

**BYLAWS
OF
BROOKEDALE COMMONS
HOMEOWNERS ASSOCIATION, INC.**

Table of Contents
Bylaws of Brookedale Commons Homeowners Association, Inc.

| <u>Article / Section</u> | <u>Page</u> |
|---|-------------|
| Article 1 NAME AND LOCATION | 1 |
| 1.1 Name and Location. | 1 |
| Article 2 DEFINITIONS | 1 |
| 2.1 Incorporation. | 1 |
| (a) The Declaration. | 1 |
| Article 3 MEETING OF MEMBERS AND VOTING | 1 |
| 3.1 Annual Meeting. | 1 |
| 3.2 Special Meetings. | 1 |
| 3.3 Notice and Place of Meetings. | 2 |
| 3.4 Quorum. | 2 |
| 3.5 Ballots and Representative Voting. | 3 |
| (a) Voting Referendum; Written Ballots. | 3 |
| (b) Proxies. | 3 |
| 3.6 Membership and Voting. | 4 |
| 3.7 Eligibility to Vote. | 4 |
| 3.8 Record Dates. | 4 |
| (a) Record Dates Established by the Board. | 4 |
| (b) Record Date for Notice of Meetings. | 4 |
| (c) Failure of Board to Fix a Record Date. | 5 |
| 3.9 Action Without Meeting. | 5 |
| 3.10 Conduct of Meetings. | 5 |
| Article 4 BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE | 5 |
| 4.1 Number. | 5 |
| 4.2 Term of Office. | 6 |
| 4.3 Removal; Vacancies. | 6 |
| 4.4 Compensation. | 6 |
| 4.5 Indemnification of Corporate Agents. | 6 |
| Article 5 NOMINATION AND ELECTION OF DIRECTORS | 7 |
| 5.1 Nomination. | 7 |
| 5.2 Election. | 7 |
| Article 6 MEETINGS OF DIRECTORS | 7 |
| 6.1 Regular Meetings. | 7 |
| 6.2 Special Meetings. | 7 |
| 6.3 Quorum. | 7 |
| 6.4 Executive Session. | 8 |
| 6.5 Telephone Meetings. | 8 |
| 6.6 Owners' Attendance at a Board Meeting. | 8 |
| 6.7 Waiver of Notice. | 8 |
| 6.8 Notice of Adjourned Meeting. | 8 |

| | | |
|--|--|----|
| 6.9 | Action Without Meeting..... | 8 |
| 6.10 | Notices Generally..... | 9 |
| 6.11 | Declarant’s Veto Rights..... | 9 |
| Article 7 POWERS AND DUTIES OF THE BOARD OF DIRECTORS..... | | 9 |
| 7.1 | Duties..... | 9 |
| | (a) Maintenance..... | 10 |
| | (b) Insurance..... | 10 |
| | (c) Discharge of Liens..... | 10 |
| | (d) Assessments..... | 10 |
| | (e) Expenses and Obligations..... | 10 |
| | (f) Records..... | 10 |
| | (g) Supervision..... | 10 |
| | (h) Review of Financial Records..... | 10 |
| | (i) Reserve Account Withdrawal Restrictions..... | 10 |
| | (j) Reserve Account Fund Management..... | 11 |
| 7.2 | Powers..... | 11 |
| | (a) Manager..... | 11 |
| | (b) Adoption of Rules..... | 11 |
| | (c) Assessments, Liens and Fines..... | 11 |
| | (d) Enforcement..... | 11 |
| | (e) Contracts..... | 11 |
| | (f) Delegation..... | 11 |
| | (g) Act as Trustee..... | 11 |
| | (h) Borrowings..... | 12 |
| | (i) Other Powers..... | 12 |
| 7.3 | Prohibited Acts..... | 12 |
| Article 8 OFFICERS AND THEIR DUTIES..... | | 12 |
| 8.1 | Enumeration of Officers..... | 12 |
| 8.2 | Election of Officers..... | 12 |
| 8.3 | Term..... | 12 |
| 8.4 | Special Appointments..... | 12 |
| 8.5 | Resignation and Removal..... | 12 |
| 8.6 | Vacancies..... | 13 |
| 8.7 | Duties..... | 13 |
| | (a) President..... | 13 |
| | (b) Vice President..... | 13 |
| | (c) Secretary..... | 13 |
| | (d) Treasurer..... | 13 |
| Article 9 COMMITTEES..... | | 13 |
| 9.1 | Appointment..... | 13 |
| Article 10 BOOKS AND RECORDS..... | | 14 |
| 10.1 | Inspection by Members..... | 14 |
| 10.2 | Rules for Inspection..... | 14 |
| 10.3 | Inspection by Directors..... | 14 |
| 10.4 | Documents Provided by Board..... | 14 |
| Article 11 MISCELLANEOUS..... | | 15 |

| | | |
|------|--|----|
| 11.1 | Association to Publish Names of Directors and Officers | 15 |
| 11.2 | Amendments..... | 15 |
| 11.3 | Conflicts. | 15 |
| 11.4 | Fiscal Year..... | 15 |

BYLAWS
OF
BROOKEDALE COMMONS
HOMEOWNERS ASSOCIATION, INC.

Article 1
NAME AND LOCATION

1.1 Name and Location.

The name of the corporation is BROOKEDALE COMMONS HOMEOWNERS ASSOCIATION, INC., INC., hereinafter referred to as the "Association." The principal office of the Association shall be located at the Development, or at such other place as may be designated by the Board.

Article 2
DEFINITIONS

2.1 Incorporation.

The definitions contained in the Declaration are incorporated by reference herein.

(a) The Declaration.

"Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for Brookedale Commons recorded in the Register of Deeds offices for Mecklenburg County and Union County, North Carolina, and subsequent amendments thereto.

Article 3
MEETING OF MEMBERS AND VOTING

3.1 Annual Meeting.

The first meeting of the Members, whether an annual or a special meeting, shall be held on such day and at such time as the Board, upon majority vote, shall determine and which shall occur not more than twelve (12) months following the date of the close of the sale of the first Unit in the Regime. Subsequent annual meetings of the Members shall be held thereafter at an hour and place within thirty (30) days of the same month and day of such first meeting, as set by the Board.

3.2 Special Meetings.

Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Directors or upon written request of the President. A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing ten percent (10%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the ten percent (10%), the record date shall be thirty (30) days before delivery of

the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice thereof to all Members in accordance with the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act.

3.3 Notice and Place of Meetings.

Unless otherwise provided in the Declaration, the Articles of Incorporation, in these By-Laws, or in the North Carolina Planned Community Act or the North Carolina Nonprofit Corporation Act, written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary, by mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) but not more than sixty (60) days before such meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. In the case of written demand of Members representing ten percent (10%) of the total voting power of the Association, written notice of such meeting shall be given not more than thirty (30) days after written demand is delivered to the Association. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting, and shall provide for voting by proxy. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal: (a) removing a Director without cause; (b) filling vacancies in the Board of Directors by the Members; or (c) amending the Articles of Incorporation. Meetings shall be held within the Development or at a meeting place within the same county, as close to the Development as possible.

Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

3.4 Quorum.

Unless otherwise provided herein, in the Declaration, the Articles of Incorporation, or the North Carolina Planned Community Act or the North Carolina Nonprofit Corporation Act, the presence of Members representing twenty percent (20%) of the votes of all Members, in person or by proxy, shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum of twenty percent (20%) of the votes of all Members is present may continue to do business until adjournment, and any action taken shall be approved by a majority of the Members required to constitute such quorum. If the required quorum is not present that meeting may be adjourned and another meeting called, not less than ten (10) nor more than thirty (30) days following the adjourned meeting, upon the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting shall be construed to be subject to the quorum requirements established by this Section 3.4. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment,

notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3.

3.5 Ballots and Representative Voting.

(a) Voting Referendum; Written Ballots.

Any vote of Members on a matter that would be cast at an annual, regular or special meeting may be taken, without a meeting, by written ballot delivered by the Association to every Member entitled to vote. The ballot shall set forth the matter to be voted upon and provide thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the number of votes cast by ballot equals or exceeds the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A solicitation of votes by ballot shall (i) indicate the record date for Members eligible to vote; (ii) indicate the number of returned ballots voting for or against the matter that is required to satisfy the quorum requirement; (iii) state the required number of votes or percentage voting in favor of the matter required to approve it (except in the case of election of directors, which shall be by plurality); and (iv) state the date and time by which a Member's completed ballot must be received by the Secretary in order to be counted in the vote to be taken. A ballot, once delivered to the Secretary, may not be revoked. A Member's signed ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under North Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

(b) Proxies.

All of the provisions of this Section 3.5(b) are subject to Section **Error! Reference source not found.** of the Declaration. To the extent that a provision set forth in this Section is inconsistent with Section **Error! Reference source not found.** of the Declaration, the provisions of Section **Error! Reference source not found.** of the Declaration shall control. At all meetings of Members, each Member may vote in person or by proxy. The appointment form of proxy shall be in writing and received by the Secretary before the appointed time of the meeting. Every proxy appointment shall automatically cease upon conveyance by the Member of his Unit, or upon receipt of written notice by the Secretary of the death or judicially declared incompetence of a Member prior to the counting of the vote, upon revocation of the appointment of the proxy in accordance with the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act., or upon the expiration of eleven (11) months from the date of the proxy. Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting. The appointment shall provide that, where the Member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act. The Member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under North Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission,

internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

3.6 Membership and Voting.

Membership in the Association is set forth in the Declaration. Except as otherwise provided in the Declaration, the Articles of Incorporation, these By-Laws, the North Carolina Planned Community Act, or the North Carolina Nonprofit Corporation Act, any action by the Association which must have the approval of the Members before being undertaken shall require voting approval by a majority of the votes cast by Members present at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority. Members are divided into Class A and Class B Members in the Declaration for the sole purpose of computing voting rights and shall not vote as a class.

3.7 Eligibility to Vote.

Voting rights attributable to Units shall not vest until the Association has levied Assessments against those Units. Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Units and not subject to any suspension of voting privileges as a result of disciplinary proceeding conducted in accordance with the Declaration. A Member's good standing shall be determined as of the record date established in accordance with Section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing. Votes allocated to Units owned by the Association may not be cast.

3.8 Record Dates.

(a) Record Dates Established by the Board.

For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as otherwise provided in the Articles of Incorporation, by agreement, in the North Carolina Planned Community Act or the North Carolina Nonprofit Corporation Act. The record dates established by the Board pursuant to this Section shall be as follows:

(b) Record Date for Notice of Meetings.

In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(i) Record Date for Voting.

In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(ii) Record Date for Action by Written Ballot Without Meeting.

In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

(iii) Record Date for Other Lawful Action.

In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

(iv) "Record Date" Means as of the Close of Business.

For purposes of this subparagraph A, a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

(c) Failure of Board to Fix a Record Date.

If the Board, for any reason, fails to establish a record date, rules set forth in the Nonprofit Corporation Act shall apply.

3.9 Action Without Meeting.

Any action that may be taken at any annual or special meeting of Members (except the election of Directors) may be taken without a meeting in accordance with the provisions of the Nonprofit Corporation Act. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice.

3.10 Conduct of Meetings.

Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt. Except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with the North Carolina Nonprofit Corporation Act. No Member of the Association shall have any right as an Association Member to attend any meeting of the Board, except such meetings of the Board as the Board of Directors shall, in the exercise of its sole discretion, open to the membership or any other person pursuant to Section 6.6 below. In any matter relating to the discipline of an Association Member, the Board shall always meet in closed session if requested by that Member, and the Member shall be entitled to attend such closed session.

Article 4

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

4.1 Number.

The affairs of the Association shall be managed by a Board of Directors, all of whom must be Members of the Association, or an officer, director, employee or agent of a Member, including the Declarant. The initial Board of Directors shall consist of three (3) Directors who shall be appointed

by the Declarant. The Declarant shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to the Declaration until the expiration of the Declarant Control Period. Within sixty (60) days after the expiration of the Declarant Control Period, the Members shall elect three (3) Directors. The Association shall either call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of, such special meeting of the Members to elect the Board of Directors, or the date on which the Association shall count the written ballots distributed to the Members with such notice for the election of the Board of Directors. Each year thereafter, the Members shall elect such number of Directors as shall exist whose terms are expiring.

4.2 Term of Office.

The election of Directors shall be by plurality, the number of nominees equal to the number of vacancies to be filled receiving the greatest number of votes being elected. However, at the meeting of the Association following expiration of the Declarant Control Period held to elect three (3) Directors or the date following expiration of the Declarant Control Period when written ballots are to be counted for the election of such Directors pursuant to Section 4.1, the two (2) nominees receiving the highest number of votes will each be elected for a term of two (2) years, and the next nominee receiving the highest number of votes will each be elected for a term of one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve for a term of two (2) years. Unless vacated sooner, each Director shall hold office until the Director's term expires and a successor is elected.

4.3 Removal; Vacancies.

A Director appointed by the Declarant may only be removed by the Declarant, otherwise, a Director may be removed from office, with or without cause, at any regular or special meeting of the Members by sixty-seven percent (67%) of the votes of the Members voting in person or by proxy at a meeting at which a quorum is present. A successor to any removed Director may be elected at the same meeting at which the vacancy is created by the removal of the Director. A Director whose removal is proposed to be voted upon at any meeting shall be given notice of the proposed removal not less than 10 days prior to the date of the meeting and shall be given an opportunity to be heard at the meeting. In the event of death or resignation of a Director, the vacancy shall be filled by majority vote of the Board at a duly held meeting, or by the sole remaining Director. A successor Director shall serve for the unexpired term of his or her predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

4.4 Compensation.

No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties, including, but not limited to, travel expenses.

4.5 Indemnification of Corporate Agents.

The Association shall indemnify any present or former Director, officer, employee or other agent of the Association to the fullest extent authorized under the Nonprofit Corporation Act, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was not entitled to indemnification under this provision.

Article 5
NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination.

Nomination for election to the Board of Directors may be made by a Nominating Committee established by the Board of Directors, otherwise upon motion or other procedure adopted therefor by the Board. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations to be placed on the ballot may also be solicited by the Nominating Committee or the Board from the membership, and if the election is to take place at a meeting and not solely by written ballot, nominations may also be made from the floor at the meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than sixty (60) days prior to the meeting of the Members at which the election is to be held, or if the election is to take place solely by written ballot not less than sixty (60) days prior to the date set on the ballot as the election date when ballots are to be counted, and shall serve until the close of the election. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

5.2 Election.

The first election of the Board shall be conducted as set forth in Section 4.1. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. No cumulative voting shall be permitted. Voting for Directors at a meeting shall be by secret written ballot. Voting for Directors may also be conducted by written ballot pursuant to Section 3.5(a).

Article 6
MEETINGS OF DIRECTORS

6.1 Regular Meetings.

Regular meetings of the Board of Directors shall be held at least annually at such place within the Development, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists within the Development, the Board shall select a room as close as possible to the Development. Should a regularly scheduled meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday.

6.2 Special Meetings.

Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

6.3 Quorum.

A majority of the Directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decisions made by a majority of the

Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.4 Executive Session.

The Board may, with approval of a majority of the Directors present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel and matters involving contracts of which the Association is a party, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.5 Telephone Meetings.

Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting. An explanation of the action shall be filed with the minutes of the proceedings of the Board.

6.6 Owners' Attendance at a Board Meeting.

At regular intervals during the year, the Board of Directors shall provide Owners an opportunity to attend a portion of a Board meeting and to speak to the Board about their issues or concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

6.7 Waiver of Notice.

The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minute. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

6.8 Notice of Adjourned Meeting.

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

6.9 Action Without Meeting.

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

6.10 Notices Generally.

Notice of any meeting of the Board of Directors, whether regular or special, shall be given to each Director by one (1) of the following methods; (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; (d) by telegram, charges prepaid; or (e) by facsimile transmission to the fax number of the Directors or to e-mail address of the Directors, with proof of transmission and receipt thereof being retained in the minutes of the meeting. All such notices shall be given or sent to the Director's address, telephone number, fax number or e-mail address as shown on the records of the Association. Such notice shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting, provided, however, notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph, facsimile transmission or e-mail shall be delivered, telephoned, given to the telegraph company, faxed or e-mailed, as the case may be, at least seventy-two (72) hours before the time set for the meeting. Notice of any meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

6.11 Declarant's Veto Rights.

This Section 6.11 may not be amended during the Declarant Control Period without the express written consent of the Declarant.

(a) During the Declarant Control Period, the Declarant shall have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section 6.11. This veto power shall be exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument.

(b) No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(i) In the absence of the physical presence of any employee of the Declarant who waives written notice, the Declarant shall have been given written notice of each meeting and the actions approved at the meeting of the Board or any committee. Such written notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time; and

(ii) The Declarant shall have and is hereby granted a veto power over any such action, policy, or program approved by any committee or the Board of Directors and to be taken by any committee or Board of the Association or any individual member of the Association if Board, committee, or Association approval is necessary for said action. This veto may be exercised by the Declarant, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions of these Bylaws. Any veto shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association.

Article 7

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 Duties.

It shall be the duty of the Board of Directors to

(a) Maintenance.

Perform the maintenance described in the Declaration;

(b) Insurance.

Maintain insurance as required by the Declaration;

(c) Discharge of Liens.

Discharge by payment, if necessary, any lien against the Common Areas and assess the cost thereof to the Member or Members responsible for the existence of the lien (after notice and hearing as required by these Bylaws);

(d) Assessments.

Fix, levy, collect and enforce Assessments as set forth in the Declaration;

(e) Expenses and Obligations.

Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

(f) Records.

Cause to be kept minutes of annual meetings of Members and to present such minutes to the Members at the next annual meeting of the Members; minutes of any special meeting when such statement is requested in writing by one-fourth ($\frac{1}{4}$) of the Class A Members; and to keep adequate and correct books and records of account, minutes of proceedings of its Board and committees, and a roll of its Members giving their names and addresses and classes of membership;

(g) Supervision.

Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(h) Review of Financial Records.

Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget, and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, these major components, which the Association is obligated to maintain.

(i) Reserve Account Withdrawal Restrictions.

Require that at least two (2) signatures are needed for the withdrawal of monies from the Association's reserve accounts, at least one (1) of whom shall be a member of the Board. One (1) signature may be that of the Association's manager or such manager's designee.

(j) Reserve Account Fund Management.

The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

7.2 Powers.

The Board of Directors shall have power to

(a) Manager.

Employ a manager as provided in the Declaration;

(b) Adoption of Rules.

Adopt rules in accordance with the Declaration, including rules setting aside Common Area parking spaces as handicap parking only, and adopt rules limiting the number of cars that will be permitted to be parked in the Common Area parking spaces;

(c) Assessments, Liens and Fines.

Levy and collect Assessments and impose fines as provided in the Declaration.

(d) Enforcement.

Enforce these Bylaws and/or the Declaration as provided in **Error! Reference source not found.** of the Declaration.

(e) Contracts.

Contract for goods and/or services in accordance with the Declaration.

(f) Delegation.

Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to procure insurance, make capital expenditures for additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration or rules and regulation promulgated by the Board, or to make a decision to levy monetary fines, impose special Assessments against individual Units, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special Assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. Any such delegation shall be revocable by the Board at any time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

(g) Act as Trustee.

Act as trustee holding and disbursing insurance proceeds as provided in the Declaration.

(h) Borrowings.

Borrow money (i) for the purpose of improving the Development, or any portion thereof, (ii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, (iii) for providing services authorized herein, and, (iv) to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of the Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

(i) Other Powers.

In addition to any other power contained herein or in the Declaration, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the Nonprofit Corporation Act.

7.3 Prohibited Acts.

The Board shall not take any of actions prohibited of it under the Declaration except with the vote or written consent of a majority of the Members other than the Declarant.

Article 8
OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers.

The officers of this Association shall be a President and Secretary, who shall at all times be members of the Board of Directors, a Vice President, and a Treasurer, and such other officers as the Board may from time to time by resolution create. One person may hold both offices of Secretary and Treasurer.

8.2 Election of Officers.

The Declarant shall have the sole right to appoint and remove officers during the Declarant Control Period. Thereafter, all officers shall hold office at the pleasure of the Board.

8.3 Term.

The Board shall elect the officers of this Association annually and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments.

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal.

Any officer may be removed from office, with or without cause, by the Board, but not from the Board, if the officer is also a Board member. Any officer may resign at any time by giving

written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies.

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7 Duties.

The duties of the officers are as follows

(a) President.

The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a North Carolina Nonprofit Corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

(b) Vice President.

The Vice President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

(c) Secretary.

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses, and shall perform such other duties as required by the Board. The ministerial functions of the Secretary in recording votes, keeping minutes, sending notices, and keeping the records of names and addresses of Members may be delegated to an Association manager.

(d) Treasurer.

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; and shall prepare and shall distribute budgets and statements. The ministerial functions of the Treasurer in sending Assessment notices, receiving and depositing Assessments, keeping books and ledgers of account, and preparing and distributing budgets and statements may be delegated to an Association manager.

Article 9
COMMITTEES

9.1 Appointment.

An Architectural Review Committee may be appointed as provided in the Declaration, and a Nominating Committee may, in the discretion of the Board, shall be appointed as provided in these

Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Act also requires Members' approval; (b) fill vacancies on the Board of Directors or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Directors; (e) appoint any other committees of the Board of Directors or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more Directors or committee members have a material financial interest.

Article 10 BOOKS AND RECORDS

10.1 Inspection by Members.

The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Development as the Board shall prescribe. Board minutes shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

10.2 Rules for Inspection.

The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made;
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

10.3 Inspection by Directors.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents, at the expense of the Association.

10.4 Documents Provided by Board.

Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide an Owner with a copy of the governing documents of the Development, a copy of the most recent budget and statements of the Association, and a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Annual and Special Assessments and fees, as well as any Assessments levied upon the Owner's interest which, as of the date of the statement, are or may be made a lien upon the Owner's Units. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

Article 11
MISCELLANEOUS

11.1 Association to Publish Names of Directors and Officers.

The Association shall publish the names and addresses of all officers and members of the Board of Directors within thirty (30) days following election or appointment to office.

11.2 Amendments.

Prior to close of the sale of the first Unit, the Declarant may amend these Bylaws. After sale of the first Unit these Bylaws may be amended, only as provided in the Declaration, in the North Carolina Planned Community Act or in the North Carolina Nonprofit Corporation Act.

11.3 Conflicts.

In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

11.4 Fiscal Year.

Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Patricia M. 7/15

FILED
CABARRUS COUNTY NC
WAYNE NIXON
REGISTER OF DEEDS

FILED Feb 21, 2013
AT 02:43 pm
BOOK 10392
START PAGE 0110
END PAGE 0182
INSTRUMENT # 04914
EXCISE TAX \$0.00

BJW

Drawn by: Margaret Shea Burnham, Nexsen Pruet, PLLC, 701 Green Valley Road, Suite 100, Greensboro, NC 27408
Mail to: Lennar Carolinas, LLC, 11230 Camel Commons Boulevard, Charlotte, NC 28226

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF
NORTH CAROLINA.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
POLITICAL SIGNS**

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BROOKEDALE COMMONS**

258.
73

TABLE OF CONTENTS
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BROOKEDALE COMMONS

| <u>Article / Section</u> | <u>Page</u> |
|---|-------------|
| ARTICLE 1 DEFINITIONS..... | 2 |
| 1.01 Defined Words and Terms..... | 2 |
| ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION..... | 7 |
| 2.01 Property Subjected..... | 7 |
| 2.02 Additional Land..... | 7 |
| 2.03 Withdrawal of Property..... | 7 |
| ARTICLE 3 SUBMISSION AND TERM..... | 7 |
| 3.01 Submission of Property..... | 7 |
| 3.02 Incorporation of Declaration into Deed..... | 8 |
| 3.03 Term..... | 8 |
| ARTICLE 4 COMPLIANCE WITH DOCUMENTS..... | 8 |
| 4.01 Compliance with Declaration and Other Documents..... | 8 |
| 4.02 Resolution of Conflicts Between Documents..... | 8 |
| ARTICLE 5 PROPERTY RIGHTS..... | 9 |
| 5.01 Easement of Enjoyment..... | 9 |
| 5.02 Sale or Transfer of Common Area..... | 10 |
| 5.03 Delegation..... | 10 |
| (a) Owner’s Right to Delegate..... | 10 |
| (b) Notice to Association Upon Its Request..... | 10 |
| 5.04 Owner’s Lease or Rental..... | 11 |
| (a) Owner Use and Enjoyment of Facilities During Tenancy..... | 11 |
| (b) Owner’s Right to Lease or Rent..... | 11 |
| (c) Restrictions Upon Lease or Rental..... | 11 |
| ARTICLE 6 MEMBERSHIP AND VOTING RIGHTS..... | 13 |
| 6.01 Governing Body..... | 13 |
| 6.02 Membership..... | 13 |
| 6.03 Voting..... | 13 |
| (a) Class A..... | 13 |
| (b) Class B..... | 13 |
| (c) Commencement of Voting Rights..... | 14 |
| (d) Declarant Vote Required..... | 14 |
| 6.04 Association Administration..... | 14 |
| (a) Board of Directors..... | 14 |
| (b) Declarant’s Right to Appoint Board and Officers..... | 14 |
| (c) Transfer of Control of Association..... | 15 |

| | | |
|--|---|----|
| (d) | Duties and Powers of the Association. | 15 |
| ARTICLE 7 COVENANTS FOR ASSESSMENTS..... | | 16 |
| 7.01 | Affirmative Covenant to Pay Assessments..... | 16 |
| (a) | Liability of Owner for Assessments. | 16 |
| (b) | No Governmental Lien on Lot for Nonpayment of Any Amount Due on Common Areas. | 16 |
| 7.02 | Purpose of Assessments..... | 17 |
| (a) | Generally..... | 17 |
| (b) | Streets and Roads; Street Lights and Sidewalks..... | 17 |
| (c) | Reserve Funds..... | 18 |
| (d) | Association Monies; No Hypothecation of Owner-Member Interest. | 18 |
| 7.03 | Assessment Lien; Perfection..... | 18 |
| 7.04 | Personal Obligation..... | 19 |
| 7.05 | Annual Assessment..... | 19 |
| (a) | Establishment..... | 19 |
| (b) | Levy. | 20 |
| 7.06 | Special Assessments. | 20 |
| 7.07 | Notice and Quorum for Annual and Special Assessments. | 21 |
| 7.08 | Specific Purpose Assessment..... | 21 |
| 7.09 | Assessments for Non-Compliance (Fines)..... | 21 |
| (a) | Basis..... | 21 |
| 7.10 | Uniform Rate of Assessment. | 23 |
| 7.11 | Commencement of Assessments..... | 23 |
| 7.12 | Revised Annual Assessments. | 23 |
| 7.13 | Delinquent Assessments; Late Charge and Interest..... | 23 |
| 7.14 | Priority of Lien..... | 24 |
| 7.15 | No Set-Off or Deduction..... | 24 |
| 7.16 | Lots Owned by Declarant or Builder. | 25 |
| (a) | Declarant and Assessments..... | 25 |
| (b) | Builders and Assessments..... | 25 |
| 7.17 | Working Capital Contribution. | 25 |
| ARTICLE 8 COMMON AREA AND LOT MAINTENANCE..... | | 26 |
| 8.01 | Maintenance by Association. | 26 |
| (a) | Stormwater Management System. | 26 |
| (b) | Sidewalks. | 26 |
| 8.02 | Maintenance by Owners. | 26 |
| 8.03 | Failure of Owner to Maintain. | 27 |
| 8.04 | Work Required by Owner's Willful or Negligent Act..... | 28 |
| 8.05 | Rights of Entry..... | 28 |
| (a) | By Declarant and Association..... | 28 |
| (b) | By Safety and Emergency Personal..... | 28 |
| ARTICLE 9 USE RESTRICTIONS..... | | 29 |
| 9.01 | Rules and Regulations..... | 29 |
| 9.02 | Use Generally..... | 29 |

| | | |
|---------------------------------------|---|----|
| 9.03 | Enforcement..... | 29 |
| 9.04 | Residential Use..... | 30 |
| 9.05 | Sales Offices; Model Homes..... | 31 |
| 9.06 | Minimum Square Footage..... | 31 |
| 9.07 | Temporary Structures..... | 31 |
| 9.08 | Accessory Structures..... | 32 |
| 9.09 | Outdoor Living Space..... | 32 |
| 9.10 | Mailboxes, Delivery Receptacles and Identification Markers..... | 32 |
| 9.11 | Subdivision of a Lot; Combining Lots..... | 32 |
| 9.12 | Obstructions..... | 32 |
| | (a) Removal of Obstructions..... | 33 |
| 9.13 | No Timeshares..... | 33 |
| 9.14 | No Offensive and Unlawful Activity..... | 33 |
| 9.15 | Parking..... | 33 |
| 9.16 | Garages..... | 34 |
| 9.17 | Signs, Curtains and Flags..... | 34 |
| 9.18 | Antennas and Dishes..... | 35 |
| 9.19 | Laundry..... | 36 |
| 9.20 | Perimeter Fences..... | 36 |
| | (a) Courtyard Walls..... | 36 |
| 9.21 | Pets..... | 36 |
| 9.22 | Trash and Vegetation..... | 37 |
| | (a) Trash..... | 37 |
| | (b) Landscaping..... | 37 |
| 9.23 | Above Ground Pools..... | 37 |
| 9.24 | Window Air Conditioners..... | 37 |
| 9.25 | Construction Material..... | 38 |
| 9.26 | Play and Exercise Equipment..... | 38 |
| 9.27 | Changing Elevations..... | 38 |
| 9.28 | Completion of Construction and Condition of Site..... | 38 |
| 9.29 | Sewage System..... | 39 |
| 9.30 | Water System..... | 39 |
| 9.31 | Utility Facilities..... | 40 |
| 9.32 | Dog Pens and Runs..... | 40 |
| 9.33 | Exterior Changes..... | 40 |
| 9.34 | Storm Doors..... | 40 |
| 9.35 | Window Boxes and Planters..... | 40 |
| 9.36 | If Rule or Regulation Requiring Irrigation Adopted..... | 40 |
| 9.37 | Unintentional Violations; Waiver of Setbacks, Building Lines and Building Requirements..... | 41 |
| 9.38 | Modification by Regulation..... | 41 |
| ARTICLE 10 ARCHITECTURAL CONTROL..... | | 41 |
| 10.01 | Required Processes Prior to Work Being Undertaken..... | 41 |
| | (a) Submission for Review..... | 41 |
| | (b) Plan Review..... | 42 |
| 10.02 | Architectural Control Committee..... | 43 |

| | | |
|--|---|----|
| 10.03 | Architectural Requirements | 43 |
| 10.04 | Reconstruction of Residences..... | 43 |
| 10.05 | No Liability for Approved Plans and Inspections..... | 44 |
| 10.06 | Violations..... | 44 |
| 10.07 | Compliance Deposit..... | 45 |
| | (a) Posting Deposit and Refund..... | 45 |
| | (b) Retention of Deposit..... | 46 |
| ARTICLE 11 EASEMENTS AND RIGHTS OF WAY | | 46 |
| 11.01 | Utilities..... | 46 |
| 11.02 | Drainage..... | 47 |
| 11.03 | Sign Easements..... | 47 |
| 11.04 | Sidewalk Easements..... | 48 |
| 11.05 | Easement and Right of Entry..... | 48 |
| 11.06 | Easement for Maintenance..... | 48 |
| 11.07 | Easement to Effectuate Intent..... | 49 |
| 11.08 | Power to Grant Easements..... | 49 |
| 11.09 | Reciprocal Flowage Easements..... | 49 |
| 11.10 | Utility Easements Reserved on Lots..... | 49 |
| 11.11 | Right of Entry..... | 50 |
| 11.12 | Berm and Landscape Easement..... | 50 |
| 11.13 | Easements Deemed Granted and Reserved..... | 50 |
| ARTICLE 12 INSURANCE..... | | 50 |
| 12.01 | Duty to Maintain Insurance..... | 50 |
| 12.02 | Proceeds of Insurance..... | 51 |
| ARTICLE 13 DAMAGE AND DESTRUCTION..... | | 51 |
| 13.01 | Damage to Lots..... | 51 |
| 13.02 | Repair, Restoration, Reconstruction of Common Area..... | 51 |
| 13.03 | Damage to an Owner's Lot by Association..... | 52 |
| 13.04 | Damage or Destruction to Common Areas by Owners..... | 52 |
| 13.05 | Hearing Procedure Following Damage or Destruction..... | 52 |
| | (a) Due Date of Specific Assessment..... | 52 |
| | (b) Specific Assessment Remaining Unpaid..... | 52 |
| | (c) Attorney Fees and Costs for Prevailing Party..... | 53 |
| | (d) Offset of Assessment if Association Liable..... | 53 |
| | (e) Procedure for Requested Adjudicatory Panel..... | 53 |
| ARTICLE 14 EMINENT DOMAIN | | 54 |
| 14.01 | Taking of Common Area..... | 54 |
| 14.02 | Repair, Restoration, Reconstruction of Common Area..... | 54 |
| ARTICLE 15 RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS..... | | 54 |
| 15.01 | Institutional Lenders..... | 54 |
| 15.02 | Obligation of Association to Institutional Lenders..... | 54 |
| 15.03 | Requirements of Institutional Lender..... | 55 |
| 15.04 | Subordination..... | 55 |

| | |
|---|----|
| ARTICLE 16 DECLARANT RIGHTS | 56 |
| 16.01 Declarant’s Reserved Special Declarant Rights. | 56 |
| ARTICLE 17 ANNEXATION | 57 |
| 17.01 Right to Annex Additional Property..... | 57 |
| 17.02 Procedure for Annexation..... | 57 |
| 17.03 Annexed Property. | 57 |
| ARTICLE 18 MISCELLANEOUS PROVISIONS..... | 58 |
| 18.01 Enforcement..... | 58 |
| 18.02 Authority and Enforcement..... | 58 |
| (a) Procedure..... | 59 |
| 18.03 Power to Settle Claims..... | 60 |
| 18.04 Notice of Sale, Lease, or Mortgage..... | 60 |
| 18.05 Severability..... | 60 |
| 18.06 Duration..... | 60 |
| 18.07 Amendment..... | 61 |
| 18.08 Federal Lending Requirements..... | 61 |
| 18.09 Megan’s Law..... | 61 |
| 18.10 Interpretation Generally..... | 62 |
| 18.11 Amplification..... | 62 |
| 18.12 No Affirmative Obligation Unless Stated..... | 62 |
| 18.13 No Implied Liabilities or Duties..... | 62 |
| 18.14 Notices..... | 62 |
| 18.15 Headings..... | 63 |
| 18.16 Equal Opportunity Housing..... | 63 |
| 18.17 Exhibits..... | 63 |
| 18.18 Professional Management..... | 63 |

Declaration of Covenants, Conditions and Restrictions for Brookedale Commons

THIS DECLARATION is made as of the 21st day of February, 2013 by Lennar Carolinas, LLC, a Delaware limited liability company (herein, "Declarant").

RECITALS:

A. Declarant is the owner of certain contiguous real property located in Cabarrus County, North Carolina, more particularly described in the attached "Exhibit A," incorporated herein by reference (the "Property").

B. Declarant desires to subject the Property to the provisions of this Declaration to create a residential community of single-family detached housing with deeded lots, to be known as "Brookedale Commons" (herein, sometimes referred to as the "Subdivision" and sometimes as the "Community").

C. Declarant owns or may acquire in the future additional real property (the "Additional Land") in Cabarrus County, North Carolina, located adjacent to or in the vicinity of the Property. Declarant may, in its sole discretion and without obligation, annex all or any portion of the Additional Land into the Community and subject all or a portion of the Additional Land to the provisions of this Declaration by filing one or more instruments annexing the Additional Land (each being an "Annexation Declaration") pursuant to the terms herein. No act or acts of Declarant, including the recordation of a plat or plats indicating lots included in the Subdivision, shall be taken to imply, or be construed as, subjecting the Additional Land to this Declaration and shall not constitute a part of the Declarant's Scheme of Development hereunder until it first files an Annexation Declaration for such Additional Land and further, expressly extends the Declarant's Scheme of Development thereto in the Annexation Declaration or in a later filed instrument amending or supplementing the covenants, conditions, easement and restrictions of this Declaration (each being a "Supplemental Declaration").

D. Declarant deems it desirable for the management and administration of the Subdivision and for the preservation of the values and amenities of the Subdivision to incorporate the Brookedale Commons Homeowners Association, Inc. as a non-profit corporation under the laws of the State for the purposes of administering and enforcing the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant declares that all of the Property (and so much of the Additional Land, as shall, from time to time, be annexed into the Community in accordance with the terms of this Declaration) shall be held, sold, occupied and conveyed subject to the

covenants, terms, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, which shall run with such real property, shall be binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof, and declares that this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act, and to the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the Act shall control.

ARTICLE 1

DEFINITIONS

1.01 Defined Words and Terms.

The following capitalized terms shall have the following meanings when used in this Declaration:

(a) “Additional Land” means any real property that adjoins the boundaries of the Property described in **Exhibit A**, or whose boundary is within 8,000 feet of any boundary line of the Property described in **Exhibit A**, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions hereof.

(b) “Annexation Declaration” means an amendment or a supplement to this Declaration entitled, “Declaration of Annexation to Declaration of Covenants, Conditions and Restrictions for Brookedale Commons” by which Additional Land is annexed into the Community and made subject hereto. The Declarant’s Scheme of Development, which may include additional terms, conditions, covenants, easements and restrictions to be applicable to the annexed Additional Land, shall not, however, extend to the annexed Additional Land unless the Annexation Declaration expressly provides therefor, or until the Declarant files of record a Supplemental Declaration expressly providing therefor.

(c) “Appraisal” means an appraisal by a member of the Appraisal Institute of the National Association of Real Estate Boards (or, if such Institute is not then in existence, a like organization).

(d) “Architectural Control Committee” means and refers to the committee appointed by the Declarant while Declarant owns a Lot or has the right and power to add Additional Property that may be subdivided into additional Lots, and thereafter by the Board of Directors, which shall, among other responsibilities, approve any plans and specifications for the construction of initial and subsequent improvements on the Lots, including but not limited to, exterior appearance, elevations, materials to be used, color, site plan and landscaping, and any changes thereto. The Architectural Control Committee may also establish such policies, procedures, guidelines or and/or requirements (the “**Architectural Guidelines**”) governing use of the Common Area and Property, and/or enforce compliance with the Regulations established by the Declarant, the Board, and/or the Architectural Control Committee, if such authority is granted to them by the Declarant or the Board.

(e) "Articles" means the Articles of Incorporation of the Association, including any amendments thereto. The Articles filed with the Secretary of State on October 11, 2012.

(f) "Assessment" will mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(g) "Association" means the Brookedale Commons Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(h) "Board" or "Board of Directors" means the governing body of the Association, selected as provided in the Bylaws.

(i) "Builder" means any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Subdivision.

(j) "Bylaws" means the Bylaws of the Association, including any amendments thereto. The Bylaws shall be adopted on or before the date Assessments against the Lots are first levied by the Association.

(k) "Common Area" means all real property, interests in real property and personal property, easements, and other interests, owned by the Association, or owned by the Declarant to be ultimately conveyed to the Association, with respect to which for the common use, benefit, and enjoyment of some or all of its Owners, including the Recreational Common Area when conveyed to the Association, but does not include real property over which the Association has only an easement. Common Area shall also mean such property, which, from time to time, is owned and/or maintained (but not necessarily owned) by the Association. The term "Common Area" shall mean to include the Subdivision sidewalks located behind the street or roadway curb even though the same may be a part of the rights-of-way of streets and roadways conveyed to a public authority.

(l) "Common Expenses" will mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration for the maintenance, repair and management of the Common Areas, and for the maintenance, repair and management of other property, whether owned by the Association or not and set forth in this Declaration or incorporated herein by a Supplemental Declaration, for which the Association has responsibility.

(m) "Community" means the Brookedale Commons Subdivision, comprised of the real property and interests described on Exhibit A and such additions to that property as may be made by Declarant, and/or its successor, or by the Association pursuant to this Declaration.

(n) "Completion of Sales" means the conveyance of all portions of the Property by Declarant, or its successor, to purchasers other than a successor Declarant.

(o) "County" means, as the context shall require, Cabarrus County, North Carolina.

(p) "Declarant" means Lennar Carolinas, LLC, a Delaware limited liability company, and any affiliate, successor or assign who succeeds to, or to whom Declarant assigns, its rights and interests as Declarant hereunder in whole or in part by instrument recorded in the official records of the County. Declarant's status hereunder does not terminate until a transfer of Declarant's Rights is signed and recorded in the Register of Deeds for the County, transferring the Declarant's rights hereunder to another developer, builder or the Association.

(q) "Declarant Control Period" means the period of time during which the Declarant possesses Class B membership in the Association.

(r) "Declaration" means this Declaration of Covenants, Conditions and Restrictions for the Brookedale Commons Subdivision, and all amendments or supplements hereto.

(s) "Lot" means any plot of land, or any numbered single family lot within the Community, together with any improvements thereon, as shown upon any recorded final subdivision map covering all or a portion of the Subdivision, which is not a dedicated street or Common Area. The ownership of a Lot shall include, and there shall pass with each Lot, as an appurtenance thereto, whether or not separately described, all of the right, title and interest of an Owner in the Common Area (when deeded to the Association) and membership in the Association.

(t) "Member" means every person or entity who owns any portion of the Property and who holds membership and voting rights in the Association.

(u) "Mortgage" means any mortgage, security deed, deed of trust, or similar instrument used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

(v) "Mortgagee" means the holder of a beneficial interest in any Mortgage.

(w) "Non-Member User" means any Person who is not a Member of the Association, but who is permitted to use the Recreational Common Area. A Non-Member User would include, but not be limited to (by way of example), a lessee or guest of an Owner.

(x) "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

(y) "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot or any portion of the Property, including Declarant, but excluding tenants, Non-Member Users, and any Person who holds an interest in any portion of the Property merely as security for the performance or satisfaction of any obligation.

(z) "Person" means a natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust, trustee or other legal entity capable of holding title to real property.

(aa) "Phase" means each separate tract or portion of the Property subjected to this Declaration and the Declarant's Scheme of Development by a recorded Supplemental Declaration under this Declaration or pursuant to express terms and conditions set forth in an Annexation Declaration making Additional Land therein described part of the Property.

(bb) "Planned Community Act" shall mean the North Carolina Planned Community Act set out in Chapter 47F of the General Statutes of North Carolina; and all section references to Chapter 47F shall be read to mean such section of the General Statutes of North Carolina set out in the Planned Community Act.

(cc) "Property" means that certain real property more particularly described on attached **Exhibit A** incorporated herein by reference, which is expressly made subject to the terms of this Declaration, and shall also include any portion of the Additional Land subjected to this Declaration by a Supplemental Declaration recorded pursuant to this Declaration.

(dd) "Recreational Common Area" means any and all that portion of the Common Area of the Property which Declarant will complete and convey, or cause to be conveyed, to the Association for the common use and enjoyment of its Members as recreational land, together with any and all improvements and facilities constructed, or dedicated for, recreational use, and any additions thereto, which are owned by the Association. Provided Declarant gives its written consent, the Board may extend licenses to non-Members to use the Recreational Common Area for a reasonable fee for such periods as the Board determines to offset the Association's costs in maintaining and operating the Recreational Common Area.

(ee) "Regulations" means any and all rules, regulations, guidelines, policies, procedures or requirements (hereinafter, collectively, the "Regulations") as may be adopted, imposed, amended, modified, or established by the Declarant, Board of Directors of the Association, and/or an Architectural Control Committee (when such authority is granted to them by the Declarant and/or the Board) for the use and enjoyment of the Property, including the Common Area (including the Recreational Common Area), and the improvements thereon, and/or which may further restrict the Common Area and the actions of the Members and Non-Member Users within the Property.

(ff) "Scheme of Development" means the general plan or scheme for the development of the land submitted to this Declaration as evidenced by its further subdivision creating Lots and Common Areas subjected to the covenants, easements and affirmative obligations herein provided and/or subjected in a Supplemental Declaration to such other covenants, conditions, easements and restrictions, whether complimentary to or in substitution for one or more covenants, conditions, easements and restrictions generally applicable under this Declaration. No reciprocal negative easement shall be created over any undeveloped land submitted hereto and not otherwise dedicated to the uses and purposes for which the within covenants, conditions, easements and restrictions apply or as otherwise may be made applicable by the filing of a Supplemental Declaration; and no intent shall be implied that such undeveloped land shall be treated similarly to other parts of the Community for which a general plan or

scheme of development has been created by the Declarant pursuant to the foregoing. Land that has not been subjected to the Declarant's Scheme of Development, as aforesaid, shall be subject to withdrawal by Declarant from the plan and operation of this Declaration during the Declarant Control Period, as further provided in **Section 2.03** hereof. The Declarant's Scheme of Development may also be expressly extended to Additional Land subjected to this Declaration in the Annexation Declaration therefor.

(gg) "State" means the State of North Carolina.

(hh) "Storm Water Management System" means the system which is designed, constructed, and implemented for the Community to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution, or otherwise affect the quantity and quality of discharges from the system, as permitted or required pursuant to the applicable requirements of the applicable governmental authorities. Such system shall include the ponds identified on the Plat as "COS BMP" or "BMP," drainage easements and storm water piping systems, drains, catch basins and other related apparatus and facilities intended to provide storm water management and control for the Project.

(ii) "Substantial Completion" means that the improvement in question has been constructed in such a manner that it can be used for its intended purpose.

(jj) "Supplemental Declaration" means an amendment or a supplement to this Declaration and/or which imposes additional conditions or amends existing provisions of the covenants, conditions, restrictions, easements and other terms contained in this Declaration affecting the Subdivision, which shall be recorded. A Supplemental Declaration shall expressly extend to the portion of the Property therein described the Declarant's Scheme of Development and as may be further created by Declarant in the Supplemental Declaration that are complimentary to or in substitution for one or more covenants, conditions, easements and restrictions then existing under this Declaration.

(kk) "Total Association Vote" means the total number of votes held by all Members (and if there is more than one class of Members, the total of each class of Members) of the Association, whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Regulations. The Total Association Vote shall be computed by including all such Members, whether or not such Members are present in person or by proxy at a meeting. If a vote is taken during the time that Declarant has the right to appoint members to the Board of Directors, a vote of the majority of the Total Association Vote approving some item, action or proposition must contain the affirmative vote of the Declarant or such proposed item, action or proposition will be deemed not to have been approved.

(ll) "Total Planned Units" means the total number of Lots intended for development on all of the Property as set forth in a Supplemental Declaration executed and filed in the Register of Deeds for the County on or before midnight, December 31, 2037. Until Declarant files a Supplemental Declaration identifying such Total Planned Units as aforesaid or upon the failure of Declarant to file such a Supplemental Declaration, Total Planned Units shall

mean that number of Lots permitted by applicable governmental zoning or development approvals to be developed upon the Property.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION

2.01 Property Subjected.

The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in **Exhibit A** attached hereto and incorporated herein by reference.

2.02 Additional Land.

Only the real property described in **Section 2.01** is made subject to this Declaration. However, Declarant may subject the Additional Land to this Declaration by recording one or more Annexation Declarations. Declarant specifically reserves such right, but shall not be obligated, to annex any Additional Land into the Subdivision, and Declarant specifically reserves the right, but shall not be obligated to submit the Additional Land to the terms, covenants, conditions, easements, and restrictions of this Declaration.

2.03 Withdrawal of Property.

There is no guarantee being given by Declarant that all of the Property made subject to this Declaration will be developed and/or will remain subject to this Declaration. Declarant expressly reserves the right to remove, and shall have the right to release, all or any portion of the undeveloped Property described on **Exhibit "A"** from the plan and operation of this Declaration, at any time, in its sole discretion by filing a written instrument in the office the Register of Deeds for the County, removing such property. The determination of whether such property shall be considered "undeveloped" shall be in the sole discretion of the Declarant; provided, however, Declarant shall not remove any of the Property then expressly subjected to the Declarant's Scheme of Development in any recorded Annexation Declaration or Supplemental Declaration.

ARTICLE 3

SUBMISSION AND TERM

3.01 Submission of Property.

The Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, Assessments and equitable servitudes set forth herein, which are for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. The provisions of this Declaration, as they may be amended and/or supplemented from time to time, shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding on, and inure to the benefit of, all Persons

having or acquiring any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, and their respective heirs, legal representatives, successors, successors-in-title, and assigns.

3.02 Incorporation of Declaration into Deed.

Any deed or other instrument by which a Lot or any portion of the Property is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed or other instrument makes express reference hereto.

3.03 Term.

This Declaration, as it may be amended from time to time in accordance with the terms hereof, shall remain in force in perpetuity, unless and until terminated by the affirmative vote of eighty percent (80%) or more of the Total Association Vote.

ARTICLE 4

COMPLIANCE WITH DOCUMENTS

4.01 Compliance with Declaration and Other Documents.

Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Articles, the Bylaws, and the Regulations duly adopted by the Association, and its committees (including the Architectural Control Committee), decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

4.02 Resolution of Conflicts Between Documents.

Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Regulations duly adopted by the Association. If there are any conflicts or inconsistencies between the North Carolina Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the North Carolina Nonprofit Corporation Act, this Declaration, the Articles of Incorporation, and the Bylaws, in that order, will prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

ARTICLE 5

PROPERTY RIGHTS

5.01 Easement of Enjoyment.

Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to their Lot(s) and the Common Area, and of access to and from his Lot over any streets comprising a portion of the Property, which rights and easements shall be appurtenant to and shall pass with the title to each Owner's Lot(s), subject, however, to the following rights of the Declarant, the Association and its committees to:

(a) permit the use of, restrict the use of, and to charge reasonable admission and other fees for the use of the Recreational Common Area facilities, if any, and to impose reasonable limits upon the number of guests who may use these facilities;

(b) to suspend the voting rights of, and the right to use the Recreational Common Area and the Common Area by, an Owner or Non-Member User for any period during which any Assessment against such Owner's Lot remains unpaid; and pursuant to **Section 18.02** for any violation of this Declaration, the Bylaws or the Regulations;

(c) grant easements over, in, to and through the Common Area, and to dedicate or otherwise convey all or any part of the Common Area to any Person, public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Association;

(d) borrow money to improve, repair, restore and reconstruct the Common Area and its improvements; and, subject to the approval of owner-members casting 80% of the Total Association Vote, to place liens on the Common Area and otherwise encumber the Common Area for such purposes;

(e) adopt, impose, amend, change, or eliminate Regulations governing use and enjoyment of the Property and Common Area and any improvements thereon; and

(f) grant easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Declarant or any successor Declarant or any Builder to whom such right may be granted by Declarant;

(g) require an Owner to maintain easement areas and/or improvements that are located on their Lot or adjacent to their Lot;

(h) exchange portions of Common Area with the Declarant for substantially equal areas of the Property for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Areas or for any other purpose or reason;

(i) the right of Declarant, so long as Declarant owns any Lot, to place advertising signs and literature in any Common Area and to use portions of the Common Area buildings;

(j) charge a fee (the “Compliance Deposit”) to Owners who are constructing improvements on their Lot;

(k) impose Regulations to be followed by Owners, their builder(s), agents, representatives, employees, and/or contractor(s) during the construction of any improvements on a Lot, including the right to temporarily or permanently suspend work in the event of any violation or non-compliance therewith; and.

(l) charge Assessments (as hereinafter described) and to administer and enforce the terms of this Declaration, the Articles, the Bylaws and any Regulations adopted by the Declarant, the Board and/or the Architectural Control Committee empowered by the Board to do so.

5.02 Sale or Transfer of Common Area.

Except as otherwise provided in this Declaration, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall occur or be valid, whether by act or omission of the Association without the vote or written consent of eighty percent (80%) of the Total Association Vote pursuant to § 47F-3-112.

5.03 Delegation.

(a) Owner’s Right to Delegate.

Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing on his Lot and to his guests and invitees while he is in possession of and occupying his Lot as his primary residence, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Articles, the Bylaws and the Regulations. Guests and invitees shall not be permitted on the Common Area unless the Owner or household member delegating his rights of use and enjoyment is physically present to accompany such guests and invitees while they are on the Common Area. Provided the notice required by **Section 5.04** of this Declaration has first been given to the Association, a tenant of an Owner, while residing on such Owner’s Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay Annual and Special Assessments.

(b) Notice to Association Upon Its Request.

Upon request by the Association, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

5.04 Owner's Lease or Rental.

(a) Owner Use and Enjoyment of Facilities During Tenancy.

Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy any recreational or other common facilities on the Common Area and/or Recreational Common Area during the period the Lot is occupied by such tenant.

(b) Owner's Right to Lease or Rent.

No Owner shall lease or rent less than an entire Lot, which shall be leased or rented for residential purposes and for single-family occupancy, as defined in **Section 9.04** below. The Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than six (6) months. Subject to the foregoing restrictions and to the limitations on rentals within the Community set forth in **Subsection (c)** of this **Section 5.04**, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Regulations.

(c) Restrictions Upon Lease or Rental.

The following restriction shall apply to the lease or rental of any Lot:

(i) Limit on Number of Leased Units.

In order to insure that the residents within the Community share the same proprietary interest in and respect for the Lots and Common Areas, no more than fifteen percent (15%) of all homes built may, at any given time, be leased or rented for exclusive occupancy by one or more non-owner tenants. For purposes of this **Subsection (c)(i)**, a Lot is exclusively occupied by one or more non-owner tenants, if the Owner of the Lot does not also correspondingly occupy the Lot as his/her principal place of residence. Prior to the execution of any lease, and in addition to the requirements set forth in this **Subsection (c)(i)**, the Lot Owner must notify the Board of Directors or the Board's agent in writing as to the Owner's intent to lease his/her Lots. After receiving such notice, the Board or the Board's agent shall advise the Owner in writing if the Lot may be leased or whether the maximum number of Lots within the Community is currently being leased. If the maximum number of Lots is already being leased, the Board or the Board's agent shall place the Owner on the waiting list in priority order based on the date of notice from the Owner, and shall notify the Owner in writing of that Owner's position on the waiting list. When an existing non-owner occupant vacates a Lot, the Owner of that Lot shall immediately notify the Board or the Board's agent in writing of such fact and that Lot cannot be re-rented or leased until all Owners on the waiting list, if any, have had a chance to rent or lease their Lot. An Owner on the waiting list who obtains the opportunity to rent or lease his/her Lot, must present an executed lease to the Board or to the Board's agent, within sixty (60) days of the date of notice that he/she may rent or lease the Lot, or that Owner will forfeit his/her position on the waiting list. The Board may, in its discretion, grant an exception, for not more

than one (1) year at a time, to the limit provided in this paragraph, to a Lot Owner if, in its sole discretion, the Board determines that a hardship exists. Before the Board may grant a hardship exception, the Board shall adopt standards and conditions as to what circumstances might qualify as a hardship.

(ii) General Lease Conditions.

All leases, including renewals, shall be in writing, and no lease shall be entered into for a term of less than six (6) months without the prior written approval of the Board. No portion of any Lot other than the entire Lot and improvements thereon may be leased for any period. No subleasing is permitted. No Owner will be permitted to lease or rent his/her Lot if the Owner is delinquent in paying any Assessments or other charges due to the Association at the time the lease is to be entered into. All leases shall be made expressly subject and subordinate in all respects to the terms of the Declaration, Bylaws and Regulations promulgated by the Board, as amended, to the same extent as if the tenant were an Owner and a member of the Association; and shall provide for direct action by the Association and/or any other Owner against the tenant with or without joinder of the Owner of the Lot. The Owner of the Lot shall supply copies of the Declaration, Bylaws and Regulations to the tenant prior to the effective date of the lease. In addition, the Board shall have the power to promulgate such additional Regulations as it, in its discretion, may determine to be necessary or appropriate concerning leasing. Prior to commencement of a lease, the Owner shall immediately give to the Association in writing:

- (A) the name of the tenant(s) and the Lot(s) rented or leased;
- (B) the current address of such Owner;
- (C) a true and complete copy of the lease or rental agreement and all amendments and/or renewals thereto; and
- (D) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(iii) Owner Remains Liable.

No lease shall provide, or be interpreted or construed to provide, for a release of the Lot Owner from his/her responsibility to the Association and the other Owners for compliance with the provisions of the Declaration, Bylaws and Regulations promulgated by the Board, or from the Lot Owner's liability to the Association for payments of Assessments. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay Annual and Special Assessments to the Association, regardless of whether the obligation to pay Assessments has been assumed by the tenant in such lease or rental agreement.

(iv) Non-compliance with These Restrictions.

Assessments for Non-Compliance pursuant to **Section 7.09** below may be imposed in an amount of not more than \$500 for each day of non-compliance with these

restrictions by an Owner or against an Owner for any non-compliance by such Owner's lessee with this Declaration, the Bylaws, the Architectural Guidelines and/or the Regulations established by the Board.

ARTICLE 6

MEMBERSHIP AND VOTING RIGHTS

6.01 Governing Body.

The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by this Declaration, the Articles and the Bylaws.

6.02 Membership.

Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon the termination of ownership of a Lot, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

6.03 Voting.

The Association shall have two classes of voting membership:

(a) Class A.

Class A Members will be all Owners of Lots, including the Declarant and any Builder. Owners with a Class A membership shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, all such Persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves and as they advise the Secretary of the Association in writing. In the event of disagreement, the decision of Members holding a majority interest in such Lot shall govern; if more than one Person desires to cast the vote for such Lot, the Lot's vote shall be suspended until an agreement is reached by a majority of the Owners. Unless the Association is notified otherwise by a co-owner as to a dispute between or among the co-owners regarding their vote, prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

(b) Class B.

The Declarant and any Builder shall, in addition to its Class A membership, possess Class B membership during its respective Class B membership period. While a Builder owns a Lot, the Builder will be entitled to cast, in addition to its Class A membership vote, one (1) Class B membership vote for each Lot owned. With respect to each Lot owned by a Builder, its Class B membership with respect to such Lot shall cease upon the closing of the sale of the Lot to a Person other than the Declarant or another Builder. During the Declarant Control Period, Declarant shall be entitled to cast, in addition to its Class A

membership vote, three (3) Class B votes for each Class A vote that may be cast by all Owners, including Declarant and any Builder. Declarant's Class B membership shall cease on the happening of the first of the following events to occur:

(i) One hundred eighty (180) days after the date that Declarant closes the sale of Lots representing one hundred percent of the Total Planned Units;

(ii) Midnight on December 31, 2037; or

(iii) At such time, when Declarant so determines, in its sole discretion, which shall be evidenced by an amendment to this Declaration recorded in the office of the Register of Deeds for the County, which sets forth Declarant's intention that its Class B membership is terminated.

(c) Commencement of Voting Rights.

Voting rights attributable to a Lot shall not vest until an Assessment against that Lot has been levied by the Association.

(d) Declarant Vote Required.

During the Declarant Control Period and unless otherwise provided herein, all actions requiring the consent of the Members of the Association shall be deemed to have been authorized only upon the receipt of a majority vote of the Class A Members and an affirmative vote of the Declarant.

6.04 Association Administration.

(a) Board of Directors.

The administration of the Association shall be vested in a Board of Directors (the "Board"). During the Declarant Control Period, the Board may consist of the Declarant acting alone, or such number as shall be appointed by the Declarant. During the Declarant Control Period, the number of directors that shall constitute the Board and the terms of such directors shall be determined by the Declarant in its sole discretion. The Declarant may, at any time in its sole discretion, elect to waive its right to appoint one or more of the directors. Every grantee of any interest in the Property agrees that Declarant shall have the authority to designate the directors in accordance with the foregoing.

(b) Declarant's Right to Appoint Board and Officers.

Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles, or in the Bylaws, Declarant hereby retains the right to appoint and remove any Person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until one hundred eighty (180) days following termination of the Declarant Control Period or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded in the County by Declarant.

Upon the termination of the Declarant Control Period as set forth hereinabove, or prior to that time, at the sole option of the Declarant, Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section shall automatically pass to the Class A Members of the Association, including Declarant and Builder if they then own one or more Lots; and a special meeting of the Association shall be called and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Members shall elect a new Board of Directors which shall undertake the responsibilities of running the Association.

Upon the termination of the Declarant Control Period, Declarant shall deliver to the new Board the books, accounts, and records, if any, which Declarant has kept on behalf of the Association, and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its position, which may still be in effect or operation.

Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

(c) Transfer of Control of Association.

Upon the termination of the Declarant Control Period, Declarant shall transfer control of the Association to the Class A Members by: (1) delivering a written statement signed by the Declarant to the then acting Board of Directors of the Association, who shall notify the Members within thirty (30) days thereafter; and (2) executing a written amendment to this Declaration and recording it in the office of the Register of Deeds for the County, stating that the Declarant Control Period has terminated and control of the Association has been transferred to the Members. Upon the termination of the Declarant Control Period as described herein, the Association shall succeed to all of the rights, duties and responsibilities of the Declarant under this Declaration, that are not specifically reserved to the Declarant by the Declaration for longer periods. The Association may delegate any of such rights, duties and responsibilities to the Architectural Control Committee or to any other committee or entity.

(d) Duties and Powers of the Association.

The duties and powers of the Association will be those set forth in the provisions of the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, the Bylaws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided; however, that if there are conflicts or inconsistencies between the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, this Declaration, the Articles of Incorporation, and the Bylaws, in that order, will prevail, and each Owner of a property within the Community, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, together with every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or

reasonably necessary to effectuate any such right or privilege. Such powers of the Association will include, but will not be limited to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense of the Association or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this **Section 6.04(d)** or any other provision of this Declaration to the contrary, during the Declarant Control Period the Association will not, without the written approval of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

ARTICLE 7

COVENANTS FOR ASSESSMENTS

7.01 Affirmative Covenant to Pay Assessments.

(a) Liability of Owner for Assessments.

All Assessments and charges (including but not limited to any late charges, interest, collection costs and attorneys' fees) shall be a continuing lien upon the Lot against which each Assessment is made in favor of the Association. Each Owner shall be jointly and severally liable for the portion of each Assessment coming due while they are the Owner of a Lot, and each grantee of an Owner, shall be jointly and severally liable with the Owner for the Assessments which are due at the time of any conveyance; provided, however, that the liability of a grantee for the unpaid Assessments of its grantor or immediately preceding Owner shall not apply to any mortgage holder taking title through foreclosure proceedings, in which event, the prior Owner shall continue to remain liable. No Owner may exempt himself from payment of Assessments, or any portion thereof, by waiver of the use or non-use of the Common Area and Recreational Common Area. For each Lot owned within the Property, each Class A Member hereby covenants and agrees to timely pay, whether or not it shall be so expressed in the deed of conveyance of the Lot(s) to such Class A Member, (A) Annual Assessments and charges; (B) Special Assessments for maintenance, capital repair or improvement; (C) Specific Purpose Assessments; and (D) Assessments for Non-Compliance, as those terms are hereinafter described, all of which are established pursuant to the terms of this Declaration, including those which require a particular Lot Owner to maintain easement areas and/or improvements that are located on their Lot or adjacent to their Lot (hereinafter, collectively, the "Assessments"); and (E) all late charges, interest, attorney's fees and costs of enforcement and/or collection, if any such Assessments and charges are not timely paid.

(b) No Governmental Lien on Lot for Nonpayment of Any Amount Due on Common Areas.

Notwithstanding anything herein to the contrary, nothing herein shall be construed as to provide any governmental entity with the right to place a lien on any one or more of the Lots due to the failure of an Owner to pay a pro rata share of ad valorem taxes for the Common Area or of Assessments for public improvements to or for the benefit of the Common Area.

7.02 Purpose of Assessments.

(a) Generally.

The Assessments levied by the Association shall be used to promote the recreation, health, safety, common benefit and welfare of the Owners and occupants of the Lots, and for payment of the costs associated with the operation and management of the Property, which, by way of example, may include, but are not limited to, the following: the acquisition, improvement and maintenance of the Property and attendant services and facilities related thereto and related to the use and enjoyment of the Common Area (which includes the Recreational Common Area); the cost of repairs, replacements and/or additions; the cost of labor, equipment, materials, management and supervision; the payment of taxes assessed against the Common Area; the operation, maintenance and repair of the facilities on the Common Area and Recreational Common Area; the maintenance of water and sewer mains in and upon the Common Area; the maintenance of lawns, irrigation systems and/or wells, including edging, seeding and fertilizing, as needed, and installation and placement of pine needles on certain Lots, or in certain sections of the Subdivision, and/or the Common Area; maintenance of the security gate, if any; the maintenance of open spaces, streets, roadways, medians, islands, drives and parking areas within the Common Area; the procurement and maintenance of hazard, liability and/or fidelity insurance in accordance with the Bylaws; the maintenance of any easement areas located on the Property or any Lot and any improvements located therein or adjacent thereto; the maintenance of entranceways, landscaping, street lighting, accent lighting and lighting of Common Area and streets; maintenance of any ponds and nature trails; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the costs associated with duties of the Architectural Control Committee; the payment of taxes, filing fees, assessments, penalties and other costs assessed by local governmental authorities; the employment of attorneys, accountants and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise or is determined necessary or desirable by the Association. The foregoing is intended as examples of the types of expenditures authorized to be made by the Association and shall not be construed to limit or require expenditure of Association funds for any particular purpose.

(b) Streets and Roads; Street Lights and Sidewalks.

It is understood and agreed that the streets and roadways in the Subdivision have not yet been deeded to any political subdivision of the State, and until any street or roadway is so dedicated to the public and the maintenance thereof assumed by such political subdivision, the maintenance costs of the streets and any privacy protection, as well as electrical service to street lights within the rights-of-way, will be a Common Expense of the Association subject to Assessments. Upon dedication and acceptance of maintenance, payment of Common Expenses therefor by the Association will be discontinued; provided, however, and notwithstanding the conveyance of the streets and roadways, and discontinuance of maintenance, repair and replacements costs therefor, the Association may continue to be responsible for maintenance, repair and replacement of the Subdivision sidewalks pursuant to **Section 8.01(a)**, even if part of the right-of-way of any conveyed street or roadway.

(c) Reserve Funds.

The Association shall establish and maintain one or more reserve funds, as the Board shall determine, for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated or deem desirable to maintain. Such reserve funds shall be established out of regular, Annual Assessments in accordance with standard accounting practices and procedures for Common Area replacements and maintenance in the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget unless a lower level of reserves is approved by the vote or written consent of a majority of the Total Association Vote. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without the vote or written consent of a majority of the Total Association Vote, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the initial budget or any later-adopted budget of the Association and expended for the purpose for which such other reserve fund has been established.

(d) Association Monies; No Hypothecation of Owner-Member Interest.

All monies collected by the Association shall be treated as the separate property of the Association, and may be applied by the Association to the payment of the expenses of the Property as determined by the Association. Although all funds and other assets of the Association shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his Membership interest therein, except as an appurtenance to his Lot.

7.03 Assessment Lien; Perfection.

Every Owner of any Lot (including Builder) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association such Assessments and charges as may be levied by the Association pursuant to the provisions of this Declaration. No Assessment shall be due except with respect to Lots shown on a recorded subdivision plat and only after the Association has levied an Assessment against those Lots. The amount of any such Assessment plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration, shall be and become a perfected lien upon the Lot assessed when the Association causes a claim of lien is filed of record in the office of the Clerk of Superior Court pursuant to § 47F-3-116, which notice shall state:

- (a) The amount of such Assessment and such other charges thereon as may be authorized by this Declaration;
- (b) A description of the Lot against which the same has been assessed; and
- (c) The name of the record owner of the Lot assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such Assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recordation of such notice of Assessment. The lien may be enforced by foreclosure in accordance with State law, or in any other manner permitted by law. The Association shall have right, but not the obligation, to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same. A recorded lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court pursuant to § 47F-3-116.

7.04 Personal Obligation.

Each Assessment, together with any late charges, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each Person or entity that held an ownership interest in the Lot at the time such Assessment was levied. If more than one Person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such Assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself from payment of Assessments, or installments, by waiver of the use or non-use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his Lot.

7.05 Annual Assessment.

(a) Establishment.

The Declarant initially, and thereafter the Board, shall establish the annual assessment (herein, the "Annual Assessment") for each Lot based upon the total annual Subdivision budget and amount needed for reserve funds of the Association, as provided herein. The Annual Assessment for the first year of operation of the Association will not exceed an amount greater than **\$600.00 per year per Lot**. The Annual Assessment for each year following may be increased by the Board without approval of the Members (the "Maximum Annual Assessment") as follows: The Maximum Annual Assessment in any year shall be the greater of (i) the Annual Assessment for the previous year increased by ten percent (10%), or (ii) the Annual Assessment for the first year in which this Declaration is filed of record increased by ten percent (10%) per annum, compounded, to the year for which the Maximum Annual Assessment is being calculated. An increase in the amount of the Annual Assessments above the allowable Maximum Annual Assessment shall require the consent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose and at which a quorum is present.

(i) Notice of Proposed Annual Assessment; Ratification.

The Board will cause notice of the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. In case the Annual Assessments do not increase above the allowable Maximum Annual Assessment for such year,

the Board shall set a date for a meeting of the Owners to consider ratification of the budget in the notice of Annual Assessments, at which a quorum need not be present, and shall include a statement that the budget will be ratified unless at the meeting the Owners entitled to cast sixty-seven percent (67%) of the votes of the Association rejects the Budget. Such meeting shall be held not less than ten (10) nor more than sixty (60) days after mailing of said notice. In the event there is an increase in the amount of Annual Assessments above the allowable Maximum Annual Assessment, the Board shall call a special meeting of the members pursuant to the Bylaws at which ratification thereof shall require consent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose and at which a quorum is present.

(ii) Disapproval of Annual Assessments.

The annual budget and Annual Assessments, as determined by the Board of Directors, will become effective unless disapproved as above provided. In the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Directors fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be equal to the budget and Annual Assessments for the previous fiscal period of the Association.

(iii) Rounding.

All Annual Assessments charged by the Association will be rounded off to the nearest dollar.

(b) Levy.

The amounts so determined by the Board shall be levied against all of the Members of the Association, except the Declarant, and on all Lots except those owned by the Declarant. The Board shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year which shall be levied against each Lot, to the Owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments the Board shall determine, and after notice of the same shall have been given to all of the Members of the Association by the Board. If the Board fails to so fix the Annual Assessment, the Annual Assessment applicable for the previous fiscal year shall remain in effect until the Board shall fix a new Annual Assessment.

7.06 Special Assessments.

In addition to the Annual Assessments authorized herein, the Board may levy, in any fiscal year, a special assessment (herein, a "Special Assessment") against all Owners, other than Declarant, applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area, including the Recreational Common Area, provided, however, in any fiscal year, Special Assessments which exceed twenty percent (20%) of the budgeted gross expenses of the Association for that

fiscal year may not be levied without the vote or written consent of a majority of the Total Association Vote. Upon the termination of the Declarant Control Period, any such Special Assessment shall require the consent of a majority of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

7.07 Notice and Quorum for Annual and Special Assessments.

Written notice of any meeting called for the purpose of taking any action authorized under **Sections 7.05(a) or 7.06** of this Article shall be sent to all Members not less than ten (10) 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 twenty percent (20%) 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 requirements, 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 thirty (30) days following the preceding meeting.

7.08 Specific Purpose Assessment.

The Declarant or the Association may levy a specific purpose assessment (herein, a “Specific Purpose Assessment”) against a Lot or a specific group of Lots, the Owner(s) of which may benefit from or which are being provided services, maintenance or other benefits not otherwise provided to or for the other Owners, Lots or the Property. A Specific Purpose Assessment may also be levied against unimproved or vacant Lots by the Board to cause such Lot to be maintained in accordance with a standard established by the Board for such Lots. The amount of the Specific Purpose Assessment levied by the Board may vary from Lot to Lot.

7.09 Assessments for Non-Compliance (Fines).

(a) Basis.

Assessments for non-compliance (“Assessments for Non-Compliance”) with this Declaration, the Bylaws, the Regulations, the Architectural Guidelines, or any other guidelines established by the Board, including its committees, e.g., the Architectural Control Committee, may be levied by the Declarant, even after the termination of the Declarant Control Period, or by the Board of Directors of the Association at any time in the event that:

(i) Any Owner violates or fails to comply with the terms of the Declaration, the Bylaws of the Association, the Regulations, the Architectural Guidelines, or any other guidelines adopted by the Declarant, the Board of Directors of the Association, or any committee given such authority by the Board of Directors (such as an Architectural Control Committee), as the Declaration, the Bylaws, Regulations, or other guidelines may be established and/or amended from time to time, whether or not such violation or non-compliance relates to an Owner’s Lot, the Common Area(s), the streets or the remaining property within the Subdivision; and/or

(ii) Any Owner or such Owner’s lessee fails to maintain their Lot and any improvement or structure thereon in a manner consistent with the intentions of the Declaration, the Bylaws, Regulations, the Architectural Guidelines, or other guidelines as

determined by the Declarant, the Board of Directors or the Architectural Control Committee, if granted such authority by the Board of Directors, in their sole discretion, or damages or destroys improvements on any neighboring Lot(s), the Common Area, streets or other improvements in the Subdivision. The Declarant, Board of Directors or the Architectural Control Committee, if granted such authority by the Board, may issue a written compliance demand to the Owner requiring the Owner to remedy the violation or non-compliance in a period that, in their sole discretion, they deem appropriate. Should the Owner fail to remedy the violation or non-compliance within the time required by the notice, the Declarant, Board or their designee(s), shall have the right, but not the obligation to, take appropriate action to remedy the violation or non-compliance, (including, but not limited to, employing an attorney to address the violation, and/or entering upon the Owner's Lot and remedying any violation or non-compliance existing on the Owner's Lot and the structures thereon, without liability for any of the foregoing) and to levy an Assessment for Non-Compliance against the Lot of that Owner for the violation or non-compliance. The Assessment for Non-Compliance may include any cost to remedy the violation or non-compliance, and/or to enforce compliance (including attorney's fees) and any costs of collection and/or enforcement. Such Assessment for Non-Compliance shall be in such amount as the Declarant, the Board of Directors, or the Architectural Control Committee, if granted such authority by the Board of Directors, deems appropriate, in its sole discretion, which Assessment, together with any accruing interest and/or penalty, cost of collection and/or attorney's fees, shall constitute a lien against the Owner and their Lot(s). The Declarant hereby reserves the right, even after termination of the Declarant Control Period to levy Assessments for Non-Compliance even after the Board of the Association becomes entitled to exercise such authority, which means that the rights of the Declarant and of the Association under this Section are not mutually exclusive.

(iii) Any Owner fails to maintain a vacant or unimproved Lot in a manner that is in compliance with Regulations, the Architectural Guidelines, and other standards set by the Board of the Association, in its sole discretion, for such vacant or unimproved Lots. A general notice to the Members setting out any standard for maintenance of vacant or unimproved Lots as established by the Board shall be the only notice necessary from the Association prior to levying an Assessment for Non-Compliance against that Owner's Lot and/or for the Association to perform such maintenance to bring a Lot into compliance, the cost of which shall be charged to such Owner. It shall be the obligation of any seller of an unimproved Lot, to provide the purchaser of that lot with notice of this requirement and of the remedies available to the Association for non-compliance. All acts, omissions, damage, destruction, violation and/or non-compliance by the Owner, lessee of any Owner, any Non-Member User, or any builder(s), contractor, agent, representative, employee, invitee or family member of an Owner, shall be deemed the responsibility of, and committed by, the Owner and may subject the Owner and their Lot to an Assessment for Non-Compliance as described above.

After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy an Assessment for Non-Compliance against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Regulations.

7.10 Uniform Rate of Assessment.

Both Annual Assessments and Special Assessments for capital repair or improvement must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semiannual or annual basis, or as directed by the Board. Specific Purpose Assessments and Assessments for Non-Compliance need not be fixed at a uniform rate for all Lots and may be levied against one (1) Lot or a select group of Lots, but not all Lots. Specific Purpose Assessments may be levied based upon the size of a Lot or upon improvements on the Lot, in proportion to the benefit(s) perceived by the Board to be received by that Owner or Lot or upon any basis that the Board of Directors, in its sole discretion, determines appropriate, including an Owner being assessed in advance of such benefit being received. Assessments for Non-Compliance may be levied by the Board in amounts that they, in their sole reasonable discretion, deem appropriate or may be based upon the nature of the violation or non-compliance.

7.11 Commencement of Assessments.

The first Annual Assessments provided for herein shall commence as to a Lot on the first day of the month following the closing of the Lot purchase, or as otherwise determined by Declarant initially, and thereafter, at the discretion of the Board. The first Annual Assessment imposed against a Lot shall be adjusted according to the number of months in the calendar year that the Lot was owned by a Person other than the Declarant. At least thirty (30) days in advance of each Annual Assessment period, the Board shall fix the amount of the Annual Assessment, and promptly thereafter, the Board shall cause written notice thereof to be sent to every Owner subject thereto. In the event the Board shall fail to fix the amount of Annual Assessment as described above, the Assessment fixed for the immediately preceding year shall continue in effect until a new Assessment amount is fixed. The due dates shall be established by the Board. 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.

7.12 Revised Annual Assessments.

Subject to the provisions of this Article, if at any time during the course of any year the Board shall deem the amount of the Annual Assessment to be inadequate or in excess of that required by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the Annual Assessment for the balance of the Assessment year. Any such revised Assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board; provided, however, an increase in Annual Assessments in any year pursuant to special Board action as aforesaid will in no way affect Annual Assessments for subsequent years, which shall be calculated in accordance with **Section 7.05(a)** above, with the Maximum Annual Assessment determined as if no increase had occurred.

7.13 Delinquent Assessments; Late Charge and Interest.

Assessments shall be considered past due if not paid on or before the due date. A late charge in an amount equal to the greater of ten percent (10%) of the outstanding balance or **\$20.00** may be added each month to any Assessment not paid within thirty (30) days after the

due date. If the Assessment is not paid within ninety (90) days after the due date, then, all amounts due the Association, including any late charge, costs of collection and/or enforcement, including attorney's fees, may, at the option of the Board of Directors, bear interest from the due date at the rate of sixteen (16.0%) percent per annum or the highest rate allowed by law, whichever is lower. The Board may also levy an additional penalty or Assessment for Non-Compliance against the Lot of the delinquent Owner for their failure to pay any Assessment by its due date. Any notice and hearing requirements set out herein or in the Bylaws shall not apply to the collection of delinquent Assessments. The Board of Directors may establish additional policies related to the collection of delinquent Assessments, including, but not limited to, the establishment of late fees. The Association may also suspend the voting rights of the Owner during any period of delinquency; accelerate all remaining Assessments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once; and may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien created herein against the Property in the same manner as prescribed by the laws of the State for the foreclosure of mortgages, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such Assessment. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for any Assessment provided for herein by non-use of the Common Area, non-use of the Recreational Common Area, or abandonment of his Lot, nor shall damage to, or destruction of, any improvements on any Lot by fire or other casualty result in any abatement or diminution of the Assessments provided for herein.

7.14 Priority of Lien.

The liens provided for herein in favor of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of ad valorem taxes on such Lot; (b) liens for all sums unpaid on a first priority mortgage or (c) a lien arising by virtue of any mortgage in favor of Declarant which is duly recorded in the Register of Deeds for the County. The sale or transfer of any Lot shall not affect the Assessment or liens provided for in this Declaration. However, the sale or transfer of any Lot which is subject to any such first mortgage, pursuant to a foreclosure thereof or conveyance in lieu of foreclosure thereof where the first mortgage holder takes title to the property, shall extinguish the lien on the Lot for the payment of such Assessments which became due prior to such sale or transfer; however, it shall not extinguish the personal obligation and liability of the Lot Owner who failed to pay such Assessment prior to the foreclosure or other proceeding on such Lot. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage. To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure or conveyance in lieu thereof, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be a Common Expense collectible from all Owners, including the Person who acquires title through foreclosure or deed in lieu thereof.

7.15 No Set-Off or Deduction.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein. No set-off, diminution or abatement of any Assessment shall

be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repair or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive or any municipal or other governmental authority. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner and is not subject to set-off for the Owner's non-use of the Recreational Common Area, Common Area or for any other reason.

7.16 Lots Owned by Declarant or Builder.

(a) Declarant and Assessments.

Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any Assessment provided for in this **Article 7**. Rather, all Lots owned by the Declarant shall be exempt from the payment of all Assessments for so long as such Lots are owned by the Declarant. However, in the event, the Declarant agrees to pay any amount(s) necessary to cover any shortfalls or deficits in the budget or to pay any expenses that should have been paid from the Annual Assessments, such amount(s) so paid by the Declarant shall be credited against the Declarant's obligations to pay any further Assessments, if such obligation to pay Assessments were imposed upon the Declarant by law. At such time as any Lot which is owned by the Declarant shall be conveyed or transferred by the Declarant, all liens and Assessments provided for in this Article shall become immediately levied against such Lot and the Owner of such Lot shall immediately become liable for the payment of all such Assessments accruing from the date of their ownership. The amount of each Assessment which shall become so payable with respect to any Lot shall be prorated according to the respective portions of the fiscal year that such Lot was owned by the Declarant and by such successor Owner.

(b) Builders and Assessments.

For each Lot owned by any Builder (other than Declarant), Builder shall pay twenty-five (25%) percent of the normal Assessments allocated to Lots in that section of the Subdivision, until such time as the improvements on the Lot have reached Substantial Completion. No lawn maintenance fees shall be assessed against any Builder for vacant lots or partially-constructed homes, unless such construction has not proceeded consistently and diligently from its commencement.

7.17 Working Capital Contribution.

Notwithstanding anything to the contrary in this Declaration, a working capital fund will be established for the Association by collecting from each Owner (other than Declarant) who acquires title to a Lot from the Declarant, from a Builder or from an Owner in a resale transaction or otherwise, a working capital amount **equal to the Annual Assessment then in effect**, which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of title to the Lot. Such sum is and will remain distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses or any operating short-fall, as well as any other expense or capital outlay incurred by the Association pursuant to this Declaration and the Bylaws. It is expressly understood that working capital

receipts may be used in lieu of deficit funding or to reimburse Declarant for any previous deficit funding. Anything contained herein to the contrary, notwithstanding, no such working capital amount shall be collected upon conveyance of a Lot to a mortgagee following foreclosure or pursuant to a deed in lieu of foreclosure, but shall be paid in conjunction with the sale or conveyance of the Lot by a mortgagee to a subsequent Owner for personal use or investment.

ARTICLE 8

COMMON AREA AND LOT MAINTENANCE

8.01 Maintenance by Association.

The Association shall maintain, repair and replace the Common Area (including the Recreational Common Area) and all improvements, utilities and facilities located thereon, with the exception of those that are maintained by a utility company, the County or other governmental, public or quasi-public entity. The Association shall maintain and repair all signage, irrigation facilities, lighting and landscaping that may be installed on or within public street medians throughout the Subdivision. Provided Declarant gives its written consent, the Board may extend licenses to non-Members to use the Recreational Common Area for a reasonable fee for such periods as the Board determines to offset the Association's costs in maintaining and operating the Recreational Common Area.

(a) Stormwater Management System.

All drainage Storm Water Management Systems not under governmental authority and responsibility are part of the Common Area unless and until transferred to and assumed for maintenance by governmental authority.

(b) Sidewalks.

Subdivision sidewalks located behind the curb of public streets and roadways within the Subdivisions are deemed part of the Common Area, and the maintenance, repair and replacement thereof is the responsibility of the Association and part of the Common Expenses assessed hereunder. Notwithstanding the generality of the foregoing, the Association shall not be responsible for the maintenance, repair and replacement of such sidewalks that are part of the driveway apron of any Lot or the private sidewalk on a Lot leading to a residence, for which an applicable Lot Owner shall be solely responsible under **Section 8.02** following.

8.02 Maintenance by Owners.

(a) Each Owner, at all times, shall maintain, repair and otherwise be responsible for the condition and maintenance of his Lot and all improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of this Declaration, an Owner shall be responsible for maintaining in good condition, the paint on the exterior of his improvements, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawns, trees, shrubs, driveways, walks, and other exterior improvements, as well as those areas on a Lot or adjacent thereto which the Association requires a Lot Owner to maintain at his expense; replacement and reconstruction of improvements on an Owner's Lot required because of damage or destruction by fire or other casualty, maintenance, repair and replacement of the

surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of his Lot and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the Association, County or other governmental entity. Landscaping for each Lot as set forth in the landscaping plan required under **Article 10** shall be installed and completed within thirty (30) days of occupancy of the dwelling and shall not be substantially modified without the prior written consent of the Board or Architectural Control Committee so empowered by the Board.

(b) The Association reserves the right, in its sole discretion, to plant, install, cut, edge and seed grass, cut or trim shrubbery and trees, install pine needles and/or to require certain Lots from time to time to be grassed, cut, trimmed, and maintained, all of which shall be at the expense of the particular Lot Owner. If the Association manages lawn maintenance in a particular section of the Subdivision, Owners with fences will be required to make arrangements to leave the gate open on lawn servicing dates; otherwise the Owner will be responsible for the portion of their yards enclosed by such fences.

(c) Each Owner shall maintain his Lot such that no activities, buildings, structures, or other improvements thereon, and shall be placed or permitted to remain on any Lot which may, damage or interfere with the surface and subsurface drainage facilities and appurtenances located on his Lot, and/or damage or interfere with the use, maintenance, repair or replacement of such drainage facilities and appurtenances. No Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area, except to the extent such alteration in drainage pattern is approved in writing in advance by the Association, Declarant and all public (or quasi-public) authorities having jurisdiction. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until all Lots in the Subdivision have been sold and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing the approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in any such instruments.

8.03 Failure of Owner to Maintain.

(a) In the event that the Owner neglects or fails to maintain his Lot and/or the exterior of his or her dwelling in the Subdivision, or any easement areas and/or improvements required by the Association to be maintained by the Owner of that Lot, the Association may, but shall not be obligated to, provide such maintenance at the Owner's expense. Other than where such maintenance, repair and replacement pertains to a vacant or unimproved Lot or where, in the sole determination of the Board of Directors, such failure to maintain, repair or replace constitutes a significant nuisance or hazard to other Owners, the Association shall first be required to provide such non-complying Owner with written notice: (a) of the required maintenance, repair and/or replacement to be performed by that Owner and of the time frame for compliance; and (b) where applicable, of the Association's intent to remedy such violation by

providing such maintenance, repair and/or replacement at the Owner's expense, should such maintenance, repair and/or replacement not be performed by the Owner by the deadline set out in the notice. The determination as to whether an Owner has neglected or failed to maintain his Lot and/or dwelling in a manner consistent with other Lots and dwellings in the Subdivision and what constitutes a significant hazard or nuisance to other Owners shall be made by the Board, in its sole discretion. In order to enable the Board to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access, egress and regress over and upon each Lot at all reasonable times to perform the maintenance, repair and/or replacement, as provided in this Article.

(b) If any Owner, after Notice and Opportunity for Hearing, fails to maintain their Lot and the improvements thereon, the Association, at the expense of such Owner, may, but shall not be obligated to, perform such maintenance, repair and/or replacement, and the Board, without the vote or written consent of Members, may levy a Special Assessment and/or a Non-Compliance Assessment against such Owner in an amount to be determined by the Board, which shall be added to and become a part of the Assessment to which such Lot is subject, and constitute the Association's lien upon that Lot.

8.04 Work Required by Owner's Willful or Negligent Act.

In the event that the Association determines that any need for maintenance, repair and/or replacement, is caused through the willful or negligent act of an Owner or the family, guests, lessees, or invitees of any Owner, then the Association may, but shall not be obligated to, perform such maintenance, repair and/or replacement at such Owner's sole cost and expense, and all costs thereof, together with a penalty determined by the Board, shall be added to and become a part of the Assessment for Non-Compliance to which such Owner is subject and shall become a lien against the Lot of such Owner.

8.05 Rights of Entry.

(a) By Declarant and Association.

This Declaration hereby reserves unto the Declarant, the Association and their successors, agents, representatives, employees, and contractors an easement for ingress, egress, access and regress and for maintenance, repair and replacement over, upon and through every Lot and the Common Area, when necessary, practical or desired, in order to inspect, repair, maintain, construct, and/or replace improvements or to bring a Lot into compliance with this Declaration, the Architectural Guidelines or the Regulations for which the Association is responsible for enforcing, and each Owner accepting title to a Lot in the Subdivision takes title subject to such right of access of the Association and Declarant and their successors, agents, representatives, employees, and contractors.

(b) By Safety and Emergency Personnel.

In addition, this Declaration reserves unto any police, fire, paramedic and other safety and emergency personnel, and to such governmental agencies having jurisdiction over the Subdivision, their agents and employees, the right of immediate access to the Common Area and the Lots at all times for emergency situations, and for the preservation of public health, safety and welfare.

ARTICLE 9

USE RESTRICTIONS

9.01 Rules and Regulations.

The Board shall have the right to write, amend, supplement, adopt, publish and enforce rules and Regulations governing the Property, the use and enjoyment of the Common Area (including the Recreational Common Area) and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households, tenants, employees, contractors and agents. The Members may amend any such Regulations adopted by the Board at any regular or special meeting of Members called for such purpose by the vote or written consent of a more than fifty percent (50%) of the total Voting Power of the Association. Such rules and Regulations shall not discriminate against Declarant or Builder (or have an adverse impact on Declarant or Builder or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws.

9.02 Use Generally.

The use of the Property (including Common Areas, streets and Recreational Common Areas) and all Lots is and shall, at all times, be subject to the terms of this Declaration, the Bylaws, the Architectural Guidelines, and such other Regulations and guidelines as the Declarant and the Board of Directors of the Association, either directly or through committees (such as the Architectural Control Committee) may from time to time adopt, amend, change, modify or eliminate. The Declarant or the Board of Directors may waive any violation of this Declaration, the Bylaws, Regulations, Architectural Guidelines or other guidelines by an Owner that the Declarant or the Board may, in its sole discretion, deem appropriate, without notice to any other Owner. Until the Declarant no longer owns any Lot in the Subdivision, the Declarant (or its member, principal or affiliate) may, in its sole reasonable discretion, and as long as the Declarant determines that such action, if taken or left untaken, would negatively affect the Declarant or the value or salability of its Lots, veto any modification to the Declaration, the Bylaws, Architectural Guidelines, and/or Regulations proposed or adopted by the Board of Directors; override any attempt by the Board to enforce or implement the Declaration, Bylaws, Architectural Guidelines, and/or Regulations; or require the Board to enforce any provision of the Declaration, Bylaws, Architectural Guidelines and/or Regulations. The Regulations may apply to the entire Property, to portions of the Property, or exclusively to specific areas of the Property or specific Lots. Except as specifically set forth herein, the Regulations may modify the use rights and restrictions set forth in the Declaration and may be more or less restrictive.

9.03 Enforcement.

Neither the Declarant nor the Board shall have any responsibility to police or enforce any violation of the Declaration, the Bylaws, the Architectural Guidelines, and/or the Regulations and shall have no liability for any violations thereof or for the failure to create, monitor or enforce any of them. Until the Declarant no longer owns any Lot in the Subdivision, the Declarant may delegate, temporarily or for the period during which the such rights and authority are reserved to the Declarant, all of the rights and authority of the Declarant set forth in the Declaration, the Bylaws, the Architectural Guidelines, and/or the Regulations and may grant

variances to the covenants and use restrictions set forth herein, without the consent of the Association, its Board or the Owners. The Association shall also have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration, the Architectural Guidelines, and/or the Regulations.

9.04 Residential Use.

Except as otherwise provided in this Declaration, all the Lots are hereby restricted to residential uses only and for single-family occupancy, and no business or business activity shall be carried on or upon any Lot at any time, except with the prior written approval of the Board of Directors and in accordance with the terms and conditions set forth hereinbelow. When used herein, "single-family occupancy" shall mean occupancy by (a) an individual and the individual's children and/or parents, or (b) two or more persons related by blood, marriage, adoption, guardianship, or duly-authorized custodial relationship and their children and/or parents, or (c) any two unrelated persons and the children and/or parents related to either of them, or (d) a group of no more unrelated persons than the number of bedrooms in the residence located on the lot, living together as a single housekeeping unit. A group of unrelated persons will be deemed to be living together as a "single housekeeping unit" when the occupants have a family-like structure, and/or a sharing of responsibility associated with the household such as equitable rent, use of space, etc. This definition is intended to exclude (i) any group whose association is temporary or seasonal in nature, such as a group of college students sharing a house, and (ii) any group providing a framework for transients or transient living.

(a) Business Activity. Nothing herein shall prevent the Declarant or any Builder of homes in the Subdivision who is approved by Declarant from using any Lot owned by Declarant or such Builder for the purpose of carrying on business related to the development, improvement and sale of property in the Subdivision; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling. Except as provided in this Declaration, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose, except with the approval of the Board or Architectural Control Committee empowered by the Board to do so, and provided that:

(i) The existence or operation of the business is not apparent or detectable by sight, sound or smell from outside the dwelling;

(ii) The business activity conforms to all zoning requirements for the Subdivision;

(iii) The use of a portion of a residence as an office by an Owner or an occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic;

(iv) The business activity does not involve door-to-door solicitation of residents in the Subdivision; and

(v) The business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, a hazardous or offensive use or threaten the security or the safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board of Directors of the Association.

The term “business” and “trade” as used in this Section shall be construed to have the ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

- (A) such activity is engaged in full or part time;
- (B) such activity is intended or does generate a profit; or
- (C) a license is required therefor.

This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots that it owns within the Subdivision.

9.05 Sales Offices; Model Homes.

Notwithstanding the provisions of **Section 9.04** or any other provision of this Declaration, Declarant, for itself and its successors or assigns, hereby reserves the right to maintain sales offices and model homes for sales of Lots throughout the Property. Declarant, its successors or assigns, shall have the right to relocate, and to discontinue and re-establish, sales offices and model homes within the Property from time to time until all of the Lots have been conveyed to Owners other than Declarant. Declarant, its successors and assigns, also shall have the right to change the use or combination of uses of such offices or model homes. Model homes are those homes constructed by Declarant, as well as by any Builder of homes in the Subdivision approved by Declarant to build model homes, which are used for the purpose of inducing the sale of other homes in the Subdivision. Declarant, its successors or assigns, also reserves the right to erect and maintain signs on the Common Area advertising the Property until all of the Lots have been conveyed to Owners other than Declarant or Builder.

9.06 Minimum Square Footage.

The minimum square footage of each home constructed upon a Lot shall be not less than one thousand two hundred (1,200) square feet of heated space; provided, however, that the aforesaid square footage requirement shall be based on interior floor space, exclusive of basements, garages, porches, decks, balconies and overhangs.

9.07 Temporary Structures.

Except as provided in this Declaration, no residence or structure of a temporary nature (unless approved by the Board or Architectural Control Committee empowered by the Board to perform such review and approval) shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, camper, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either

temporarily or permanently; provided, however that this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

9.08 Accessory Structures.

No metal carport, free standing metal garage, or free standing metal utility building shall be erected on any Lot or attached to any residence located on the Lot. Any accessory structure which is approved for construction shall comply with the architectural requirements of this Declaration and the Board or the Architectural Control Committee so empowered by the Board, and shall be located on any Lot so that it is directly behind the residence as viewed from a point on a line of sight along the side of the house perpendicular to the street right-of-way. Such structure shall not exceed 100 square feet, unless the Board or Architectural Control Committee so empowered by the Board approves a greater square footage.

9.09 Outdoor Living Space.

The Declarant/Builder reserves the right to build an outdoor living space to be designed at its discretion. Homeowners must submit an architectural approval request for any additions or changes being made to the exterior of their property as noted in **Article 10** of this Declaration.

9.10 Mailboxes, Delivery Receptacles and Identification Markers.

The Board or the Architectural Control Committee so empowered by the Board shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as "For Sale" signs and Lot identification markers. The Board or Board-empowered Architectural Control Committee shall have the right to require uniform mailboxes and uniform "For Sale" signs utilized in the Subdivision. The initial mailboxes for the Subdivision may be installed by the Declarant or the Builder. If a mailbox and/or post is damaged, the Owner must install the same color, style, and material of post and box as was first supplied. If the Owner does not replace said damaged mailbox and/or post within thirty (30) days of its damage or destruction, the Association may replace same and assess the Owner for the cost thereof.

9.11 Subdivision of a Lot; Combining Lots.

No Lot shall be subdivided. However, Declarant shall have the right to subdivide any Lot or Lots owned by it, combine one or more Lots owned by it or portions thereof into other Lots or portions thereof owned by it, or otherwise change the boundaries of any Lots owned by Declarant, and to determine in its sole discretion whether the Lots resulting from such subdivisions or combinations are to be considered as one Lot or multiple Lots for all purposes hereunder, including without limitation the payment of Assessments.

9.12 Obstructions.

No part of any structure or the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections. No doorways, walkways or streets shall be

obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

(a) Removal of Obstructions.

(i) The Declarant, its successors or assigns, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, either might produce a hazard or might interfere with the ability or willingness of the State or any municipality (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(ii) The Declarant, its successors or assigns, shall have the right, in its sole discretion, to charge the actual cost of removing obstructions to the Lot Owner who, directly or through his agents, contractors or invitees, caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its successors or assigns, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way and its removal. In the event that the Lot Owner responsible for such charge or liability fails and refuses, after demand by the Declarant, its successors or assigns, to pay said charge or liability, then the Declarant, its successors or assigns, shall have the right to levy an Assessment for Non-Compliance against the Lot of that Owner for the violation or non-compliance. The Assessment for Non-Compliance may include any cost to remedy the violation or non-compliance, and/or to enforce compliance (including attorney's fees) and any costs of collection and/or enforcement.

9.13 No Timeshares.

No part of the Property subject to this Declaration, including any improvements thereon or to be built thereon, will be used for or subject to any type of Time Share Program or Time Share Project as defined by the North Carolina Time Share Act, N.C. Gen. Stat. 93A-41 (1983), or any subsequent laws of this State dealing with that or similar type of ownership by a Lot Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Lot and which is not otherwise registered as a Time Share Program or Time Share Project or which utilizes the Lot as accommodations for time share sale prospects of any person.

9.14 No Offensive and Unlawful Activity.

No noxious, offensive or unlawful activities shall be conducted on any Lot, on the Common Area, or in any other part of the Subdivision. Nothing shall be done within the Subdivision that is, or becomes an unreasonable annoyance, inconvenience or nuisance to other residents of the Subdivision, or which unreasonably interferes with the quiet enjoyment of occupants of Lots.

9.15 Parking.

(a) Parking of any passenger vehicles or pick-up trucks without signage or lettering advertising a business shall only take place on an Owner's driveway or in the Owner's

garage or within a Common Area designated therefor. No boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any part of the Common Area, except such portions of the Common Area (if any) as may have been designated by the Declarant or the Board for such purpose; (b) in any driveway except for a temporary twenty-four (24) hour period no more frequently than once per calendar month; or (c) on any other part of a Lot at any time; or (d) otherwise unless the same is fully enclosed within the garage located on the Lot. For purposes of this Declaration, a "commercial vehicle" shall include any vehicle having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4) of a ton; any vehicle other than a law enforcement vehicle bearing a company name or logo; any vehicle with ladders on top or in a truck bed; and any "box" van or truck. The Board shall have the authority to further define the term "commercial vehicles" in the Regulations to include other vehicles used primarily for commercial purposes other than commuting to and from the workplace.

(b) The restrictions contained in this **Section 9.15** shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and such Builders as may be designated by Declarant and their agents and contractors in the conduct of their business prior to Completion of Sales.

(c) No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Subdivision. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Subdivision, except in the case of emergency and except as may be permitted by the Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot outside of a garage.

9.16 Garages.

Garage doors are required for garages. All ducts, pipes and wiring in garages shall be concealed from view above the level of the finished ceiling. For aesthetic purposes, all garage doors shall remain closed whenever possible. Carports are not allowed.

9.17 Signs, Curtains and Flags.

(a) No advertising signs or billboards shall be erected on any Lot. This restriction shall not apply to signs used to identify and advertise the Subdivision as a whole, nor to signs for selling Lots and/or houses during the development and construction period or for the re-selling of houses, provided such signs are approved by the Board or Architectural Control Committee empowered by the Board to do so. Also, the provisions of this Article shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a mortgage.

(b) No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no Owner shall display, hang, store or use any signs (including, without limitation, political signs), curtains, draperies, shades, stained glass, flags (including, without limitation, flags of the United States of America or the State) or other articles whatsoever outside of the dwelling on any Lot so as to be visible from outside the Lot, excluding seasonal decorations, the flag of the United States of America or the

State, and political signs, provided that such seasonal decorations, flags of the United States of America, flags of the State, and political signs, conform with the requirements of this Section, and with all Regulations.

(c) Flagpoles for seasonal decorations, the flag of the United States of America, and/or the flag of the State must be attached to the main dwelling, shall be no more than five (5) feet in length and shall not be mounted on the roof of any dwelling. Only one flag (whether a seasonal decoration, the flag of the United States of America, the flag of the State, or any other flag) may be displayed on any Lot at any given time. No flag (whether a seasonal decoration, the flag of the United States of America, the flag of the State, or any other flag) may exceed the size of three feet by five feet.

(d) No more than two (2) political signs may be displayed on any Lot at any one time, unless the applicable municipal or County ordinance allows more than two signs, in which event no more signs than are allowed by the applicable municipal or County ordinance shall be displayed on any Lot at any one time. Political signs may not be displayed any earlier than 45 days before the day of the election or later than 7 days after an election day. No political sign may exceed the dimensions of 24 inches by 24 inches, unless the applicable municipal or County ordinance allows a greater size, in which case no political sign shall exceed the dimensions set forth in such municipal or County ordinance. For purposes of this Section, "political sign" means a sign that attempts to influence the outcome of an election including supporting or opposing an issue on the election ballot.

(e) Notwithstanding the foregoing, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale or rent may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions in this Section shall not apply to Declarant or its agents, who may erect such signs or flags as Declarant deems desirable to promote the sale of Lots.

(f) Holiday decorative lighting shall be allowed from Thanksgiving to January 15 of each calendar year; provided, however, the Board may adopt Regulations limiting the type, intensity and number of decorative lights so allowed. Other seasonal decorations are approved two weeks prior to the event until two weeks after the event.

(g) Except as approved in writing by the Declarant, all exterior and landscape lighting shall be approved in writing by the Board of Directors or Architectural Control Committee empowered by the Board to do so prior to installation.

9.18 Antennas and Dishes.

No radio or television transmission or reception towers, antennas, satellite dishes or disks or similar transmission equipment shall be erected on any structure or on any Lot or within the Property, except in accordance with the Telecommunications Act of 1996 and the implementing rules therefor issued by the Federal Communications Commission and by the Board or the Architectural Control Committee empowered by the Board to do so in compliance with the Regulations adopted therefor.

9.19 Laundry.

No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible within the Subdivision from outside such Lot.

9.20 Perimeter Fences.

No perimeter fence or wall shall be erected on any Lot closer to the street than the rear back corner of the dwelling or the side street setback for corner lots. Perimeter fencing shall be picket fencing and decorative metal or PVC only, four (4) feet in height, and any other fencing, including chain link, split rail, wood privacy, or other type of metal fencing, is expressly prohibited. The spacing between the pickets of perimeter fencing shall not be less than one and one-half (1½") inches and all such pickets shall be installed on the exterior. However, Declarant and any Builder expressly permitted in writing by the Declarant may install any fencing make or style and may install temporary decorative fencing on a model home. No perimeter fence or wall shall be erected on any berm of dirt which was placed on side or rear lot line by the Declarant. Screen fencing around a patio, deck, inground pool or sanitary containers not to exceed six (6) feet in height may be erected. All fence, perimeter or screening, may not be installed without prior written approval of the Board or Architectural Review Committee and subject to such terms, conditions and design standards as may be established therefor, from time to time.

(a) Courtyard Walls.

Notwithstanding the restrictions provided in this **Section 9.20**, an Owner may install a fence or wall generally parallel with the side of a residence that forms an enclosed courtyard with that portion of the residence set back from the remainder of the side of the residence with which the fence or wall runs parallel, and subject to terms, conditions and design standards from time to time adopted therefor and the written approval of its location by the Board or the Architectural Control Committee.

9.21 Pets.

(a) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other small household pets may be kept or maintained, subject to applicable leash laws, and provided that they are not kept, bred or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner, or creates or causes unsanitary conditions. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience, nuisance or creates an unsanitary condition, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience, nuisance or creates an unsanitary condition, the Board may require that such animal be removed from the Subdivision. All animals shall be kept on a leash when in the Common Area or any other area within the Subdivision other than a fenced area on a Lot. Owners shall be required to properly remove any excrement deposited by a pet on any Lot and/or any portion of the Property and dispose of same properly and in accordance with any Regulations pertaining thereto. Owners shall also be responsible for repairing any damage

caused to any Lot and/or any portion of the Property by a pet. Violations by an Owner or an Owner's pet under this Section may subject an Owner to an Assessment for Non-Compliance.

(b) The Board may adopt Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that animals be restricted to designated areas within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Subdivision at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience, nuisance or creating unsanitary conditions be removed from the Subdivision.

9.22 Trash and Vegetation.

(a) Trash.

No trash, rubbish, garbage, debris or waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view of neighboring Lots and streets, except on the day of collection when such containers may be moved on the Lot to the location designated for its collection. No weeds or dead or dying vegetation shall be permitted to accumulate on any Lot or any portion of the Subdivision which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Owners or occupants of any property in such vicinity.

(b) Landscaping.

Only Bermuda grass shall be used in the Subdivision. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Subdivision shall be kept trimmed, and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Section, the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition, including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Lot at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a Special Assessment against such Owner to obtain reimbursement of the cost therefor as provided in this Declaration, or, after Notice and Opportunity for Hearing, levy a fine against such Owner.

9.23 Above Ground Pools.

No above ground pools shall be erected or installed on a Lot.

9.24 Window Air Conditioners.

No window air conditioners are allowed in any window of the dwelling.

9.25 Construction Material.

The storage of construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the Architectural Control Committee is prohibited.

9.26 Play and Exercise Equipment.

All swing sets, play structures, basketball goals and similar equipment must be located within the building setback lines and comply with the Regulations, and the location thereof must be approved in writing by the Board or the Architectural Control Committee in accordance with the provisions of this Declaration and subject to terms and conditions from time to time established therefor. No metal swing sets shall be allowed. In addition, permitted basketball goals must be portable, with no permanent poles, and shall be stored in the garage or out of view of the street when not in active use. Portable basketball goals shall only be used on the Lot's driveway and at no time within the street or a Common Area. No trampolines shall be permitted on any Lot.

9.27 Changing Elevations.

No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted on any Lot which materially affects surface grades of surrounding Lots or any drainage, unless approved in advance in writing by the Architectural Control Committee.

9.28 Completion of Construction and Condition of Site.

(a) Construction of any "primary" improvements on any Lot (such as a home and the initial installation of walls and landscaping) shall proceed consistently and diligently and shall, unless a variance is granted by the Declarant during the Declarant Control Period, and thereafter by the Board or the Architectural Control Committee, be completed within one (1) year from the date of commencement of construction. An Owner shall be solely responsible for securing from the governmental entity with jurisdiction, and at the Owner's sole cost and expense, such permits and approvals as shall be required prior to any construction or installation governed thereby.

(b) The period that is appropriate for the completion of "secondary" improvements (such as walls, fences, paving, landscaping, etc. or the modification to an existing structure), shall be determined by the Declarant or the Board (when such authority is transferred to the Board by the Declarant), or by an Architectural Control Committee established by either.

(c) During construction, the Owner shall, at all times, maintain the construction site in accordance with any standards and Regulations established by the Declarant and/or the Board and/or the Architectural Control Committee. The Board shall have the right to take appropriate legal action, whether at law or in equity, or to levy Assessments for Non-Compliance, to compel the immediate completion of any primary improvements not completed within eighteen (18) months from the date of commencement of construction or any secondary Improvements not completed by the deadline set out in the approval for the modification provided to the Owner of the Lot. The Declarant, the Board and/or the Architectural Control

Committee shall have the right, but not the obligation, to extend any time period for completion, but any such extension must be in writing and a copy kept on file with the corporate records of the Association.

(d) If an Owner or their builder, agents, representatives, employees, family members, and/or contractors store construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the Architectural Control Committee, the Declarant, Board and/or the Architectural Control Committee may impose an Assessment for Non-Compliance on the Owner of the Lot.

(e) No building or other structure shall be placed or permitted to remain on any Lot which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the drainage, water and/or sewer facilities and appurtenances thereto serving the Subdivision. No Owner shall perform, or permit to be performed, any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area, except to the extent such alteration in drainage pattern is approved in writing by the Association, Declarant and all public (or quasi-public) authorities having jurisdiction. All drainage, water and sewer facilities and appurtenances shall at all times be accessible to Declarant until the Subdivision is completed and shall at all times be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may, from time to time, present for recordation in the official records of the County plats, engineering plans, and/or other instruments showing the approximate locations of subsurface storm drainage facilities, subsurface groundwater drainage facilities, water and sewer lines and appurtenant facilities. If, for any reason, any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

9.29 Sewage System.

Sewage disposal shall be through the municipal system or, a type approved by appropriate State and local agencies. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the sewer lines, facilities and appurtenances thereto serving any portion of the Subdivision.

9.30 Water System.

Water shall be supplied through the municipal system or, a type approved by appropriate State and local agencies. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the water lines, facilities and appurtenances thereto serving any portion of the Subdivision.

9.31 Utility Facilities.

Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone, electric, cable, natural gas and sewage systems, which may be in variance with these restrictions. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the utility lines, facilities and appurtenances thereto serving any portion of the Subdivision.

9.32 Dog Pens and Runs.

No dog pen or dog runs are permitted; provided, however, dog house are permitted as long as they are located in the rear yard of a residence and not visible from the street. In addition to other requirements of this Declaration applicable to pets, pets must be on a leash or restrained at all times.

9.33 Exterior Changes.

All exterior changes for improvements to any Lot shall first be approved in writing by the Board or the Architectural Control Committee empowered by the Board to review and approve such change, and as further provided in this Declaration. All exterior colors must conform to the original, approved scheme incorporated into the original construction. Shutters and doors must complement the approved exterior color scheme and conform to the original, approved colors incorporated into the original construction. When submitted a request for a color change, color chips and siding examples shall be attached to the architectural approval request form.

9.34 Storm Doors.

Storm doors are permitted provided that prior written approval is granted therefor by the Board, or by the Architectural Control Committee empowered by the Board, following review and approval of a request therefor using the standard form of request adopted for architectural review submissions. Permitted storm doors shall be full-view glass or glass/screen and must match the existing façade color scheme. Door hardware shall also match the existing hardware (brass handle for brass lights, etc.).

9.35 Window Boxes and Planters.

Window boxes and planters shall be allowed; provided, however, window boxes and planters must be of a color and material complementary to the residence exterior and shall be maintained in a neat and attractive manner. Dead, dying and diseased plants and all weeds shall be promptly removed. Statues and figurine planters, however, shall not be allowed.

9.36 If Rule or Regulation Requiring Irrigation Adopted.

If the Association enacts any rule or Regulation requiring the irrigation of landscaping, such requirement to irrigate landscaping shall be suspended during periods of mandatory water conservation measures as provided in § 47F-3-122 No Owner may drill or use a private well for irrigation, nor draw water from any pond or other body of water within the Community.

9.37 Unintentional Violations; Waiver of Setbacks, Building Lines and Building Requirements.

In the event of the unintentional violation of any of the building setback line restrictions set forth herein, Declarant reserves the right to change or grant variances for the setbacks, location of Lot lines, and easements; provided, however, that such changes shall not be in violation of any provisions of the zoning provisions of the appropriate governmental authority. The Declarant, or the Architectural Control Committee, may, for good cause, waive unintentional violations of the setbacks and minimum square footages provided for in this Declaration. Such waiver shall be in writing and recorded in the Register of Deeds office for the County. A document executed by the Declarant or the Architectural Control Committee shall be, when recorded, conclusive evidence that the Owner of a Lot has met the requirements of this Declaration regarding such violation. The Declarant or the Architectural Control Committee may also handle violations of setbacks and boundary lines by amending the any plat of the Subdivision showing the amendment or adjustment. Nothing contained herein shall be deemed to allow the Declarant or the Architectural Control Committee to waive violations, which must be waived by an appropriate governmental authority.

9.38 Modification by Regulation.

Any of the use restrictions imposed in this Declaration on the Owners of Lots may be modified by the adoption or amendment of a Regulation by the Declarant during the Declarant Control Period and thereafter by the Board and/or the Architectural Control Committee.

ARTICLE 10

ARCHITECTURAL CONTROL

10.01 Required Processes Prior to Work Being Undertaken.

(a) Submission for Review.

Unless alternate or additional Regulations are adopted or established by the Declarant, or the Board of Directors or an Architectural Control Committee (when such authority is granted to them by the Declarant or the Board), NO BUILDING, POOL, FENCE, WALL, SOLAR PANEL, ANTENNA, SATELLITE DISH, DECK, PATIO, ROOM ADDITION, EXERCISE/PLAY EQUIPMENT, LOT CLEARING OR GRADING, TREE REMOVAL OR OTHER STRUCTURE OR IMPROVEMENT OF ANY NATURE ON ANY LOT SHALL BE CONDUCTED, ERECTED, CONSTRUCTED, DEMOLISHED, OR ALTERED UNTIL TWO (2) COPIES OF EACH OF THE FOLLOWING:

(i) AN APPLICATION, INCLUDING

(ii) ALL PLANS AND SPECIFICATIONS SHOWING THE NATURE, KIND, SHAPE, ELEVATIONS, MATERIAL, COLOR, AND FINISHES OF THE STRUCTURES;

(iii) SITE PLAN (SHOWING THE PROPOSED LOCATION OF SUCH STRUCTURES, DRIVES, AND PARKING AREAS);

(iv) LANDSCAPE PLAN; AND

(v) CONSTRUCTION SCHEDULE

SHALL HAVE BEEN SUBMITTED TO AND APPROVED IN WRITING BY THE BOARD OR AN ARCHITECTURAL CONTROL COMMITTEE which has been empowered by the Board to approve such applications, comprised of not less than three (3) and not more than five (5) persons who have been appointed by the Board; provided, however, that no such approval shall be required for alterations to the interior of any residential structure.

(b) Plan Review.

(i) The Board or an Architectural Control Committee established by the Board shall have not less than thirty (30) days (or such other time period as may be determined by the Board) in which to approve or disapprove such application. Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications of any of the features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval. Any deviation from, or non-compliance with, the plans submitted to the Board or Architectural Control Committee entitles the Board to levy an Assessment for Non-Compliance.

(ii) If the Board or the Architectural Control Committee has not approved or disapproved an application within the time period established by the Board, and fails to approve or disapprove an application within ten (10) days following receipt of written notice from an Owner, or the Board or the Architectural Control Committee fails to act within said period of time, the application shall be deemed approved. The Board and/or Architectural Control Committee may refuse approval of plans, location, exterior color or finish or specifications for any reason, including purely aesthetic reasons, and/or may require specific changes to the plans in order to provide approval, all of which shall be in the sole discretion of the Board and/or Architectural Control. The restrictions herein contained shall have no application to the development, improvement, maintenance and repair of the Property by Declarant, any Builder or by the Association, and neither the Board nor the Architectural Control Committee shall have any power or authority to review or require modifications in plans and specifications for construction or installation of any improvements to the Lots, Common Area or other portions of the Subdivision by Declarant or Builder.

10.02 Architectural Control Committee.

The initial Architectural Control Committee shall be the Declarant or shall be appointed by the Declarant. Notwithstanding anything herein to the contrary, for so long as Declarant owns a Lot or has the power to add Additional Property that may be subdivided into additional Lots, Declarant shall have the right to appoint the members of the Architectural Control Committee and may approve any plans and specifications for the construction of initial and any subsequent improvements on any Lot, including landscaping, subject, however, to the approval of such plans and specifications by the appropriate governmental entity. Such approval by Declarant shall operate and have the same effect as approval by the Architectural Control Committee or the Board. As long as the Declarant owns a Lot in the Subdivision or has the right and power to add Additional Property that may be subdivided into additional Lots, no Regulations or alternate or additional policies, procedures, guidelines or requirements, that in the sole reasonable opinion of the Declarant would negatively affect the Declarant or the value or salability of its Lots, shall be adopted by the Association, its Board of Directors or the Architectural Control Committee without the express written consent of the Declarant. After Declarant no longer owns a Lot or has the power to add Additional Property that may be subdivided into additional Lots, the Board of Directors shall appoint the Architectural Control Committee.

10.03 Architectural Requirements.

The driveway and sidewalks on a Lot shall be constructed of concrete or other approved material. Only the original mailbox, with its original color combination, installed by the Declarant or Builder is permitted. If replacement or repair is required, the mailbox must be restored to the original design specification. The Board will provide design specifications as necessary. Specification will be provided to each Owner by the Association. Lots shall be planted with standard size plantings along the front of the dwelling to screen the foundation. No above ground storage tanks shall be erected or installed on a Lot. No improvement or addition of any kind shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved in writing by the Declarant or the Architectural Control Committee, its successors or assigns, in their sole discretion, as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation as described in this Article. Declarant shall be entitled to stop any construction in violation of the restrictions contained in this Declaration so long as Declarant owns any Lot or Lots within the Subdivision.

10.04 Reconstruction of Residences.

In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans and specifications therefor; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the Board or duly authorized Architectural Control Committee to reconstruct or repair his residence in accordance with revisions in the plans and specifications. The Board or said committee shall grant such requests only in the event that the proposed change

or deviation will materially benefit and enhance the entire Subdivision in a manner generally consistent with the plan and development thereof.

10.05 No Liability for Approved Plans and Inspections.

(a) Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications, neither Declarant, nor the Board, nor the Association, nor any member of the Architectural Control Committee, assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. **NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER BY REASON OF A MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR FOR THE EXERCISE OR NON-EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSION OF SUCH PLANS AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL CONTROL COMMITTEE, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES, AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN and;**

(b) During construction, any employee or agent of Declarant, the Board, and/or the Architectural Control Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and structure thereon for the purpose of ascertaining compliance with the provisions of this Declaration, and neither the Declarant, the Board, the Architectural Control Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

10.06 Violations.

If any structure shall be erected, placed, maintained or altered upon any Lot, other than in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article. If, in the opinion

of the Declarant, or the Board upon recommendation of the Architectural Control Committee, such violation shall have occurred, the Board shall provide written notice to the Owner of such Lot, setting forth the nature of the violation and the specific action required to remedy the violation. Any such required remedial action shall be consistent with guidelines and the Regulations, if any, established by the Declarant, the Board and/or the Architectural Control Committee for such actions. In cases of violations and non-compliance, an Owner shall also be subject to an Assessment for Non-Compliance levied by the Declarant or Board, the amount of which shall be determined by the Declarant or Board, in its sole discretion. Any such Assessment for Non-Compliance levied shall be secured by a continuing lien upon the Lot. If the Owner shall not have taken reasonable steps toward the required remedial action (as such remedial action shall be deemed appropriate by the Board in its sole discretion) within thirty (30) days after providing the Owner with written notice of the violation or where the Board determines such violation or non-compliance constitutes a significant nuisance or hazard to the community, its Owners or their guests, within a period established by such notice, then the Board may levy an Assessment for Non-Compliance against the Lot of the Owner, may remedy the violation and charge the costs thereof to the Owner, and/or may proceed at law or in equity for the recovery of damages, or for injunctive relief, or all of the above. The Declarant, Board of Directors and the Architectural Control Committee (when such authority is assigned to it by the Declarant or the Board) may impose Regulations to be followed by Owners, their builder(s), agents, representatives, employees, and/or contractor(s) during the construction of any improvement on a Lot, including the right to temporarily or permanently suspend work in the event of any violation or non-compliance therewith.

10.07 Compliance Deposit.

(a) Posting Deposit and Refund.

The Association shall have the authority, either directly through its Board or through its Architectural Control Committee, to charge a fee (hereinafter, a "Compliance Deposit") to Owners who are constructing or otherwise placing improvement(s) on their Lot, as a deposit to insure compliance with this Declaration, and the Regulations established by the Declarant, the Board and/or the Architectural Control Committee. The Compliance Deposit will be returned to the Owner within a reasonable period of time after completion of all improvements on the Lot, if:

(i) all improvements on the Lot are constructed in accordance with the plans and specifications approved by the Declarant, the Board and/or the Architectural Control Committee; and

(ii) the Declarant, Board and/or the Architectural Control Committee are satisfied that all disturbances related to the construction or placement of any structures on the Lot (or surrounding Lots), including landscaping, have been properly addressed; and

(iii) the Owner is in full compliance with this Declaration, the Bylaws, the Regulations and any construction or architectural guidelines established by the Declarant, the Board and/or the Architectural Control Committee.

(b) Retention of Deposit.

Provided, however, that all or a portion of the Compliance Deposit may be retained by the Declarant, Board and/or the Architectural Control Committee:

(i) to repair damage to other Lots, the Common Area, streets, trees, shrubbery, or other improvements located within the Subdivision, including its entranceway, that may in any way be damaged as a result of the Owner's construction and/or placement of improvements on that Lot; and/or

(ii) as an Assessment for Non-Compliance if the Owner or their builder, agents, representatives, employees, family members, and/or contractors store construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the Architectural Control Committee;

(iii) as an Assessment for Non-Compliance levied against the Lot of the Owner for their failure or the failure of their builder(s), agents, representatives, employees, family members, and/or contractor(s) to:

(A) remove construction related trash and debris from their Lot and/or to failure to maintain their Lot during and after the period of construction in a neat, clean and safe manner; and/or

(B) construct the improvements on the Lot in accordance with the plans and specifications approved by the Declarant, the Board and/or the Architectural Control Committee; and/or

(C) to enforce compliance, and/or remedy any non-compliance, of the Owner; and/or

(D) to otherwise comply with the terms of this Declaration, the Bylaws of the Association, the construction or architectural guidelines or any Regulations established or amended by the Declarant, the Board of Directors of the Association or any committee given such authority by the Board of the Association (such as an Architectural Control Committee), as such Declaration, Bylaws, guidelines or Regulations may be established or amended from time to time.

ARTICLE 11

EASEMENTS AND RIGHTS OF WAY

11.01 Utilities.

(a) Declarant reserves for itself, its successors and assigns, and the Board, blanket easements upon, across, above, through and under the Property, including all Lots and Common Area, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as

storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Property. It shall be expressly permissible for the Declarant, the Board, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such utility or service.

(b) Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement over all areas within the Community, including but not limited to Lots and Common Areas. The general location of easements shall be indicated on recorded plats. Within these easement areas, no structures shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct, retard or otherwise change the direction of flow of water through drainage channels in the easements.

(c) An easement is hereby established for the benefit of the any government, person or firm providing services to the Property under agreement with or at the direction of the Board, over all portions of the Property as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Board shall have the power and authority to grant and establish upon, over and across the Property such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

(d) Declarant has requested from a local utility company to provide electrical distribution facilities to service the Property. Any Lot Owner having a pad-mounted transformer on his property is required to maintain at least twelve (12') feet of unencumbered space in front of the transformer doors for operation and maintenance of the equipment. Further, Lot Owners, by ownership of a Lot, hereby grant such utility company access for maintenance and/or replacement of transformers and underground power lines.

11.02 Drainage.

Declarant hereby reserves a perpetual easement across the Property for the purpose of altering drainage and water across all the Property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping water flow across any Lot or the Common Area. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of the property affected, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at its sole expense.

11.03 Sign Easements.

Easements for the maintenance of subdivision signs and landscaping and lighting surrounding same are hereby reserved by Declarant. Declarant hereby grants, gives and conveys to the Board a perpetual, nonexclusive easement over any portions of the Lots designated as "sign easements" or "landscape easements" on recorded plats, to maintain, repair and replace the

subdivision signs which may be located thereon, as well as the lighting fixtures and any landscaping thereon. The costs of all such maintenance, repair and replacement shall be part of the Common Expenses of the Association, payable by the Owners as set out hereinabove.

11.04 Sidewalk Easements.

An easement, five (5') feet in width, is hereby imposed on the front of the Lots for the construction, maintenance and repair of, and access to and from, sidewalks, if such sidewalks are constructed by Declarant.

11.05 Easement and Right of Entry.

In addition to the other easements and rights reserved in this Declaration to Declarant and the Board, the Declarant and the Board shall have the right (but not the obligation) to enter upon any Lot within the Subdivision for emergency, security, and safety reasons, and for purposes associated with inspecting, constructing, repairing, maintaining, removing a nuisance from, and bringing into compliance, the Lots, the amenities, and other appurtenances of the Subdivision and/or in exercising the authority granted to Declarant and the Board in this Declaration. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation or to prevent further damage from an existing condition, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or occupant fails or refuses to cure the condition upon request by the Board. For the purpose of performing its function under this or any other Article of this Declaration, including the providing of maintenance, repair, clearing, cleaning, compliance and other special services authorized by the Declaration to one or more Lots, the Declarant reserves unto itself and its agents and contractors, unto the Association and unto the Association's directors, officers, agents and contractors a perpetual, alienable easement and right of ingress and egress, over, upon, across and under each Lot to (a) inspect, maintain, repair, clear, clean, cut grass and bushes, remove or trim dead or damaged trees and/or shrubbery; remove nuisances; and/or bring into compliance any Lot; (b) correct any violation of this Declaration, the Bylaws, Regulations or the Architectural Guidelines; (c) make necessary examinations in connection therewith; (d) respond to the request or demand of a governmental body, district, agency or authority exercising jurisdiction over a portion of the Property; and (e) in the sole discretion of the Declarant or the Board of Directors, prevent an anticipated request or demand of a governmental body, district, agency or authority exercising jurisdiction over a portion of the Property. Any entry by the Declarant, the Association, the Board or their designees under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Declarant and to the Association for the purpose of entry onto any residential Lot for the purposes of enforcing the terms of the Declaration.

11.06 Easement for Maintenance.

Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and the Association across such portions of the Property, determined in the sole discretion of the Declarant and the Board, as is necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the

quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at its sole expense.

11.07 Easement to Effectuate Intent.

Declarant hereby reserves for itself, its successors and assigns and the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby reserved and granted shall run with the Property in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning and subsequently acquiring all or a part of the Property.

11.08 Power to Grant Easements.

The Association or Declarant shall have the power to grant easements in, on, over, through, and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot and (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to said Lot Owner's easement of ingress and egress.

11.09 Reciprocal Flowage Easements.

There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts and surface water drainage; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot.

11.10 Utility Easements Reserved on Lots.

In addition to the easements established and reserved above, a perpetual easement is reserved over the rear ten (10) feet and side five (5) feet of each Lot and as shown on all recorded maps of the Subdivision for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage. All easements for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage facilities which are dedicated on any final map(s) of the Subdivision or created in some other way and extend over the rear ten (10) feet and each side five (5) feet of every Lot shall be kept free of buildings and other structures, and within such easements, no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public (or quasi-public) utilities, cable television or drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. All such easements at all times shall be accessible to Declarant until the Subdivision is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities, cable television and drainage facilities. The easement area for each Lot and all improvements in it shall be maintained continuously by the Owner of such Lot, except for those improvements for which a public (or quasi-public) authority or utility company is responsible. Declarant reserves the right to create and impose additional

easements or rights-of-way over unsold Lot(s) or the Common Area for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate, replace, or modify any of the easements established, reserved, or create pursuant to this Section or any preceding Sections.

11.11 Right of Entry.

After reasonable notice to the occupant, except in the event of an emergency or to prevent further damage to any portion of the Property, the Association or Declarant or their agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of any easements or other improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or Declarant or their agents. Any governmental agency, their agents, and employees, shall have the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

11.12 Berm and Landscape Easement.

Any portion of a Lot which shares a berm, landscape planting, irrigation system, entrance and/or directional signage, lighting or the Subdivision monumentation with the Common Area or any other area for which the Association is responsible for the maintenance thereof, shall be subject to an easement in favor of the Association for landscaping, mowing and maintenance of the berm, landscape planting, irrigation system, entrance and/or directional signage, lighting and/or the Subdivision monumentation. No alteration, removal or modification to such berm, landscape planting, irrigation system, entrance and/or directional signage, lighting and/or Subdivision monumentation shall be permitted without the prior written approval of the Declarant, its successors or assigns.

11.13 Easements Deemed Granted and Reserved.

All conveyances of a Unit hereunder, whether by the Declarant or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Declaration, including, but not limited to, those set forth in this Article 11.

ARTICLE 12

INSURANCE

12.01 Duty to Maintain Insurance.

(a) The Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Common Area in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance with limits and amounts adequate under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the Subdivision. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.

(b) Each Owner shall maintain casualty and personal liability insurance pertaining to his Lot, in such form and in such amounts as the Regulations may require.

(c) All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation if such waiver can be obtained, unless otherwise provided in the Regulations.

(d) Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance meeting the insurance requirements for planned unit development Subdivisions established by the Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Lot within the Subdivision, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or Government National Mortgage Association.

12.02 Proceeds of Insurance.

The proceeds of casualty insurance carried by the Association shall be paid to and held by the Association as trustee for the Owners, Declarant and Mortgagees for disbursement in accordance with the provisions of this Declaration. Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement or reconstruction to the extent required to effectuate repair, replacement or reconstruction.

ARTICLE 13

DAMAGE AND DESTRUCTION

13.01 Damage to Lots.

Restoration and repair of damage to any Lot and improvements thereon shall be commenced promptly after such damage, pursued diligently and made by and at the expense of the Owner thereof.

13.02 Repair, Restoration, Reconstruction of Common Area.

Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board will obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns any of the Property or has the right and power to add Additional Property, primarily for development or sale, and the Board acting on the vote of eighty percent (80%) or more of the votes of the entire Association by ballot referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such damaged improvements. If any insurance proceeds for such damage or destruction are not sufficient to defray the cost thereof,

including any amount attributable to Association's insurance deductible, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to **Section 7.06** hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be used to restore the damaged or destroyed Common Areas to a condition compatible with the remainder of the subdivision. Any remaining insurance proceeds will be distributed to the Owners or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all Units.

13.03 Damage to an Owner's Lot by Association.

If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner.

13.04 Damage or Destruction to Common Areas by Owners.

If an Owner is responsible for damage inflicted on any Common Area, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover the amount from the Owner as a Specific Purpose Assessment.

13.05 Hearing Procedure Following Damage or Destruction.

When a claim arising under **Sections 13.03** or **13.04** is less than or equal to \$4,000 or the then current jurisdictional amount for small claims pursuant to N.C. Gen. Stat. 7A-210, the aggrieved party may, pursuant to § 47F-3-107(d), request that a hearing be held before an adjudicatory panel appointed by the Board of Directors to determine if an Owner is responsible for damages to any Common Area or if the Association is responsible for damages to a Lot. The adjudicatory panel may assess liability for the damage incurred by the aggrieved party and assessed the amount as a Specific Purpose Assessment. If the amount of damage is found to be more than the current jurisdictional amount for small claims, liability of any Owner or the Association shall be determined as otherwise provided by law.

(a) Due Date of Specific Assessment.

If the party charged is assessed a Specific Purpose Assessment pursuant to this Section, said amount will be due within thirty (30) days of receipt of the amount assessed.

(b) Specific Assessment Remaining Unpaid.

Any Specific Purpose Assessment payable by an Owner remaining unpaid for thirty (30) days, together with simple interest at a rate established from time to time by the

Board of Directors, not to exceed eighteen (18%) per annum, will be an equitable charge and a continuing lien when a claim of lien is filed of record in the office of the Clerk of Superior Court pursuant to § 47F-3-116. A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time of the claim of lien is filed, a description of the Lot and the amount of the lien claimed. A lien for unpaid assessments for damages by an Owner is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court pursuant to § 47F-3-116.

For Lots located in two or more counties, filing shall occur pursuant to NCGS § 43-7.

(c) Attorney Fees and Costs for Prevailing Party.

A judgment, decree, or order in any action brought under this Section shall include costs and reasonable attorney's fees of enforcement and collection for the prevailing party.

(d) Offset of Assessment if Association Liable.

In addition, any liabilities of the Association determined by the adjudicatory Panel in the hearing pursuant to **Section 13.05 (e)** below or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

(e) Procedure for Requested Adjudicatory Panel.

In the event an aggrieved party requests that an Owner or the Association be brought before an adjudicatory Panel, the following procedures shall control.

(i) Notice.

If an aggrieved party requests a hearing pursuant to this **Section 13.05**, then the Board shall provide the party charged with twenty (20) days' notice of the time and place of the hearing and the damage alleged.

(ii) Hearings.

All hearings under this **Section 13.05** will be held before an adjudicatory panel appointed by the Board, or if no adjudicatory panel is appointed, the hearing will be before the Board itself sitting as the adjudicatory panel. The party charged will be afforded an opportunity to be heard and to present witnesses and written notice of the decision.

ARTICLE 14

EMINENT DOMAIN

14.01 Taking of Common Area.

If all or any portion of the Common Area is taken by an action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed fairly and equitably among the affected Owners (or any Mortgagee of an Owner to the extent such Mortgagee is entitled to such Owner's share of the proceeds). If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

14.02 Repair, Restoration, Reconstruction of Common Area.

If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a Special Assessment levied equally against all Owners.

ARTICLE 15

RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

15.01 Institutional Lenders.

"Institutional Lenders" as the term is used herein, shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

15.02 Obligation of Association to Institutional Lenders.

So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender, upon timely written request to the Association, shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board, such financial statement or report to be furnished by April 15 of each calendar year;

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration, the Articles of Incorporation, or the Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association;

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof;

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(e) To have the right to approve any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association; and

(f) To be given notice of any delinquency in the payment of any Assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

15.03 Requirements of Institutional Lender.

Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof by certified mail, postage prepaid, return receipt requested, to the Association at the Registered Agent's address registered with the Secretary of State for the State identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

15.04 Subordination.

No provisions contained in this Declaration shall defeat or render invalid the lien of any mortgage which is made in good faith and for value. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage recorded prior to the date any such Assessment becomes due. This subordination shall apply only to Assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments or charges against the Lot which have accrued prior to the time such mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for Assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due Assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, Assessments, and equitable

servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

ARTICLE 16

DECLARANT RIGHTS

16.01 Declarant's Reserved Special Declarant Rights.

Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors hereby reserves the right, but not the obligation, for itself and its successors and/or assigns, to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Subdivision as a residential community and for the sale, rental or other disposition of Lots in the Subdivision. In the event of any conflict between a Builder and Declarant, the Declarant will be the prevailing party. The rights of Declarant or Builder, their agents, employees and contractors shall include, without limitation:

(a) The right and easement to exercise any development right reserved to Declarant or for the benefit of any Builder by this Declaration, including the right to complete infrastructure and improvements denoted on any Plat or in any Supplemental Declaration;

(b) The right to dedicate and transfer to any governmental authority or to any utility company infrastructure improvements, including, but not limited to, roadways streets and Stormwater Management Systems;

(c) The right to appoint members of the Board of Directors and officers of the Association

(d) The right and easement of ingress in, over and upon the Common Area for the purpose of taking such action on any portion of the Property deemed necessary, advisable or convenient for the completion and improvement of the Subdivision as a residential community and for the sale, rental or other disposition of Lots;

(e) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Subdivision as a residential community and for the sale, rental or other disposition of Lots; and

(f) The right to use Lots and improvements owned by Declarant or Builder as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Subdivision.

The rights of Declarant and, to the limited extent set forth herein, Builder under this Section shall terminate one (1) year after the Completion of Sales. Amendment of this Section shall require the

vote or written consent of seventy-five percent (75%) of the Total Association Vote and the written approval of Declarant during the Declarant Control Period.

ARTICLE 17

ANNEXATION

17.01 Right to Annex Additional Property.

Declarant shall have the right to annex the Additional Land or any part thereof into the Subdivision and thereby subject the Property to the plan and operation of this Declaration. Declarant is under no obligation to annex the Additional Land and may elect to develop the Additional Land for single family or multifamily purposes, including apartments, not as a part of the Subdivision. Annexation of any other real property shall require the vote or written consent of not less than sixty-seven percent (67%) of the Total Association Vote. Annexation of any of the Additional Land may be accomplished in Phases.

17.02 Procedure for Annexation.

Any annexation of Additional Land shall be made by recording an Annexation Declaration in the office of the Register of Deeds for the County. The Annexation Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the plan and operation of the Declaration to the Additional Land being annexed. The Annexation Declaration may also extend the Declarant's Scheme of Development to the annexed Additional Land and may further contain such additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Additional Land being annexed and which shall thereby become part of Declarant's Scheme of Development under this Declaration.

17.03 Annexed Property.

(a) Each Owner of a Lot located on the Additional Land which has been annexed by the filing of an Annexation Declaration and/or Supplemental Declaration, as described above, shall automatically be a Member of the Association and such Owners and the Lots within such Additional Land shall be subject to Assessment by the Association for the benefit of the Subdivision or any part thereof. Assessments for Lots in annexed Additional Land shall commence upon the first day of the month next following the conveyance of each respective Lot in such Additional Land to a purchaser, as provided in **Section 7.11**. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to the annexed Additional Land.

(b) Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Property located within the original Subdivision and all annexed Additional Land that has been subdivided and committed to the Declarant's Scheme of Development (herein, the "Combined Subdivision") shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Combined Subdivision may be expended by the Association anywhere in the Combined Subdivision without regard to the particular phase, area or subdivision from which such Assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Combined Subdivision

and any phase thereof and shall have use and enjoyment of any recreational facilities and other amenities contained within the Common Area throughout the Combined Subdivision, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Regulations. Notwithstanding the foregoing, any of the Property may be subjected to a Supplemental Declaration, or annexed pursuant to an Annexation Declaration, that expressly incorporates, as part of the Declarant's Scheme of Development, additional covenants, conditions, easements, restrictions and affirmative obligations ("Additional Covenants"). Additional Covenants may provide for payment of Assessments upon Lots described therein in addition to those imposed by this Declaration, and mandatory membership in a subordinate homeowners association in addition to the Association. Such Additional Covenants may provide for exterior maintenance and other services for Lots not provided to the remainder of the Combined Subdivision.

ARTICLE 18

MISCELLANEOUS PROVISIONS

18.01 Enforcement.

The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all Regulations, restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, as it may be amended from time to time, the Articles of Incorporation, and/or the Bylaws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers enter upon the Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

18.02 Authority and Enforcement.

Subject to the provisions of **Section 18.02(a)** hereof, upon the violation of this Declaration, the Bylaws, or any rules and Regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (A) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a Specific Assessment, (B) to suspend an Owner-Member's right to vote in the Association, (C) to suspend an Owner's right, or the right of any occupant of Owner's Lot, to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the roadways and streets that may be maintained by the Association in the manner of Common Areas until dedicated to governmental authority will not be terminated hereunder. An Owner or applicable occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

(a) Procedure.

Except with respect to the failure to pay Assessments, including late charges and interest, the Board will not suspend voting rights, or infringe upon or suspend any other rights of an Owner or other occupant for violations of the Declaration, By-Laws, or any rules and Regulations of the Association, or impose a fine in excess of \$100 per occurrence of the event or condition giving rise to the imposition of a fine for each day more than five (5) days after a decision is rendered following the hearing provided in Section 12.3(c), unless and until the following procedure is followed:

(i) Demand to Cease and Desist.

Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

(A) The alleged violation;

(B) The action required to abate the violation; and

(C) A time period of not less than five (5) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(ii) Notice of Hearing.

Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice, in accordance with **Section 18.14** of a hearing to be held by the Board in executive session. The notice will contain:

(A) The nature of the alleged violation;

(B) The action required to abate the violation; and;

(C) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(iii) Hearing.

The hearing will be held in executive session of the Board of Directors, adjudicated by a panel composed of Owners who are not officers or members of the Board, pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if the

officer, director, or other individual who delivered such notice enters a copy of the notice together with a statement of the date and matter of delivery. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any. The decision of the adjudicatory panel shall be appealable to the full Board, whose decision shall be final.

18.03 Power to Settle Claims.

The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

18.04 Notice of Sale, Lease, or Mortgage.

In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

18.05 Severability.

The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

18.06 Duration.

All of the terms and conditions of this Declaration shall run with and bind the Property and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless during the last year of such initial or then current renewal term, the Owners of not less than a majority (more than 50%) of the Total Association Vote (including Declarant's ownership, if any) of the Subdivision, or Combined Subdivision, as the case may be, agree in writing to terminate this Declaration at the end of such term.

18.07 Amendment.

Until the expiration of the Declarant Control Period, Declarant may, in its sole discretion, and unilaterally, without the requirement of approval, joinder or consent of the Owners or any other party, amend this Declaration as long as such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or use of the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot owned by any party other than Declarant, unless such Owner shall consent in writing thereto, which consent shall be filed with such amendment. In addition to the above, this Declaration may be amended:

(a) after the termination of the Declarant Control Period, for so long as the Declarant and/or any of its affiliates own any Lot in the Subdivision or Combined Subdivision, as the case may be, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of not less than a majority (more than 50%) of the Total Association Vote (including Declarant's ownership) of the Lots; and

(b) if the Declarant and no affiliate of Declarant owns any Lot in the Subdivision, or the Combined Subdivision, as the case may be, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least a majority (more than 50%) of the Total Association Vote, provided that (1) no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein; (2) no amendment shall adversely affect any rights or interest of Declarant as provided herein, unless agreed to in writing by Declarant; (3) no amendment shall have priority over any amendment made by Declarant in accordance with this Article, as long as Declarant or any affiliate of Declarant owns a Lot; and (4) no amendment shall alter, modify or rescind any right, title, interest or privilege herein granted or accorded to any mortgagee of a Lot affected thereby unless such holder shall consent in writing thereto, which consent shall be filed with such amendment. Any such amendment also shall constitute rights and interests appurtenant to the Property and shall run with the title to the same. All amendments must be properly recorded in the office of the Register of Deeds for the County.

18.08 Federal Lending Requirements.

Declarant may (at Declarant's option) also amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or other similar agency. Any such amendment must be with the consent and approval of such agency and must be recorded in the office of the Register of Deeds for the County.

18.09 Megan's Law.

By acceptance of a deed to a Lot, Owner acknowledges that neither the Declarant nor the Association is responsible for investigating, obtaining or disclosing any information contained in any sex offender registry of this State or in the National Sex Offender Registry. Each Owner agrees that no action may be brought against the Declarant or the Association for

failure to investigate, obtain or disclose any information contained in any sex offender registry. Owner has the sole responsibility and duty to investigate and obtain such information.

18.10 Interpretation Generally.

In all cases, the provisions set forth or provided for in this Declaration will be construed together and given that interpretation or construction which, in the opinion of the Declarant or the Board of Directors will best effect the intent of the Scheme of Development. The provisions hereof will be liberally interpreted and, if necessary, they will be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration will be given full force and effect notwithstanding the existence of any zoning ordinance or building codes that are less restrictive. The effective date of this Declaration will be the date of its filing in the Register of Deeds for a County. This Declaration will be construed under and in accordance with the laws of the State of North Carolina.

18.11 Amplification.

The provisions of this Declaration are amplified by the Articles of Incorporation and the Bylaws; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws on the other, be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles or Bylaws to the contrary.

18.12 No Affirmative Obligation Unless Stated.

ANY RESERVATION OR RIGHT OF THE DECLARANT WHICH IS STATED IN OR IMPLIED FROM THIS DECLARATION WILL NOT GIVE RISE TO ANY AFFIRMATIVE OBLIGATION OR DUTY ON THE PART OF THE DECLARANT UNLESS EXPRESSLY STATED IN THIS DECLARATION.

18.13 No Implied Liabilities or Duties.

ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT PURSUANT TO THIS DECLARATION WILL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.

18.14 Notices.

Notices shall be in writing and shall be addressed as follows: (i) if to an Owner, to the address of his Lot; (ii) if to Declarant, to Lennar Carolinas, LLC, 11230 Camel Commons Boulevard, Charlotte, North Carolina 28226; and (iii) if to the Association, to the address of the President or Secretary of the Association, or its Property Manager. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

18.15 Headings.

The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

18.16 Equal Opportunity Housing.

This Subdivision provides equal opportunity housing. Each Lot sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, age or sex of the purchaser.

18.17 Exhibits.

Exhibit A attached to this Declaration is incorporated herein and made a part hereof by this reference.

18.18 Professional Management.

In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Subdivision, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice, without payment of a termination fee.

IN WITNESS WHEREOF, Declarant, by its duly authorized officer, has executed this Declaration this 21st day of February, 2013.

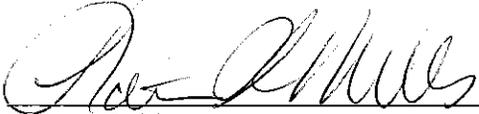
Lennar Carolinas, LLC

By: Jon S. Hardy
Jon S. Hardy, its Vice President

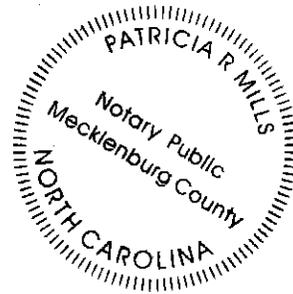
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

The foregoing instrument was acknowledged before me this 21st day February, 2013 by Lennar Carolinas, LLC, a Delaware limited liability company, by Jon S. Hardy, its Vice President.

WITNESS my hand and notarial seal.



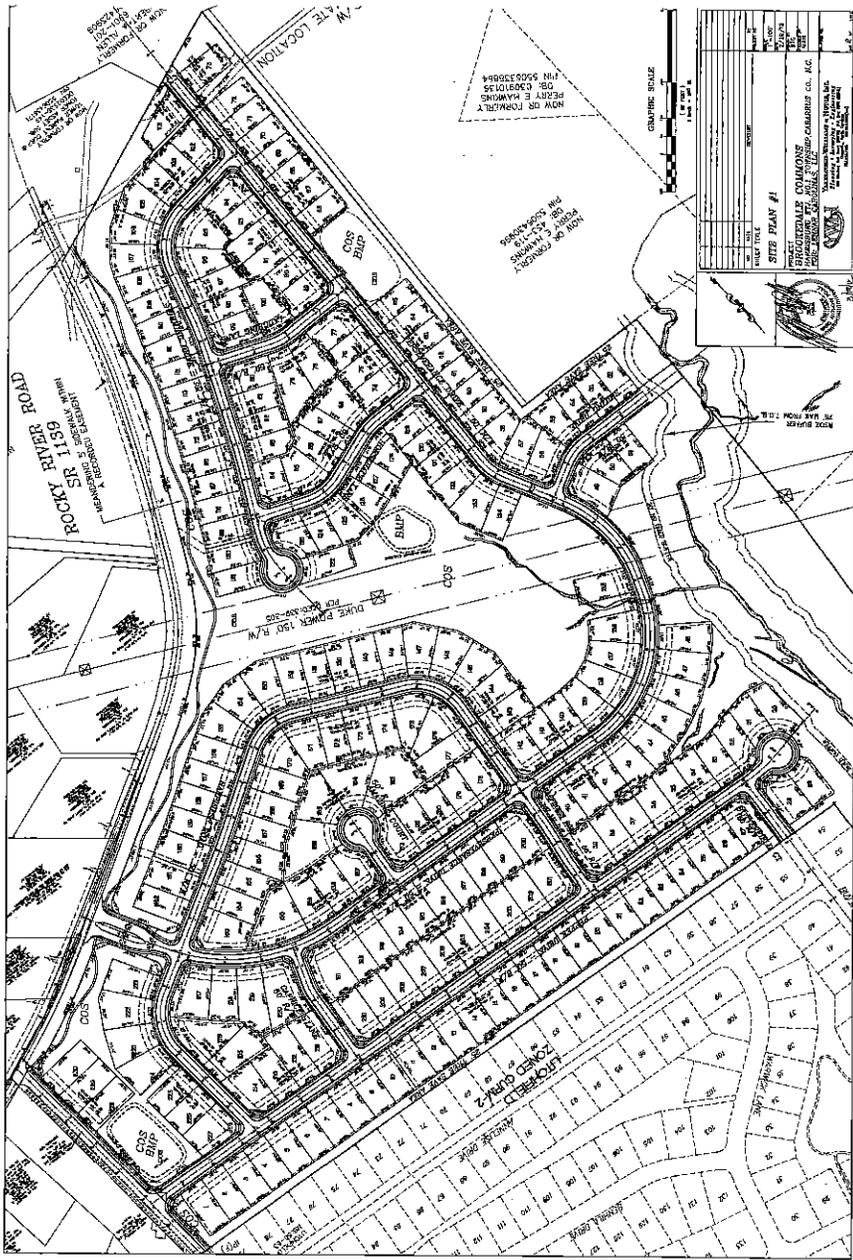
Notary Public
My Commission Expires: 9-11-16



[NOTARY SEAL]

EXHIBIT A

Legal Description of Additional Land



ROCKY RIVER ROAD
 SIR 1159
 DRIVE PAVEMENT 150' R/W
 CROSS DRIVE

THE LOCATION
 NOW OR FORMERLY
 OR A PORTION
 HEREIN IS SHOWN
 AS BEING
 1159 500330804

DRIVE PAVEMENT 150' R/W
 CROSS DRIVE

GRAPHIC SCALE
 1" = 20'

| | |
|-------------|---------------------|
| PROJECT | ROCKY RIVER COMMONS |
| DATE | 11/15/03 |
| SCALE | 1" = 20' |
| SHEET # | 1 |
| PREPARED BY | [Name] |
| CHECKED BY | [Name] |
| DATE | 11/15/03 |
| PROJECT | ROCKY RIVER COMMONS |
| LOCATION | [Location] |
| SCALE | 1" = 20' |
| SHEET # | 1 |
| PREPARED BY | [Name] |
| CHECKED BY | [Name] |
| DATE | 11/15/03 |



2020 ADOPTED OPERATING BUDGET - BROOKEDALE COMMONS

| | <u>2018 Actual</u> | <u>Actual YTD as of 9/30/19</u> | <u>2020 Budget</u> |
|--|--------------------|-------------------------------------|--------------------|
| REVENUES | | | |
| Residential Assessments | 103,500 | 103,302 | 149,040 |
| Operating Capital Contribution | 0 | 4,800 | 3,240 |
| Late Fees and Interest | 2,366 | 2,317 | 0 |
| Violation Fines | (1,983) | 500 | 0 |
| Pool Fees | 200 | 170 | 0 |
| Miscellaneous Revenues | 17,267 | 17 | 0 |
| TOTAL REVENUES | 121,350 | 111,106 | 152,280 |
| OPERATING EXPENSES | | | |
| Administrative | | | |
| Management Fees - Contract | 13,265 | 13,806 | 20,000 |
| Professional Services Legal | 8,347 | 1,920 | 2,400 |
| Professional Services General | 270 | 3,753 | 4,200 |
| Professional Services Accounting | 2,350 | 2,250 | 3,720 |
| ARC Expenses | 0 | 0 | 540 |
| Office Supplies - General | 4,290 | 3,660 | 6,000 |
| Insurance - General | 2,853 | 1,955 | 2,880 |
| Social Events | 1,559 | 225 | 1,500 |
| Total Administrative Expenses | 32,934 | 27,569 | 41,240 |
| Landscaping/Irrigation | | | |
| Landscape Contract | 38,400 | 28,800 | 38,400 |
| Landscape Irrigation | 306 | 657 | 1,740 |
| Landscape Maint./Repair | 5,925 | 2,623 | 7,020 |
| Total Landscaping/Irrigation Expenses | 44,631 | 32,080 | 47,160 |
| Repairs and Maintenance | | | |
| R & M General | 5,100 | 3,515 | 3,000 |
| Pest Control | 0 | 0 | 420 |
| Water Amenities Service Contract | 21,897 | 22,804 | 24,950 |
| Water Amenities Repairs | 4,103 | 1,041 | 2,000 |
| Water Amenities Supplies | 815 | 542 | 750 |
| Water Amenities Permits | 250 | 0 | 250 |
| Pool Fobs | 134 | 480 | 420 |
| Pond Treatment | 7,818 | 5,701 | 8,200 |
| Amenity | 0 | 232 | 500 |
| Safety/Security Equipment Repairs | 0 | 0 | 1,480 |
| Total Repairs and Maintenance | 40,117 | 34,315 | 41,970 |
| Utilities | | | |
| Electric General | 5,579 | 4,050 | 6,300 |
| Water and Sewer | 6,931 | 5,475 | 6,960 |
| Telephone - Landlines | 2,848 | 1,290 | 2,040 |
| Total Utilities Expenses | 15,358 | 10,815 | 15,300 |
| TOTAL OPERATING EXPENSES | 133,040 | 104,779 | 145,670 |
| EXCESS REVENUES OVER EXPENSES | (11,690) | 6,327 | 6,610 |
| Reserve Contributions * | 0 | 0 | 6,610 |
| Net Income/Loss | (11,690) | 6,327 | 0 |

* Note: 2019 Reserve Contribution is based upon year-ending Net Income/Loss