



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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Prepared by and mail after recording to: Russell & Frazier, PLLC
P. O. Box 19001, Raleigh, NC 27619

DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
BENNINGTON PARK SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by Satterwhite
Construction Inc., a North Carolina Corporation, hereinafter referred to as "Declarant".

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain Properties in Raleigh Township,
County of Durham, State of North Carolina, which is more particularly described as:

**SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN
BY THIS REFERENCE.**

WHEREAS, Declarant will convey lots from its currently owned Properties
subject to certain protective covenants, conditions, restrictions and easements as
hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Properties
described on Exhibit A, shall be held, sold, used, occupied, and conveyed subject to the
following easements, restrictions, covenants, and conditions, which are for the purpose of
enhancing and protecting the value and desirability of, and which shall run with, the

Properties and be binding on all parties having any right thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. “Act” is defined as the “North Carolina Planned Community Act”, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements as enacted from time to time.

Section 2. “Additional Property” is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger or consolidation, as provided herein.

Section 3. “Assessment” shall mean and refer to the share of the Common Expenses from time to time assessed against a Lot and its Owner by the Association in the manner herein provided.

Section 4. “Association” shall mean and refer to Bennington Park Homeowner’s Association, Inc., its successors and assigns.

Section 5. “Board of Directors” shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 6. “Bylaws” shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 7. “Common Area” shall mean that certain portion of the Properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including Open Space Areas, Managed Open Space, parking

areas, any recreational facilities, all the Stormwater Management Area serving more than one Lot, which are situated outside the public street. The Stormwater Management Areas serving more than one Lot, which are situated outside the public street rights of way, are Common Areas.

Section 8. "Common Expenses" shall mean and refer to all sums lawfully assessed against a Lot by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas, expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of this Declaration or the Bylaws; insurance premiums and maintenance of stormwater management areas.

Section 9. "Declarant" shall mean and refer to Satterwhite Construction Inc., a North Carolina corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area, Managed Open Space and road rights-of-way which are offered for public dedication.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Natural Protective Yard" shall mean and refer to those areas so designated on a recorded plat which areas may or may not be a portion of a Lot. Such areas that are parts of a Lot shall be maintained by the respective Lot owner in compliance with the Raleigh City Code. Those areas outside of any Lot shall be maintained by the Association in compliance with the Raleigh City Code.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "Properties" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of Association.

Section 15. "Stormwater Management Areas" shall mean and refer to the stormwater facilities situated outside the public street rights-of-way and serving more than one lot and located on the Property as private drainage easements or stormwater management areas designated on recorded plats of the Property.

Section 16. "Subdivision Plan" is defined as the most current development plan approved by the City of Raleigh for any portion of the Properties or Additional Property, for any portion of the Properties or the Declarant Additional Property, including a subdivision plan, site plan, group housing plan or cluster unit development plan. When two or more Subdivision Plans are approved for the same portion of The Properties (for example, a phase or section within a cluster unit development), the most current and most specific plan controls.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and

easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) subject to the ordinances of the City of Raleigh the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facilities which may constitute a portion of the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any of the recreational facilities which may constitute a portion of the Common Area by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof, to pledge the Common Area; as security;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by four-fifths (4/5) of each class of Members has been recorded; and,

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common

Area, to the members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot and, to his guests, invitees and licensees.

Section 3. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Area, shall be subject to such easements for private roads or drives, public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessor in title, prior to the subjecting of the Properties to this Declaration; provided, however, as to any easements which may be granted that run across or affect any of the Lots, such easements shall not be granted so as to run under or disturb in any way any of the dwelling structures which may be constructed upon such Lots; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. Sight easements, if any, as may be shown upon any recorded subdivision map of the Properties are hereby reserved by the Declarant. Within sight easements no fence, wall, sign, landscaping, or any obstruction shall be erected or maintained 24 inches above the ground.

An easement is hereby established for the benefit of the County of Durham, the City of Raleigh, any agency thereof, and service providers over all Common Area and Lots hereby or hereafter established for the setting, removal, and reading of water meters, the maintenance and replacement of water and sewer facilities, the fighting of fires, delivery and collection of mail, collection of garbage and police protection.

Section 4. Temporary Construction Access and Disturbance Easement. An easement

over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and all Owners of any Lot to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot, and installation of driveways, sidewalks, underground drainage and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In using and taking the benefits of said easement, Declarant or its designate and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is grades smooth and in harmony with surrounding areas. Should Declarant fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot.

Section 5. Easement for Minor Encroachments. All Lots and the Common Area shall be subject to a perpetual easement for the encroachment of initial improvements constructed on Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitations, such items as overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls. If any encroachment shall occur subsequent to subjecting the Properties to the

Declaration as a result of settling or shifting of any improvement or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and there shall be a valid easement for such encroachment and for the perpetual maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 6. Emergencies and Entrance. Every Lot thereon shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Area.

Section 7. Drainage Easements. Declarant does hereby grant and convey to the Association as Common Areas, for the use and benefit of the Owners, a perpetual, non-exclusive easement for the use, drainage, inspection, maintenance, repair, reconstruction and replacement of the Stormwater Management Areas on, over and upon any portion of the Properties not owned in fee by the Association such as Stormwater Management Areas and private drainage easements on which stormwater control measures are located and on, over and upon such other portions of the Properties reasonably necessary to conduct such inspection, maintenance, repair, reconstruction, and replacement of the stormwater control measures and for ingress, egress and regress to and from the stormwater control measures.

Section 8. Title to the Common Area. Prior to the sale of any Lot, the Declarant hereby covenants for itself, its heirs, and assigns that it will convey fee simple title to the Common Area shown on the same recorded Subdivision Map as the Lot to the Association, which Common Area shall include any private roads or drives which may have been previously created, free and clear of all encumbrances and liens, except utility and drainage easements and those easements stated in this Article.

Section 9. Utility Charges for Water and Street Lights. As consideration for the conveyance of the Common Area and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use of water provided to and used in connection with any of the Common Area and by virtue of the use and operation of the street lights installed and erected within the Common Area from and after the date of acceptance. Such cost of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of Article IV below.

Section 10. Greenway – City of Raleigh Approval. Notwithstanding any other provisions of these Declarations, the Association, Owners, Members, Tenants of members, members' guests or invitees, or families of members shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh, without the prior written consent of the City of Raleigh:

- (a) Grant easements of any nature whatsoever;
- (b) Remove any trees or vegetation;

- (c) Erect gates, fences or other structures;
- (d) Place any garbage receptacles;
- (e) Fill or excavate;
- (f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Lot Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to Assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. 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 they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The foregoing allocation of votes is in recognition of the fact that The Properties likely will be developed in phases and there may be times during the development of The Properties when Declarant owns less, if any Lots. The Class B membership shall be reinstated if before December 31, 2010 additional lands are annexed to this Declaration as hereinafter provided. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When 75% of the maximum number of Lots allowed for the Properties (as amended and supplemented from time to time) under the Subdivision Plan have been conveyed to Owners; or
- (b) on December 31, 2010; or
- (c) the date specified by the Declarant in a written notice to the Association.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with 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 to 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 became due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Property, the recreation, health, safety and welfare of the residents in the Property, for the improvement and maintenance of the Common Area, and, in particular, for the payment of governmental water and sewage disposal charges attributable to the Common Areas, as well as other like expenses, including but not limited to, any and all changes necessary to maintain Stormwater Management Areas and for such other purposes permitted by the Planned Community Act Chapter 47F of the General Statutes of North Carolina. Assessments shall include, but not limited to, the payment of taxes, liability insurance and all assessments for the public improvements of the Common Area, and easements appurtenant thereto, the enforcement of these covenants and the rules of the Association and, in particular, for the improvement and maintenance of the Property, private streets, drives and parking areas, services and facilities devoted to this purpose and related to the

use and enjoyment of the Common Area. The Association shall be required to maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Association Common Area out of the assessment levied.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum amount annual Assessment shall be THREE HUNDRED SIXTY DOLLARS (\$360.00).

(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 ten percent (10%) above the maximum Assessment for the previous year without a vote of the membership. Any budget increasing assessments by less than ten percent (10%) is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting.

(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 ten Percent (10%) by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

Section 4. Special Assessments for Capital Improvements. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided,

however, 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. Fines levied by the Board of Directors shall be treated as a Special Assessment otherwise due to the Association, and as such, will be a lien against the Owner's lot if not paid. Such fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines.

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 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. This provision shall continue to reduce the quorum by one-half from that required by the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 6. Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots and annual Assessments shall be due and payable and collected on a quarterly basis or as deemed appropriately by the Board of Directors; provided, however, annual and special Assessments for all Lots owned by Declarant, its successors and assigns, for which no certificate of occupancy have been issued by the

City of Raleigh. Special Assessments may be collected on a quarterly basis, or as deemed appropriate by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for herein shall commence and shall be due and payable as to all Lots on the first day of the month following the conveyance of the Common Area and on the first day of each calendar year thereafter. Such amount due and payable on the first day of each such calendar year shall be as set forth and established pursuant of Section 3 of this Article. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. In addition to the annual Assessment, there shall be paid at the time of the initial sale of each Lot at least two months' Assessments in order to provide a working capital fund for the initial months of the Association's operation. Amounts paid into such fund shall not be considered as advance payment of any portion of the annual assessment. 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 date shall be as previously set forth herein, unless otherwise 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 as 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 remaining not paid thirty (30) days or longer after the due date shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Durham County and shall bear interest from the due date at the rate of eighteen percent (18.0%) per annum or highest rate allowed by law and shall be subject to a late charge of Twenty Five and No/100 Dollars (\$25.00). Sixty (60) days after the delinquency, the Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent Assessment, late charges and reasonable attorney's fees of any such action, or foreclosure the lien against the property in a like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of this Section, the amount of delinquent Assessment and late charge shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 10. Fines Designated to be Special Assessments. The Board may impose fines against any Lot and such fines shall be treated as a Special Assessment otherwise

due to the Association, and as such will be a lien against the Owner's Residential Unit or Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fines paid by the offending Owner(s) shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner. Fines shall be as follows:

(a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).

(b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(c) Third and subsequent non-compliance, or violation or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

No such imposition of fines shall occur without an opportunity of a hearing before the Board of Directors.

ARTICLE V

INSURANCE

Section 1. Ownership of Policies. All insurance policies upon the Common Area which shall be purchased by the Association shall be for the benefit of all the Association and the Owners and their mortgagees as their interest may appear.

Section 2. Coverage. Public liability and casualty insurance shall be secured by the Association with limits of liability of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a

group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary. Such policies shall contain clauses providing for waiver or subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half (1/2) the annual Assessment plus reserves accumulate.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to all Owners as an Assessment according to the provisions of Article IV above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) the proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) any expense of the insurance trustee may be paid from proceeds after payment of

reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VI

ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Required Approval. The Architectural Control Committee shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any Lot within The Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Control Committee. No building addition, sign, fence, outside lighting, hedge, wall, roof, shingle replacement, walk, antenna, deck, porch, carport, garage, or other structure or planting shall be constructed, erected, or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and located with respect to topography and finished ground elevation shall have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure or landscaping and materials or which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the Architectural Control Committee shall fail to