifically referenced in any deed to any Lot. The land within the easement area for said roadway shall be owned in fee simple by all the owners. The Declarant further reserves and easement of 15 feet along the front (roadside) property line and 10 feet along the rear property line of each Lot for the purpose of drainage and installation and maintenance of utility lines or services, or fencing. Drainage and utility easements for common septic systems are reserved to the use of the Lots utilizing the areas designated as "Common Septic Areas", all as shown on the recorded plat.

Article V: Setback Lines

No building, structure, fence, hedge, outbuilding, or appurtenance of any nature shall be located closer to any property line or street right of way than the minimum building lines shown on the recorded plat.

Article VI: Animals

No animals, livestock or poultry of any kind shall be raised, kept or bred on any Lot, except as follows: dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes, and provided they are not allowed to run at large or otherwise become nuisance to the community. Owners shall be solely and absolutely liable for the acts of any pet kept on their Lot. Horses may also be kept on Lots 8, 18, 22 and 54 (but no more than two horses), provided that they are for personal use of the Lot Owners only, and are kept within the confines of the Owner's Lot; horses are not allowed on any common areas. **(See Amendments: Second Amendment, Fourth Amendment)**

Article VII: Utility Lines

All electrical services and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead unless prior written approval is given by the Declarant or the Association. Any waiver of these restrictions shall not constitute a waiver as to other Lots or line. The Declarant reserves the right to subject the Property to a contract with an electric utility company for the installation of the underground electric cables and/or for the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to said utility company by each Lot Owner for a pro rata share of installation maintenance expenses. The Declarant shall be entitled to reimbursement from each Lot Owner for any water and/or sewer permits, tap fees or meters which have been obtained at the Declarant's expense.

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Article VII: Nuisances

No noxious, offensive or illegal activity shall be carried on or conducted upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. All Lots, whether occupied or unoccupied, shall be well-maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a Lot. No automobile, other vehicles or similar items shall be repaired or placed on blocks or stands except in an enclosed garage. Declarant reserves for itself and for the Association the right to enter upon cut grass, weeds or undergrowth on any Lot or easement, but shall be under no obligation to do so. The Declarant or the Association may contract for, and assess to the Lot owner, any maintenance necessary to enforce this covenant. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause noise that might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Lots. Except when used during and as part of the construction of a dwelling on the Lot, no truck or busses (other than pickup trucks of one-ton capacity or less, small vans or small trailers) shall be parked overnight on any Lot except in an enclosed garage. A pleasure boat on its trailer and recreational vehicles may be parked or stored on a Lot only behind the front face of the dwelling located on the Lot and not nearer than ten (10) feet to any side or rear Lot line. Any motor vehicle parked on any Lot shall have a current license plate, registration and inspection sticker. No elevated tanks of any kind shall be erected, placed or permitted on any part of the Properties, except as approved by the Declarant. Any tanks for use in connection with any residence constructed on the Properties, including tanks for the storage of fuels, must be buried or walled sufficiently to conceal them from the view from neighboring lots, roads, or streets. All clotheslines, garbage cans, equipment, coolers wood piles, or storage piles shall be walled in or fenced to conceal them from the view of neighboring lots, roads, or streets. Plans for all enclosures of this nature must be approved by the Declarant or Association prior to construction. Mail boxes and holders shall be black.

(See Amendments: First Amendment)

Article IX: Signs

No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any Lot or improvement thereon except "For Sale" or "For Rent" signs not exceeding 48" x 48" in size. Nothing herein shall be construed to prevent the Declarant from erecting, placing or maintaining signs, structures and offices as may be deemed necessary by them or for the operation of the subdivision.

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Article X: Sight Distance at Intersections

No fence, wall, hedge, shrub planting or other item which obstructs sight lines at elevations between two (2) and four (4) feet in height shall be permitted to remain on any Lot within any sight triangle easement as shown on the recorded plat, nor within ten (10) feet of the intersection of the right-of-way line with any driveway, and no portion of any tree shall be permitted to remain within such areas unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Article XI: Fences

No fences in excess of six (6) feet in height (except for eight-foot-high privacy fencing separating the Highlands from Queens Creek Mobile Home Estates) shall be constructed between the front building line and the back lot line of any Lot; there shall be no fences between the front building line the street.

Article XII: Drainage

Drainage ways shall conform to the requirements of all lawful public authorities, to the full extent of the authority given them by law. Further, Declarant may, at its option require restrictive drainage ways if the same would promote the best interest of the development.

Article XIII: Future Development

The Declarant reserves the right to annex any property now owned or hereafter acquired by the Declarant and adjoining the Property, and to subject such additional property to the restrictive covenants set forth herein, without prior approval or consent of the Lot Owners Association.

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Article XIV: Membership and Voting Rights

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the association. Membership shall be appurtenant to an may not be separated from ownership of an Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership

Class A. Class A members shall be all owners, with the exception of the Declarant 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 the determine but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three(3) votes for each Lot owned. The Class B membership shall cease and be converted to a 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 the Class B membership or
- b. On the fifth anniversary of the conveyance of a Lot or other parcel within the development.

(Note: Declarant is no longer a Class B member. All members including the Declarant are Class A)

Article: XV: Covenant for Maintenance Assessments

Section 1. Purpose of Assessments. The assessments described herein and levied by the Association or Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and their Lots, and in particular the maintenance and upkeep of the private roadway(s) located within the development in an all-weather passable condition, and for services and facilities devoted to this purpose, including but not limited to the maintenance, repair, replacement and additions to the roadways, entranceways, with gates and signs, recreation areas, drainage ways, the privacy fencing separating the Highlands from Queens Creek Mobile Home Estates and Queens Haven Road, the common septic drain field areas, and for the cost of labor, equipment, materials, repairs, management and supervision thereof. The cost of maintenance and repairs for the common septic systems, including any necessary special assessments, shall be shared equally among the Lots served by each respective system, and will be billed separately by the Association.

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Section 2. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the 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 assessment shall not pass to his successors in title unless expressly assumed by them.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$350.00 per Lot. There shall be an extra \$150.00 per year assessment for each of the forty-eight (48) Lots utilizing the six (6) common septic drain fields areas.

- a. From And after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than twenty (20%) percent above the maximum assessment for the previous year without a vote of the membership.
- b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above twenty (20%) percent 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 in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the 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 Ares, 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. Note: no such assent shall be required for any necessary special assessments for maintenance or repairs to any of the common septic systems; each group of eight (8) Lots serviced by each respective septic system shall bear its own such expenses, which will be managed by the Association, but billed separately.

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Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty (50%) percent 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 to the required quorum at the subsequent meeting shall be on-half (1/2) of the required quorum at the preceding meeting. No subsequent meeting shall be held more than 60 days following the preceding meeting nor less than (5) 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 (except for the additional assessments for Lots utilizing the common septic systems as stated above) and shall be collected on a regular basis. However, notwithstanding this section or any other section contained herein, Declarant shall not be obligated to pay the Uniform Assessment provided for the lot is unoccupied and has not been conveyed from the Declarant.

Section 7. Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as to all Lots on the date of conveyance of the Lot from Declarant to Owner. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The first year's Association dues shall be collected at the time of the purchase from the Declarant. 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 Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of (12%) percent per annum or such other rate as the Association may determine. The 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 the liability for the assessments provided for herein by non-use of the common Area or abandonment of his Lot. Should the Association (or Declarant) find it necessary to employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, all costs incurred in such enforcements, including court costs and a reasonable fee for counsel, shall be paid by the owner of such Lot or Lots against which such enforcement action is taken, and the Association (or Declarant) shall have a lien upon such Lot or Lots to secure payment of such costs.

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Section 9. Subordination of the Lien to Mortgages. The lien of 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 the mortgage foreclosure of 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 XVI: General Provisions

Section 1. Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by proceeding at law or in equity, all restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

Section 3. Document Availability. The Association shall have current copies of the Declarations, By-Laws and other rules concerning the project as well as its own books, records and financial statements available for inspection by Lot Owners or by holders, insurers and guarantors of first mortgages that are secured by Lots and improvements within the development. These documents shall be available during normal business hours and under other reasonable circumstances. There shall be an annual audited statement prepared each year with copies made available to the Lot Owners, and any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the development.

Section 4. Condemnation, Destruction, or Liquidation. The Association will be deemed to represent the owners in any losses or proceeds from condemnation, destruction or liquidation of all or part of the Common Areas and shall have the authority to negotiate, settle, and otherwise make agreements on behalf of all Lot Owners and their mortgage holders. Any and all funds shall be distributed to each of the Lot Owners in equal shares. However, all first mortgage holders shall be given ten (10) days notice prior to any disbursements to the Lot Owners.

Section 5. Limitation of Ability to Sell and Lease. No Lot Owner's right to sell, convey transfer of mortgage his Lot shall be restricted.

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Section 6. Amendment. The covenants and restrictions of this Declaration shall run with and bind with the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time the shall be automatically extended for successive period of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

Article XVII: Resignation of Declarant

The Declarant shall grant and convey all of its rights and privileges under these covenants, conditions, reservations and restrictions to the Association, at such time as the Class A votes of the Lot Owners shall exceed those of the Declarant. Upon such conveyance and grant the Association shall have and shall success to all rights and duties with the same powers as if the Association had been named as the Declarant herein.

Article XVIII: Storm Water Runoff

Section 1. The following covenants are intended to insure ongoing compliance with State Storm water Management Permit No. SW8070803, as issued by the Division of Water Quality under NCAC 2H.1000

Section 2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water management permit.

Section 3. These covenants are to run with the land and shall be binding upon all Owners and all persons and parties claiming under them.

Section 4. These covenants pertaining to storm water may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.

Section 5. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

Section 6. The maximum allowable built-upon area (BUA) per Lot is shown on the attached exhibit. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate and coquina, but does not include raised, open wood decking, or the water surface of swimming pools.

Section 7. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development, except for average driveway crossings, is strictly prohibited by any persons.

Section 8. Lots within CAMA's Areas of Environmental Concern may have the permitted built-upon area reduced due to CAMA jurisdiction within the AEC.

Section 9. Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

Section 10 . All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

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Article XIX: Conservation Declaration

The areas shown as conservation areas on the plat entitled "Survey of the Wetlands Conservation Easement (Easement "W"), Highlands at Queens Creek and recorded in Map Book 56, Page 28 Slide M-622, Onslow County Registry, shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area:

- (1) fill, grade, excavate or perform any other land-disturbing activities,
- (2) cut, mow, burn, remove or harm any vegetation;
- (3) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures;
- (4) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area;
- (5) dump or store soil, trash or other waste;
- (6) graze or water animals, or use for and agricultural or horticultural purpose.

Provided, however, that the Declarant and the Homeowners Association reserve the right to enter the designated conservation areas to construct, repair and maintain the fitness trail, bridges and utility easement as shown on the recorded plat, as well as a 10-foot mowed path across the designated wetlands areas to access the uplands on which the septic and fitness areas are located. Further, the Owners of Lots 8, 10, and 11 are allowed to have a 10-foot mowed path crossing the areas designated as wetlands, in order to access the uplands areas of said lots.

This covenant is intended to ensure continued compliance with the mitigation condition of a Clean Water Act authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, AID#2007 1429 and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the Owner, and all parties claiming under it, and no amendment to this covenant shall be valid without the execution and recording of an amendment upon the authorization and approval of the United States of America, U.S. Army Corps of Engineers, Wilmington District or successor regulatory agency or authority.

The following deed notification is included herewith in compliance with the Special Conditions imposed by the U.S Army Corps of Engineers for the Action ID number 2007 4129: "A portions of the subdivision has been determined to meet the requirements for designation as a wetland. Any subsequent fill or alteration of this area shall conform to the requirements of the federal rules addressing wetland impact noted in the Code of Federal Register at the time of the proposed alteration. The intent of this provision is to prevent additional wetland and stream impact, so the property owner should not assume that a future application for filing or alteration would be approved. The property owner shall report the name of the subdivision in any application pertaining to said rules. This covenant is to run with the land and shall be binding on all parties and persons claiming under them.

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(First) Amendment to the Restrictive Covenants: The Highlands at Queens Creek, Phase 1

Article VII: Nuisances shall be amended by adding the following: "Each Low Owner is responsible for maintaining the area (including ditches) between the front Lot line and the edge of the road pavement."

Article XII: Drainage shall be amended by adding the following: "Driveway pipe can be any material approved by the North Carolina Department of Transportation, not just concrete tile."

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Second Amendment to the Restrictive Covenants: The Highlands At Queens Creek, Phase I

1. The definition of "Lots" in Article I, Section 4, shall specifically include Lots 51, 52, 53 and 54, which were included in the plat recorded in Map Book 55, Pate 212, Slide M-566, Onslow County Registry, but were inadvertently omitted from the recitations of said Declaration.
2. Due to the unique size of Lot 54 (which contains 38.00 acres) in proportions to all other Lots:
 - a. Up to four (4) horses may be kept on said Lot, for personal use only, and
3. Lot 49 may be subdivided into Lots 49 and 49A upon approval by the appropriate governmental authorities, including Onslow County Planning & Development
4. A new Article XX shall be added, as follows:

Article XX: Architectural Control Committee

Section 1. In order to preserve and protect the appearance of the Properties and the value of the Lots and the residences constructed thereon, no building, wall, fence or other structure or improvement of any type shall be erected, placed or altered on any Lot until the construction plans and specification have been approved in writing by the Architectural Control Committee. Any such improvements may be made only in accordance with the approved plans and specification. Refusal of approval of plans and specifications may be made on any grounds, including purely aesthetic grounds, in the sole discretion of the Architectural Control Committee. Any change in the appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping (with the exception of the Planting or pruning of flowers and shrubs) shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the authority to publish such rules and regulations as it deems necessary to carry out the provisions and intent of this article.

Section 2. Within thirty (30) days after receipt of the required plans and specifications, the Architectural Control Committee shall notify the Lot Owner in writing of its approval, disapproval or approval with conditions, of the submitted plans and specifications, or that further information is required for a determination, in which case the thirty day response period shall commence only upon receipt of the requested further information. If no such response is made within the thirty (30) day, the plans and specification shall be deemed approved as submitted.

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Section 3. Until the sale of the last numbered Lot in the Properties, or of any subsequent phases or additions thereto, the Declarant, its successors or assigns shall have all the powers and authority of the Architectural Control Committee as described herein. Upon the resignation of the Declarant, its successors or assigns from the Architectural Control Committee, such powers and authority shall pass to the Association, which may appoint three (3) Lot Owners to compose the membership of the Architectural Controls Committee. In the event of the death disability or resignation of any such Owner-member, the remaining members shall appoint a success, to server until the following annual meeting of the Association.

Section 4. A majority of the Architectural Control Committee may take any action the committee is empowered and authorized to take, and may employ consultants, upon the approval of the Association's Board of Directors. The members of the Architectural Control Committee shall not be entitled to compensation for their services absent Board approval, but may impose a reasonable fee, to be delivered when plans and specifications are submitted, to cover the expense of any consulting fees.

Third Amendment to the Restrictive Covenants (Annexing Phase II, Highlands at Queens Creek)

Those Lots shown on the plat entitled "Phase II, Highlands at Queens Creek" as recorded in Map Book 57, Page 187, Slide M-1021, Onslow County Registry, shall be held and transferred subject to said Declaration of Conditions, Reservations, Restrictions, as amended.

Fourth Amendment to the Restrictive Covenants: The Highlands at Queens Creek, Phase I

1. Due to the large size of lots 8, 18, and 22 in proportion to the other lots, up to four (4) horses may be kept on said Lots, for personal use only.

The Following is applicable to all Amendments:

Except as expressly modified herein, all other matters contained in said Declaration of Conditions, Reservations and Restrictions, as amended, shall remain unchanged.