

**CONSENT AND SUBORDINATION TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR CRESSWIND CHARLOTTE**

U.S. Bank, N.A. d/b/a Housing Capital Company ("Beneficiary"), owner and holder of note(s) secured by (i) that certain Deed of Trust (With Security Agreement and Assignment of Rents and Leases) dated December 29, 2016 from KH Mint Hill, LLLP, a Florida limited liability partnership ("Grantor") to Sam A. Meade ("Trustee"), for the benefit of Beneficiary, recorded in Book 31468, Page 236 in the Office of the Register of Deeds of Mecklenburg County, North Carolina (the "Registry"), and (ii) that certain Master Deed of Trust (With Security Agreement and Assignment of Rents and Leases) dated January 20, 2017 from Grantor to Trustee, for the benefit of Beneficiary, recorded in Book 31513, Page 693 in the Registry (collectively, the "Deeds of Trust") hereby consents to the foregoing Declaration of Covenants, Conditions and Restrictions for Cresswind Charlotte (the "Declaration") made by Grantor as "Declarant" and owner of the Property identified in the foregoing Declaration, and consents to the execution, delivery and recording of the Declaration, and agrees that any subsequent foreclosure of the Deeds of Trust shall not extinguish the Declaration and that the Deeds of Trust, the lien(s) created thereby, and Beneficiary's interest in the Property described therein by virtue of the Deeds of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof, except and provided that the lien of assessments provided for in the Declaration shall be subordination to the lien(s) of the Deeds of Trust as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these present under seal as of this the 26th day of June, 2017.

BENEFICIARY:

U.S. BANK, N.A.

By: Jamie Miller

Its: Vice President

STATE OF Texas - COUNTY OF Dallas:

I certify that the following person personally appeared before me this day and acknowledged to me that he signed the foregoing document for the purposes stated therein:

Date: June 26, 2017

Jamie Miller

(Stamp or Seal)



Lauren Gonzales

Signature of Notary

Printed Name: _____

My commission expires: _____

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
CRESSWIND CHARLOTTE**

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

Prepared by and return to:
Alexander Ricks PLLC (MJH)
4601 Park Road, Suite 580
Charlotte, NC 28209

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CRESSWIND CHARLOTTE

This Declaration of Covenants, Conditions and Restrictions is made on the date set below by **KH MINT HILL LLLP**, a Florida limited liability partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of the real property located in the Town of Mint Hill, Mecklenburg County, North Carolina as described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Initial Property"); and

WHEREAS, Declarant desires to subject the Initial Property, including the improvements thereof, to the provisions of this Declaration.

NOW THEREFORE, Declarant hereby declares that the Initial Property, including the improvements or constructed or to be reconstructed thereon, is hereby submitted and made subject to the provisions of this Declaration. By virtue of the recording of this Declaration, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to provisions of the covenants, conditions, restrictions, easement, assessments, and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and in the Exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below:

- (a) "ARC" means the Architectural Review Committee as described in Article 9.
- (b) "Additional Property" means all of the real property which is described on Exhibit "B" attached hereto together with any property contiguous to the real property described on Exhibit "B" (and for purposes hereof the term contiguous shall include property which connects to the Exhibit "B" property at any point, or which is separated from the Exhibit "B" property by a public road or water body). The Initial Property, together with any Additional Property that becomes subject to this Declaration, are hereinafter collectively referred to as the "Property".
- (c) "Adult Housing" means or refers to housing provided for adults fifty-five (55) years of age and older in accordance with the provisions of the Fair Housing Amendments Act of 1988, as set forth in Title 42 U.S.C. §3601 et seq. (the "Act") and the Rules and Regulations promulgated thereto, as amended from time to time and applicable North Carolina Law.
- (d) "Articles of Incorporation" or "Articles" means the Articles of the Incorporation for the Community Association filed with the Secretary of State of the State of North Carolina, as they may be amended.
- (e) "Assessments" means and refers to those payments due pursuant to Article 8, whether General Assessment, Special Assessment, or Specific Assessment (as hereinafter defined) or a combination thereof.

(f) “Board of Directors” or “Board” means the body responsible for administration of the Community Association selected as provided in the Bylaws and serving as the Board of Directors under North Carolina corporate law.

(g) “Builder” means any person who is designated a Builder by the Declarant. This generally includes one who purchases one (1) or more Lots for the purpose of constructing Initial Improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Community for further subdivision, development, and/or resale in the ordinary course of such person’s business or who enters into a construction contract with an Owner of a Lot for the construction of a Residence. Any person shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such person originally was recognized as a Builder.

(h) “Bylaws” means the Bylaws of the Community Association Attached hereto as Exhibit “C”.

(i) “Common Expenses” means the actual and estimated expenses incurred, or anticipated to be incurred, by the Community Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

(j) “Community” means the Property, as such may be amended or supplemented from time to time to reflect any additions (including all or any portion of the Additional Property) or removal of property in accordance with Article 7.

(k) “Community Association” means the Cresswind Charlotte Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

(l) “Community Common Area” means all real and personal property, including easements and licenses, which the Community Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term shall include any Exclusive Community Common Area, as defined below.

(m) “Community Master Plan” means the land use plan or development plan for the Community, as such plan may be amended from time to time by the Declarant. Inclusion of property on the Community Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of any Additional Property from the Community Master Plan bar its later annexation in accordance with Article 7.

(n) “Community-Wide Standard” means the standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors.

(o) “Cresswind Charlotte” means the Community located in Mecklenburg County, North Carolina, subject to this Declaration.

(p) “Declarant” means KH Mint Hill LLLP, a Florida limited liability limited partnership or any successor, successor-in-title, or assign who holds or takes title to any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) person entitled to exercise the rights and powers of the Declarant at any time.

(q) “Design Guidelines” means the guidelines and application and review procedures applicable to all or any portion of the Community further described in Article 9.

(r) “Detention Facility” means any area within the Community serving as a detention structure or facility, including but not limited to berms, swales or any facility designated as a “detention pond” “retention pond” or a “proposed detention facility” or “proposed retention facility” on a Plat.

(s) “Development Period” means the period of time during which the Declarant either owns any property, including any Lot or Residence, subject to this Declaration, owns any portion of the Additional Property, or has the unilateral right to subject Additional Property to this Declaration pursuant to Article 7. The Declarant may, but shall not be obligated to, relinquish its rights and terminate the Development Period before such stated time by recording a written instrument so stating.

(t) “Electronic Document” shall mean information created, transmitted, received or stored by electronic means and retrievable in humanly perceivable form including, without limitation, email, web pages, electronic documents, and facsimile transmission.

(u) “Electronic Signature” shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Signature.

(v) “Exclusive Community Common Area” means a portion of the Community Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Lots, as further discussed in Article 3.

(w) “Exempt Resident” means either: (i) “Exempt Care Resident” which means a person who is providing care to a disabled Qualifying Occupant or the member of the Qualifying Occupant household as necessary to afford such disabled person an equal opportunity to use and enjoy a Residence and the Community Common Area pursuant to 24 C.F.R. 100.204; or (ii) “Exempt Maintenance Resident” which means any individual who performs substantial duties directly related to management or maintenance of the Community Common Area and whose occupancy is approved by the Board.

(x) “General Assessment” means Assessments levied on all Lots subject to assessment under Article 8.

(y) “SFHA” means the North Carolina State Fair Housing Act (N.C.G.A. §41A-1, *et. seq.*) and the regulations promulgated by the Human Relations Commission pursuant thereto.

(z) “Governing Documents” means the Declaration, Bylaws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the Rules of the Community Association and all additional covenants governing any portion of the Community or any of the above, as each may be supplemented and amended from time to time.

(aa) “HOPA” means the Housing for Older Persons Act of 1995 (42 U.S.C. §3607(b)), amending the Fair Housing Amendments Act of 1988, and the Fair Housing Act of 1968 (42 U.S.C. § 3601, *et. seq.*), and the regulations promulgated by the Department of Housing and Urban Development pursuant thereto (24 C.F.R. 100.300, *et. seq.*).

(bb) “Improvements” means and refers to, by illustration but not limitation, any buildings, including Residences, underground installations, slope alterations, painting, siding, roofing, shutters, windows, exterior materials, antenna, steps, lights, roads, driveways, sidewalks, utility facilities and lines, parking areas, fences, satellite dishes, rooftop installations, screening walls and barriers, retaining walls, stairs, decks, patios, windbreaks, railings, plantings, landscaping, planted trees or shrubs, poles, signs, and any structures, or any other landscaping or yard improvements of every type and kind.

(cc) “Initial Improvements” means the Improvements as are initially contemplated for construction on the Lot, including, for example, the Residence and all of its appurtenances and structures installed prior to the initial occupancy of the Residence located on such Lot.

(dd) “Institutional Lender” means and refers to any person or entity (i) holding a mortgage encumbering a Lot, (ii) which in the ordinary course of business makes purchases, guarantees or insures mortgage loans, and (iii) which is not owned or controlled by the Owner of the Lot encumbered. An Institutional Lender may include, but is not limited to, a Federal or State chartered bank of savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company; the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an Agency of the United States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the United States Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Declarant, whether or not such holder would otherwise be considered an Institutional Lender.

(ee) “Lot” means a portion of the Community (other than the Community Common Area), whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached Residence. The term shall refer to the real property which is part of the Lot as well as any Improvements thereon. In the case of an unplatted parcel of land, the parcel shall be deemed to be single Lot until such time as a Plat is filed with respect to all or a portion of the parcel.

(ff) “Majority” means those votes, Owners, Members, or other groups, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

(gg) “Member” means a Member of the Community Association.

(hh) “Mortgage” means a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

(ii) “Mortgagee” means a beneficiary, grantee or holder of a Mortgage.

(jj) “Occupant” means any natural person who resides in a Residence within the community for 60 days or longer in any calendar year.

(kk) “Owner” means the record owner, whether one or more persons or entities, of the fee simple title to any Lot. Owner shall not include those having such interest merely as security for the payment or repayment of a debt. If a Lot is owned by more than one person and/or entity, then all such persons and/or entities shall be jointly and severally liable to perform the responsibilities of the owner.

(ll) “Person” shall mean any natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or other legal entity.

(mm) “Plat” means and refers to any of the plats of the Community as recorded in the Public Records of Mecklenburg County, North Carolina.

(nn) “Private Amenity” means real property and any Improvements and facilities thereon (but not the Community Common Area) located adjacent to, within or in the vicinity of the Community which are owned or operated in whole or in part, by someone other than the Community Association for recreational or other purposes. The use of the term “Private Amenity” shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

(oo) “Qualifying Occupant” means a person fifty-five (55) years of age or older, as referenced in the Housing for Older Person Act of 1995 (42 U.S.C. §3607(b)), who resides in a Residence.

(pp) “Residence” means a private dwelling constructed on any Lot, whether attached or detached, for occupancy of a single family.

(qq) “Resident” shall mean any natural person eighteen (18) years of age or older whose principal place of Residence is a Lot within the community.

(rr) “Secure Electronic Signature” shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is limited to data in such a manner that if the data is changed, the Electronic Signature is invalidated

(ss) “Supplemental Declaration” means an instrument filed in the Mecklenburg County Public Records which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

(tt) “Turnover” means or refers to the transfer or control of the Board of Directors to the Members, other than the Declarant, at which time such members have elected at least a majority of the Board.

(uu) “Vacant Residence” means a Residence that is unoccupied, except that if the former resident has resided in the Residence during the prior twelve (12) month period and intends to return to the Residence, on either a permanent or periodic basis, then such Residence shall not be deemed a Vacant Residence.

ARTICLE 2: PROPERTY WITHIN THIS COMMUNITY

Section 1. Legal Description. The real property which is and shall be held, transferred, sold and conveyed and occupied, subject to this Declaration (and is within this Community) is located in Mecklenburg County, North Carolina, and is more particularly described in Exhibit “A”, as such may be amended or supplemented from time to time to reflect any additions (including all or any portion of the Additional Property) or removal of property in accordance with Article 7.

Section 2. Declarant’s Right to Add Additional Property to or Withdraw Property from the Community. Declarant shall have the right, in its sole discretion, to add Additional Property to the Community by annexing the same to the terms of this Declaration. Any Annexation shall be in accordance with Article 7, Section 8, below. Declarant shall also have the right to withdraw property from the Community as long as such property has not previously been conveyed to an Owner. The addition or withdrawal by Declarant shall not require the consent or joinder of the Community Association, or any Owner or Mortgagee of any of the property within the Community, but shall be at the sole option of the Declarant. Upon addition of any property to the Community by annexation to the terms of this Declaration, the owners of such Additional Property shall be and become subject to this Declaration, including assessment by the Association for their pro-rata share of the Common Expenses.

ARTICLE 3: COMMUNITY RIGHTS OF OWNERS

Section 1. Community Common Area. The Community Common Area is intended to be available for the mutual benefit and enjoyment of all Owners, except to the extent that the Community Common Areas are made Exclusive Community Common Areas. In furtherance of this, every Owner shall have the right and the nonexclusive easement of use, access and enjoyment in and to the Community Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Community Association;

(c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Community Common Area, including rules limiting the number of guests who may use the Community Common Area;

(d) The right of the Community Association to rent, lease or reserve any portion of the Community Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;

(e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Community Common Area and Exclusive Community Common Area pursuant to Article 4, Section 5, below;

(f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Community Common Area;

(g) The right of the Board to permit use of any facilities situated on the Community Common Area by persons other than Owners, their families, lessees and guests upon payment of reasonable use fees, if any, established by the Board;

(h) The right of the Community Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, these rights being subordinate to the rights of Owners under this Declaration;

(i) The right of the Community Association, acting through the Board, to dedicate or transfer all or any portion of the Community Common Area, subject to any approval requirements set forth in the Governing Documents;

(j) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Community Common Area designated "Exclusive Community Common Areas," as more particularly described in Section 3 of this Article; and

(k) The right of the Declarant to conduct activities and establish facilities within the Community as provided in this Declaration.

The right of the Board to enforce use restrictions, the Declaration and Bylaws provisions and Rules and Regulations by imposing reasonable monetary fees, exercising self-help powers, and suspend the voting privileges of an Owner. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, as well as subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided however, the Owner shall remain responsible for payment of all Assessments and other charges.

Section 2. Exclusive Community Common Area. Certain portions of the Community Common Area may be designated as Exclusive Community Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Lots. By way of illustration and not limitation, Exclusive Community Common Areas may include shared driveways, and other portions of the Community Common Area benefiting certain Lots. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Community Common Area shall be assessed as a Specific Assessment against the Owners of Lots to which the Exclusive Community Common Areas are assigned.

During the Development Period, any Exclusive Community Common Area shall be designated as such, by Declarant, and the exclusive use thereof shall be assigned, in the contract of sale relating to any Owner's Lot or in the deed by which the Community Common Area is conveyed to the Community Association, or is in this Declaration, and or any Supplemental Declaration and/or on the Plat relating to such Community Common Area. Any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Community Common Area to additional Lots during the Development Period. Any assignment of an Exclusive Community Common Area shall be for the term and subject to the conditions specified in the assignment and may be limited to a period of ownership by the Owner of the Lot to which such assignment has been made.

Section 3. Condemnation. The Community Association shall be the sole representative with respect to condemnation proceedings concerning Community Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Community Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Community Common Area under threat of condemnation only if approved by members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Community Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Community Association.

If the taking or conveyance involves a portion of the Community Common Area on which Improvements have been constructed, the Community Association shall restore or replace such Improvements on the remaining land included in the Community Common Area to the extent available, unless within sixty (60) days after such taking, Members holding at least sixty-seven percent (67%) of the total Class "A" votes of the Community Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with the plans approved by the Board. The provisions of Article 6, Section 1(e) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Community Common Area, or if a decision is made not to repair or restore, or net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Community Association for such purposes as the Board shall determine.

Section 4. View Impairment. Neither the Declarant nor the Community Association guarantees or represents that any view from Lots over and across the Community Common Area, or over any Lot or other portion of the Community, will be preserved without impairment. The Community Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping or to install Improvements or barriers (both natural and artificial) to the Community Common Area from time to time. The Board may approve Improvements to Lots in accordance with the terms of this Declaration. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of Improvements or barriers (both natural and artificial) on the Community Common Area and Lots or any other portion of the Community.

ARTICLE 4: COMMUNITY ASSOCIATION

Section 1. Membership. Every Owner shall be a Member of the Community Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 2(d) of this Article and in the Bylaws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Community Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Declarant shall be a Member of the Community Association for so long as Declarant owns any Lot subject to this Declaration.

Section 2. Voting. The Community Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) **Class "A"** Class "A" Members shall be all Owners except the Class "B" Member. Each Class "A" Member shall have one (1) equal vote for each Lot in which he or she holds the interest required for membership under Section 1 of the Article; provided however, there shall be only one (1) vote per Lot and no vote shall be exercised by any Builder for any Lot which is exempt from Assessment under Article 8, Section 2 below. All Class "A" votes shall be cast as provided in Section 2(d) of this Article below. Notwithstanding the foregoing, however, the Community Association has the right to suspend the voting rights of an Owner for non-payment of Association Assessments that are delinquent in excess of ninety (90) days.

(b) **Class "B"** The sole Class "B" Member shall be the Declarant (or any successor so designated, in writing). The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration or Governing Documents are specified in the relevant sections of this Declaration or Governing Documents. The Class "B" Member shall be entitled to the same number of votes held by the total of all other members of the Community Association, collectively, plus one (1); however, notwithstanding any provisions to the contrary, the Class "B" Member may appoint all members of the Board of Directors until the first to occur of the following;

i. Ninety (90) days after one hundred percent (100%) of the total number of Lots permitted by the Community Master Plan for the Property have been conveyed to Owners other than Declarant or Builders or affiliates of Declarants;

ii. December 31, 2047; or

iii. When, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

At such time, the Class "B" membership shall terminate, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns. After termination of the Class "B" membership, (i) the Declarant shall have the right to disapprove actions of the Board, the ARC, and committees as provided in the Governing Documents, and (ii) the Declarant shall have the right, in its sole discretion, to appoint one member to the Board during the Development Period.

(c) **Exercise of Voting Rights** If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Community Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be cast by either co-Owner unless more than one (1) person seeks to exercise such vote, in which case that Lot's vote shall be suspended. No vote shall be exercised on behalf of any Lot if any Assessment for such Lot is delinquent in excess of sixty (60) days.

Section 3. Function of Community Association. The Community Association shall be the entity responsible for management, maintenance, operation and control of the Community Common Area and all Improvements thereon. The Community Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Community as the Board may adopt pursuant

to Section 5 of this Article. The Community Association shall perform its functions in accordance with the Governing Documents, federal laws, and the laws of the State of North Carolina. In addition to the powers otherwise provided in the Governing Documents, the Community Association, through action of the Board of Directors, shall have the power, but not the obligation to enter into an agreement or agreements from time to time with one or more persons, firms or corporations for management services.

Section 4. Personal Property and Real Property for Common Use. The Community Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey or transfer whether by quitclaim deed, lease or otherwise as determined by Declarant, to the Community Association improved or unimproved real estate, or, interests in real estate or Improvements located within the Property, personal property, and leasehold and other property interests. Such property may be accepted by the Community Association when conveyed or transferred to it at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Community Association. Declarant shall not be required to make any Improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any pond or other body of water that may be conveyed. Upon written request of Declarant, the Community Association shall reconvey to Declarant any portions of the Community originally conveyed by Declarant to the Community Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect upon the rights of the Owners, and Declarant hereby retains an option to obtain such reconveyance.

The Community Association agrees that Community Common Area, including all Improvements thereon, may be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Community Common Area. No claim shall be made by the Community Association or any Owner relating to the condition, operation, or completeness of the community Common Area or for incidental or consequential damages arising therefrom. Declarant shall transfer and assign to the Community Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Community Common Area which exist and are assignable.

Section 5. Rules and Regulations/Enforcement. The Community Association, through the Board of Directors, may make and enforce reasonable rules and regulations governing the use of property in the Community, including the Community Common Area and the Lots. The Board or any Committee established by the Board, with the Board's approval, may impose sanctions for violation of such rules and regulations and the Governing Documents after compliance with the notice and hearing procedures set forth in the Bylaws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall (unless prohibited by applicable state law) constitute a lien upon the Lot of the violator and be collectable as a Specific Assessment;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any person's right to use any recreational facilities within the Community Common Area and any part of the Exclusive Community Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and

(e) suspending any services provided by the Community Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any Assessment or other charge owed to the Community Association.

(f) in addition, the Board, or its approved and designated entity may elect to enforce Governing Documents by exercising Board approved self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents). The Community Association may levy Specific Assessments to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents.

(g) enforcement by suit at law to recover monetary damages or in equity to enjoin any violation or both.

In the event that any occupant, guest or invitee of a Lot violates the rules and regulation or any of the Governing Documents, the Board or its approved and designated entity, may sanction the Owner of the Lot that the violator is occupying or visiting.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Community Association to enforce the provisions of the rules and regulations of the Governing Documents, if the Community Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorney's fees and court costs, incurred in such action, regardless of whether suit is filed and including any appeals.

The Community Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Community Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right of the Community Association to enforce such provision under any circumstances or prevent the Community Association from enforcing any other covenant, restriction or rule.

Section 6. Implied Rights: Board Authority. The Community Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, or the other Governing Documents or by law, all rights and powers of the Community Association may be exercised by the Board without a vote of the membership.

Section 7. Governmental Interests. During the Development Period, the Declarant may designate sites within the Community for utility facilities, bus stops and shelters, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include portions of the Community Common Area, in which case the Community Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents.

Section 8. Indemnification. The Community Association shall indemnify every officer, director, Board member and committee member against all damages, liabilities, and expenses, including reasonable attorney's fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, Board member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and North Carolina law.

The officers, directors, Board members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct,

or bad faith. The officers, directors, Board members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Community Association (except to the extent that such officers, directors, or committee members may also be Members of the Community Association). The Community Association shall indemnify and forever hold each such officer, director, Board member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, Board member or committee member may be entitled. The Community Association shall, through the General Assessment, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9. Dedication of or Grant of Easements on Community Common Area. The Community Association may dedicate or grant easements across portions of the Community Common Area to any other local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company.

Section 10. Personal Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Community Association may, but shall not be obligated to, maintain or support certain activities within the Community. Neither the Community Association, the Declarant, nor any successor to the Declarant shall in any way be considered insurers or guarantors of security within the Community nor have any duties in respect to security or safety, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt adequately to illuminate all of the Community Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Community Association, its Board of Directors and committees, Declarant, an any successor to Declarant are not insurers or guarantors of safety and security within the Community and that each person within the Community assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties. Neither Declarant nor Community Association shall be liable or responsible for any personal injury or for any loss or damage to Community which may occur within the Community regardless of whether it is due to failure of the limited access entry system, or procedures for operation adopted from time to time.

Section 11. Trails. The Declarant reserves for itself, its successors and assigns, and the Community Association the right to designate certain areas within the Community, including the Community Common Area, to be used as recreational bike and pedestrian pathways and trails ("trail system"). Each Owner acknowledges, understands and covenants to inform the occupant of such Owner's Lot, that the Community may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail system resulting from the use of the trail system by the Declarant, the Community Association, its Members, their tenants, occupants, guests and invitees.

Section 12. Relationship With Tax-Exempt Organizations. The Declarant or the Community Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Community Common Areas to non-profit, tax exempt organization for the benefit of the Community. The Community Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a General Assessment and included as a line item in the Community Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501 (c) (3) or 501 (c) (4) thereof.

Section 13. Provision of Services. The Community Association may provide services and facilities for the Members of the Community Association and their guests, lessees and invitees. The Community Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Community Association may be funded by the Community Association as a General Assessment provided the service or

facility is provided to all Lots or as Specific Assessments. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Community Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet and other computer related services, home monitoring, caretaker, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Community Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Community Association. Each Owner consents to the Community Association providing to the provider of any such service the name of contact information of such Owner so as to allow the owner the opportunity to receive such services.

Section 14. Community Common Area Ownership. The Declarant may retain legal title to the Community Common Area so long as Turnover has not occurred. If not done sooner, within thirty (30) days after Turnover, the Declarant shall convey and transfer the Community Common Area to the Community Association by non-warranty deed. The Community Association shall accept such conveyance or transfer, subject to taxes for the year of conveyance, and to restrictions, limitations, conditions, reservations, and easements of record. If real estate taxes on the Community Common Area are not included in tax bills for the individual Lots, then the Community Association shall pay taxes on the Community Common Area. The identity and Improvements constituting the Community Common Area shall be determined by the Declarant in its discretion without limitation on the right of the Declarant to identify Improvements in the Community as Private Amenities as opposed to Community Common Area.

Section 15 Merger and Consolidation. Upon a merger or consolidation of the Community Association with any other association, or upon any decision by the Community Association that its functions may be performed effectively and efficiently by any other association, the rights and obligations of the Community Association may be transferred to another surviving or consolidating association. Alternatively, the property and rights and obligations of another association may be assigned to the Community Association as a surviving corporation pursuant to a merger. In any event, the surviving or consolidated association may administer covenants and restrictions established by this Declaration within the Community, together with the covenants and restrictions established upon any other property in a unified manner. No such merger or consolidation, however, shall affect any revocation, change or addition to the provisions established by this Declaration.

ARTICLE 5: MAINTENANCE

Section 1. Community Common Area Maintenance. Commencing with the date this Declaration is recorded, except as stated hereinafter, the Community Association shall be responsible for the maintenance of the Community Common Areas and any Improvements thereon (whether the same has been conveyed or transferred to the Community Association or not), and such other areas as are available for the collective use and enjoyment of the Owners in a continuous and satisfactory manner and for the payment of taxes assessed against the Community Common Areas, if any, and any Improvements thereon accruing from and after the date these covenants are recorded. For purposes of illustration, Community Common Areas may (but is not required to) include, but are not limited to: entrance features; all Detention Facilities, fences associated with any Detention Facilities, conservation areas, tracts designated for open space, greenbelts, buffer areas and non-disturbance areas, tennis courts and other recreational tracts on the Plat; and, if installed, the Community Common Area sprinkler system; The Community Association shall at all times maintain in good repair and shall replace as scheduled any and all Community Common Areas and Improvements of which it has ownership or for which it has maintenance obligations.

Section 2. Street Lighting. The Community Association shall have the obligation for maintenance of any street lighting facilities installed in Community Common Area owned by the Community Association, if any, from the date of recording this Declaration or from the date of installation of the street

lighting, whichever occurs first. Maintenance of the street lighting fixtures shall include the fixtures within the Community Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. In the event the Declarant, in its sole discretion, elects to install such street lighting, Declarant shall be entitled to all rebates or refunds of the installation charges and the Community Association hereby assigns such rebates or refunds to Declarant and the Community Association shall forthwith pay same to the Declarant.

Section 3. Lot Maintenance.

(a) **Landscaping/Irrigation.** Subject to Article 10 below, grass cutting and maintaining landscaping/irrigation as originally installed by the Declarant shall be the maintenance responsibility of the Community Association. The Community Association shall not be responsible for adding any landscaping to any Lot. Nor shall the Association be responsible for maintaining mulch or pine straw on any Lot. The maintenance and/or repair of landscaping on an Owner's Lot damaged due to the negligence or intentional acts of such Owner shall be the responsibility of such Owner. The maintenance or replacement(s) of the Residence and related Improvements constructed on the Lot shall be the responsibility of the Owner(s) thereof. The maintenance of all landscaping/irrigation installed or altered on a Lot by the Owner(s) thereof which is in addition or alteration to and not a replacement of the landscaping/irrigation originally installed by the Declarant shall be the responsibility of such Owner(s). Lawns shall be primarily grass, and shall not be paved or covered with gravel, artificial turf or other covering unless permitted by the Board. All diseased or dead sod, plants, or shrubs as originally installed by the Declarant shall be replaced by the Community Association as determined by the Board. Any diseased or dead landscaping installed by an Owner shall be removed or replaced by such owner. Excessive weeds, underbrush or unsightly growth shall be removed by the Community Association as part of the landscape maintenance. Owners are responsible for compliance with rules and regulations that may pertain to landscaping/irrigation.

(b) **Residence.** The maintenance of the Residence and related Improvements constructed on the Lot shall be the complete maintenance responsibility of the Owner(s) thereof. Each Owner shall keep all parts of his Lot, including the Residence, clean and free of debris, and in good order and repair except as set out in sub paragraph (a) of this Section 3. Such duties shall include, without limitation, repair or replacement of the roof, windows and doors (including glass or screens), and exterior of the Residence. Exterior maintenance, including painting, shall be periodically performed as reasonably required. Paint and roof colors shall not be materially changed without the consent of the Board, and all paint / roof colors shall be harmonious with other improvements within the Community. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any Improvement on a Lot.

Section 4. Irrigation System. Declarant may, but shall have no obligation to, install a common irrigation system throughout the Community to irrigate the Community Common Areas. If so installed, the irrigation pump(s), wells, and any main irrigation lines shall be the maintenance obligation of the Community Association. The Community Association shall have an easement over the Community, including any Lot, as necessary, to provide maintenance of the portion of the irrigation system to be maintained by the Community Association. Notwithstanding the foregoing, the maintenance and/or repair of any damage to irrigation lines or sprinkler heads located in the Community caused by the Owner's negligence or intentional act(s) shall be the responsibility of such Owner. The Community Association shall have the sole control of the timing system for irrigation of the Community Common areas.

Section 5. Offsite Signage & Landscaping. The Community Association shall have the obligation to maintain any signage that advertise and promote the name of the Community and to maintain the landscaping surrounding said signs.

Section 6. Storm Water Drainage Facility. Mecklenburg County and/or the Town of Mint Hill shall own and shall be responsible for the maintenance, repair, or replacement of any storm water drainage facility, including, but not limited to, any detention ponds, located in the Community upon dedication of said facilities. Prior to any such dedication, the Community Association shall responsible for the maintenance, repair,

or replacement in accordance with any stormwater covenants recorded in the Public Records of Mecklenburg County, North Carolina.

Declarant reserves, creates, establishes, promulgates and declares for Mecklenburg County and the Town of Mint Hill, their agents or employees, the non-exclusive, perpetual, appurtenant right and easement of access and encroachment to enter upon any storm water drainage facility and over the Community Common Area and Lots (but not the Residences thereon) adjacent to or within twenty (20) feet of any storm water drainage facility in order to inspect, observe, maintain, and repair the storm water drainage facility as deemed necessary.

Section 7. Lift Station and Surface Water Management System. Unless and until dedicated or conveyed to Mecklenburg County or utility company, the Community Association shall maintain, repair and replace as needed, and pay the electrical usage charges for, any lift station and related lines and equipment located within the Community. It is the responsibility of the Community Association, at Common Expense, to operate, maintain and repair any portions of any surface water management system located within the boundaries of the Community, and to enforce, or to take such appropriate action as may be necessary to cure violations of, the routine maintenance and non-interference covenants of the Owners and, when appropriate, to levy Special Assessments or Specific Assessments therefore. Maintenance of any surface water management system shall include the exercise of practices that allow the system to provide drainage, water storage, conveyance and other surface water management capabilities.

Section 8. Drainage Improvements. The Community Association shall maintain, repair and replace all drainage improvements within the Community, including without limitation within all platted drainage easements and all swales. All maintenance, repairs and replacements of drainage improvements within the Community, including without limitation within all platted drainage easements, shall also be the responsibility of the Community Association.

Section 9. Maintenance Expense. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Community Common Area and common irrigation system shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Community Association to seek reimbursement from the Owner(s) of, or other persons responsible for, certain portions of the Common Community Area pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Community Common Areas shall be a Specific Assessment against the particular Lots to which the Exclusive Community Common Areas are assigned, notwithstanding that the Community Association may be responsible for performing such maintenance hereunder.

Section 10. Deficiency in Maintenance. In the event that the Community Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Community Association for all costs incurred. If an Owner fails properly to perform his or her maintenance responsibility, the Community Association or Declarant may upon not less than ten (10) days' notice and opportunity to cure such failure, perform such maintenance responsibilities and if performed by the Community Association, assess all costs incurred by the Community Association against the Lot and the Owner in accordance with Article 8 Section 6 below or, if performed by the Declarant, the Declarant shall be reimbursed by the Community Association and the Community Association shall have the rights against the Owner as if the Community Association performed the maintenance. If entry into a home is deemed necessary due to an emergency that may cause damage to Community Common Area or the Association Members Personal and/or Real Property the Community Association or Declarant, shall attempt to contact Owner(s). If the Community Association or Declarant is unable to contact the Owner(s), immediate entry shall be allowed for the purpose of bringing resolution to the emergency situation. Entry under this Section shall not constitute a trespass.

Section 11. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the

composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article 7. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations by the Board.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

Section 1. Community Association.

(a) Required Coverages The Community Association acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance.

i Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Community Common Areas. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Community Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Community Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

ii General Liability insurance insuring the Community Association and its Members for damage or injury caused by the negligence of the Community Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Community Association shall obtain such additional coverages or limits. The liability insurance shall include, but not be limited to, hired and non-owned automobile coverage, if applicable.

iii Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

iv Directors and officers liability coverage;

v Crime or theft insurance covering all persons responsible for handling Community Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Crime or theft insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

vi Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Community Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Community Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less.

Premiums for all insurance obtained by the Community Association shall be Common Expenses and shall be included in the General Assessment. In the event of insured loss, the deductible shall be treated as a Common Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such

Owner(s) and their Lots. The Community Association shall have no insurance responsibility for any portion of the Private Amenities. The Board of Directors is hereby irrevocably appointed agent for each Member, each Mortgagee and for each holder of any other lien secured by any portion of the Community, for the purpose of compromising and settling all claims arising under insurance policies obtained by the Community Association and executing and delivering releases upon payment of claims.

(b) Policy Sufficiency Reviews The Board of Directors shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified persons, at least one (1) of whom must be familiar with insurable replacement costs in the location of the Community. All Community Association policies shall provide for a certificate of insurance to be furnished to the Community Association and to each Member upon written request. Unless a higher maximum amount is required by state law, the maximum deductible amount shall be the lesser of \$10,000 or 1% of the hazard insurance policy face amount. The deductible shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section this Section.

(c) Insurance Coverage All insurance coverage obtained by the Board shall:

i be written with a company authorized to do business in the State of North Carolina, which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

ii the company or companies with whom the Community Association shall place its insurance coverage must meet the following requirements; or an A or better rating from Demotech, Inc.;

iii be written in the name of the Community Association as trustee for the benefited parties. Policies on the Community Common areas shall be for the benefit of the Community Association and its Members;

iv not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

v contain an inflation guard endorsement;

vi include an agreed amount endorsement, if the policy contains a coinsurance clause;

vii an endorsement requiring at least thirty (30) days prior written notice to the Community Association of any cancellation, substantial modification, or non-renewal; and

(d) Optional Requirements The Board shall use reasonable efforts to secure insurance policies which provide:

i a waiver of subrogation as to any claims against the Community Association's Board, officers, employees, and Manager, the Owners and their tenants, servants, agents, and guests;

ii a waiver of the insurer's rights to repair, replace, or reconstruct instead of paying cash;

iii an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Community Association to cure the defect or violation and allowance of a reasonable time to cure;

iv an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

v a cross-liability provision;

vi a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss;

vii a construction code endorsement; and

viii a machinery coverage endorsement.

(e) **Damage and Destruction** In the event of any insured loss covered by insurance held by the Community Association only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair, replacement or reconstruction, as used in this subsection, means repairing, replacing, or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Community Common Area shall be repaired, replaced, or reconstructed unless the Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Community Association and during the Development Period the Declarant, decide within sixty (60) days after the loss either (i) not to repair, replace, or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Community Association within such sixty (60) days period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Community Common Area shall be repaired, replaced, or reconstructed.

If determined in the manner described above that the damage or destruction to the Community Common Area shall not be repaired, replaced, or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Community Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair, replacement, or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Community Association and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair, replacement, or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall.

Section 2. Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Community Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, including, by way of example, and not limitation, the Residence.

Each owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising his or her Lot, the Owner shall proceed promptly to repair, replace, or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Section 3. Liability. Notwithstanding the duty of the Community Association to maintain and repair portions of the Community Common Area or any Lot, neither the Community Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) or any combination of them shall be liable to any Member or any member of a Member's immediate household for any injury or damage sustained in the Community Common Area or other area maintained by the Community Association or for any injury or damage caused by the negligence or misconduct of any Member or their family members, guests, invitees, agents, servants, contractors or lessees, whether such loss occurs in the Community Common Area or within individual Lots.

Each Owner, by virtue of the acceptance of title to his or her Lot, and each other person having an interest in or right to use any portion of the Community, by virtue of accepting such interest or right to use, shall be bound by this Article and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Community Association arising from or connected with any matter for which the liability of the Community Association has been disclaimed under this Article and agrees to hold harmless the Community Association from any claims asserted in contradiction to this Article.

ARTICLE 7: DECLARANT RIGHTS

Section 1. Sales Activity. Notwithstanding any provision herein to the contrary, until the Declarant has completed, sold and conveyed all of the Lots within the Community, neither the Owners, nor the Community Association nor their use of the Community Common Area shall interfere with the completion of the contemplated Improvements, the sale of Lots, and/or any other sales activity of the Declarant, whether related to the Community or other developments of the Declarant. The Declarant (or its duly authorized agents or assigns, including any Builders authorized by Declarant), may make such use of the unsold Lots and residences, and the Community Common Areas as may facilitate such completion and sale including, but not limited to, (a) the maintenance of sales and administrative offices, construction trailers, storage areas, model homes, and/or parking lots for the showing of property, (b) the display of signs, billboards, flags, placards and visual promotional materials, and (c) tournaments, charitable events, and other promotional events. Declarant shall have the right to use unimproved Lots for temporary parking for prospective purchasers and such other parties as Declarant determines. Each Lot and the Community Common Area is hereby subjected to an easement for the purposes set forth herein. Declarant may permit the use of any facilities situated on the Community Common Area by persons other than Owners without the payment of any use fees and may restrict Owners from using the Community Common Area during any promotional activities.

Section 2. Replatting. It may be necessary for the Declarant to re-plat a portion of the Community. The Declarant shall have the right to re-plat unsold (not yet conveyed) portions of the Community without requiring the joinder or consent of any Owner or Mortgagee holding a Mortgage on any Lot.

Section 3. Utility and Construction Payments and/or Deposits. In the event a utility company or governmental authority requires a deposit to be made by the Declarant, and such deposit shall be refunded at some time in the future, then the Declarant (and not the Community Association) shall be entitled to receipt of the refunded funds. In addition, should construction payments made by the Declarant be refunded by a utility company or governmental authority at some time in the future, then the Declarant (and not the Community Association) shall be entitled to receipt of the refunded funds or the Community Association shall reimburse the Declarant for such payments prior to the time that Owners other than the Declarant elect a majority of the members of the Board of Directors of the Community Association.

Section 4. Declarant's Right to Community Common Areas. Declarant shall have the right from time to time to enter upon the Community Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Community Common Areas that Declarant elects to build. Declarant may grant easements to Owners adjacent to Community Common Areas for overhangs, protrusions and encroachments of any portion of the improvements to a Lot constructed by Declarant. The Declarant shall have the right to dedicate the Community Common Areas or a portion thereof to any

governmental authority or utility company, or to grant an easement over the Community Common Areas in favor of any governmental authority or utility company, without requiring the joinder or consent of any other Owner or Mortgagee holding a Mortgage on any Lot.

Section 5. Assignment of Declarant Rights. The Declarant shall have the right to assign to any other person or entity, including the Community Association, any or all of the Declarant's rights reserved in this Declaration, in whole or in part, with respect to all or any portion of the Community. In the event of an assignment, the assignee shall not be liable for any action of a prior developer and Declarant automatically shall be released from any and all liability arising with respect to such transferred rights and obligations. Acquisition, development or construction lenders acquiring title to the Community or any portion thereof by foreclosure or deed in lieu of foreclosure shall have the right, but not the obligation, to assume the Declarant's rights. Such acquisition, development or construction lender shall have the right to assign the Declarant's rights to a subsequent purchaser, without regard as to whether the lender assumed the Declarant's rights. No such assignment or transfer shall be effective unless in a recorded instrument signed by the Declarant and recorded in the Public Records.

Section 6. Right of the Declarant to Disapprove Actions. Until the Declarant no longer owns any portion of the Community or has the right to annex any Additional Property unilaterally pursuant to the terms of this Declaration, the Declarant shall have the right set out in this Section and the right to disapprove any action, policy or program of the Community Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion of the Community, or diminish the level of services being provided by the Community Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Community Association, the Board or any committee as may be granted to the Declarant in the Governing Documents:

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Community Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Community Association which notice complies with the Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the Bylaws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Community Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Community Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 7. Additional Covenants. So long as Declarant owns any portion of the Community, Declarant has the right to review and approve, in writing, any declaration of covenants, conditions and restrictions, identified as the Declaration or similar instrument affecting any portion of the Community, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, identified as the Declaration or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

Section 8. Annexation by Community Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Community Declarant may, from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Additional Property may be subjected to this Declaration in such portions as from time to time, determined by the Declarant or may never be subjected hereto. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing an amendment hereto or a Supplemental Declaration in the Public Records describing the property being annexed. Such amendment or Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such amendment or Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever. The rights of Declarant hereunder shall be optional and exercised in the discretion of the Declarant. The Additional Property is not subject to the terms of this Declaration nor restricted or regulated in any way hereunder unless and until expressly and in writing subject to the terms hereof by Declarant.

Section 9. Annexation by Membership. The Community Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Community Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Community Association and by the owner of the property being annexed, and by the Community Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 10. Withdrawal of Property by Declarant. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Community from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Community Common Area, the Community Association shall execute a written consent to such withdrawal.

Section 11. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Community to additional covenants and easements, including covenants obligating the Community Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Community Association. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, of other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

Section 12. Use of Facilities. In addition, the Declarant and Builders authorized by Declarant may establish within the Community, including within any clubhouse, or Declarant, or Builder owned Lot or Residence, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Community and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model units, tents, sales offices, sales or design centers and related parking facilities (hereinafter collectively referred to as the "Sales Offices"). During the Development Period, Owners may be excluded from use of all or a portion of Sales Offices in the Declarant's sole discretion. The Declarant and authorized Builders shall have easements over the Community for access, ingress, and egress and use of the Sales Offices. In addition, the Declarant, affiliates of Declarant, and Builders authorized by Declarant may use the Sales Offices to promote and sell other lots, projects and Community, owned or controlled by the Declarant or affiliates of the Declarant. Declarant may permit the use of any facilities situated on the Community Common Area by persons other than the Owners without payment of any use fees.

Section 13. Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 8: ASSESSMENTS

Section 1. Creation of Assessments. There are hereby created assessments for Community Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of Assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 5 of this Article; and (c) Specific Assessments as described in Section 6 of this Article. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, cost of collection, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the Assessment or charge is made until paid, as more particularly provided in Section 7 of this Article. Each such Assessment or charge, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the person who was the Owner of such Lot at the time the Assessment arose. Accordingly, each Owner by acceptance of title to a Lot, expressly vests in the Community Association, the right and power to bring all actions against such Owner personally for the collection of such Assessments as a debt and to enforce the aforesaid by all methods available for the enforcement of liens, including foreclosures by an action brought in the name of the Community Association, and such the Owner is deemed to have granted to the Community Association a power of sale in connection with such lien. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of the conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

The Community Association shall, upon request, furnish to any Owner liable for any type of Assessment a written statement signed by a Community Association officer or designee setting forth whether such Assessment has been paid. Such Statement shall be conclusive evidence of payment. The Community Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish which may include discounts for early payment. The Board may require advance payment of Assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance in quarterly installments with the first quarter's installment being due on the first days of each fiscal year. If any owner is delinquent in paying any Assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding Assessments to be paid in full immediately. Any Assessment or installment thereof shall be

considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for Assessments by non-use of Community Common Area, including Exclusive Community Common Area reserved for such Owner's use, abandonment or leasing of such Owner's Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Community Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Community Association or Board.

The Community Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

Section 2. Commencement of Assessments. The obligation to pay Assessments shall commence as to each Lot on the earlier of: (a) the closing of the conveyance of the Lot to a Class "A" Member other than a Builder; or (b) fifteen (15) months following the conveyance of the Lot from the Declarant or any affiliate of the Declarant to a Builder not affiliated with Declarant, provided no assessment shall be due prior to the month in which the Board first determines a budget and levies assessments pursuant to this Article. The obligation to pay Assessments shall not commence upon conveyance of a Lot by Declarant to a Builder who is an affiliate of Declarant, provided the obligation to pay Assessments shall commence upon conveyance of such Lot by an affiliated Builder to a person who is not an affiliate of Declarant. The first annual General Assessment levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time Assessments commence on the Lot and shall be due and payable at closing or, with respect to such Builders following commencement, upon demand of the Community Association.

Section 3. Initial Budget/Computation of General Assessments. The Declarant shall establish the initial budget, which shall be based on a fully developed Community. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. In the event the Community is not fully developed at the time the budget is adopted by the Board, the Board may nevertheless base the budget on a fully developed Community. In instances where the Declarant or the Board bases the budget on a fully developed Community when in fact the Community is not so developed, then the budget (and therefore the Association Assessments) shall be reduced by the amount allocated for incomplete amenities or facilities. The Association Assessment shall be for the calendar year, but the amount of the General Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year. The amount of the General Assessment may be changed at any time by the Board from that originally adopted or that which is adopted in the future.

For each year after the initial budget, at least thirty (30) days before the beginning of each fiscal year, the Board shall approve a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 4 of this Article. For so long as the Class "B" membership exists, Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the total Class "A" votes of the Community Association and the Class "B" Member.

General Assessments shall be levied equally against all Lots subject to Assessments. For each year after the initial budget, in determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Community Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Community Association or, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within twenty (20) days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such Assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each owner at least thirty (30) days prior to it becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

Section 4. Reserve Budget. The Board may, in its sole discretion, annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Common Area, the expected life of each asset, and the expected repair or replacement cost. The Board may include in the general budget reserve amounts sufficient to meet the projected needs of the Community Association. Each Owner acknowledges and consents that such funds held pursuant to the reserve budget are the exclusive property of the Community Association and no Owner shall have any interest or right to any such funds. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy a Special Assessment in accordance with the provisions of this Article, which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors so determines, any excess reserves may be taken into account in establishing the next year's budget and may be applied to defray general expenses incurred thereunder. During the period of time that the Declarant is funding any deficit in the budget, the Declarant shall not be required to fund any reserves regardless of whether such reserve amounts are shown in the budget.

Section 5. Special Assessments. A Special Assessment may be levied against one or more Lots for the following purposes:

- (a) Cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Community Common Area, including fixtures and personal property related thereto.
- (b) Any other charge which is not a general expense.
- (c) Any general expense, which exceeds the amount budgeted, or any emergency expense which exceeds the amount of any reserves or other Community Association funds.

Special Assessment(s) may be levied against any or all Lots by a majority vote of the Board of Directors, in accordance with applicable Operating Procedure guidelines. The Board of Directors shall fix the amount and due date of any Special Assessment by resolution, which resolution shall also set forth the Lot or Lots subject to such Assessment.

Section 6. Specific Assessments. The Board of Directors of Community Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

- (a) To cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might

include, without limitation, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet and other computer related services, security caretaker, fire protection, utilities, and similar services and facilities), which Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the owner;

(b) To cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Community Common Area assigned to one (1) or more Lots; and

(c) To cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

(d) Late charges, user fees, fines and penalties.

(e) Reimbursement for damages caused by an Owner, Owners, their family members, guests, invitees or tenants.

Section 7. Lien for Assessments. As allowed under N.C.G.S. § 47F, or successor statutes, the Community Association may file a lien against each Lot to secure payment of all Assessments and other charges, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of North Carolina law), late charges in such amount as the Board may establish (subject to the limitations of North Carolina law), costs of collection and reasonable attorney's fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

The sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Assessments on such Lot due prior to such acquisition of title. Such unpaid Assessments shall remain the personal obligation of the Owner of the Lot prior to the foreclosure, and unless and until collected from such prior owner, shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessment, including such acquirer, its successors and assigns.

All other persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 8. Failure to Assess. Failure of the Board to establish Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Community Association may retroactively assess any shortfalls in collections.

Section 9. Deficit. For so long as the Class "B" membership exists, Declarant shall fund any deficit in operations for the Community Association. The deficit, if any, to be paid by Declarant pursuant to this Section, shall be determined by looking at the term of the Class "B" membership as a whole, without regard to quarterly, annual or any other accounting or fiscal periods and without regard to intra period allocations. In that regard, in the event it is determined at the end of the Class "B" membership term that there is a deficit and Declarant has previously advanced funds to the Community Association in excess of the deficit during the period of duration of the Class "B" Member, Declarant shall be entitled to the immediate repayment from the Community Association of the amount of funds advanced by Declarant in excess of the deficit. The Declarant may fund any deficit by payment of a subsidy and/or contributions of services and materials, which may be

treated as either a contribution or an advance against future sums due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. The "deficit" shall be the difference between: (i) the amount of all income and revenue of any kind received by the Community Association, including, but not limited to, Assessments collected on all Lots, use fees, advances made by Declarant, and income from all other sources, and (ii) the amount of all actual expenditures incurred by the Community Association during the fiscal year, including any reserve contributions for such year, but excluding all non-cash expenses, such as depreciation or amortization, and all expenditures made from reserve funds. Calculation of the deficit shall be performed on a cash basis of accounting.

Notwithstanding the foregoing, in the event of an Extraordinary Financial Event, as hereinafter defined, the cost necessary to effect restoration shall be assessed against all Lot Owners owning Lots as of the date of the Extraordinary Financial Event, and their successors and assigns, including the Declarant, with respect to Lots owned by Declarant and shall not be calculated into any determination of a deficit. "Extraordinary Financial Event" shall mean a casualty loss affecting the Community Common Area and resulting from a natural disaster or act of God which is not covered by insurance proceeds from insurance maintained by the Community Association.

Section 10. Capitalization of Community Association. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder or upon occupancy of a Lot by a person other than a Builder or Declarant and upon each subsequent transfer of title to a Lot, a contribution shall be made by or on behalf of the purchaser or occupant to the working capital of the Community Association in an amount equal to three (3) months of the annual General Assessments. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such Assessment. This amount shall be collected and disbursed to the Community Association at closing of the purchase and sale of the Lot to the Owner thereof other than the Declarant or a Builder, or if the obligation to make the capital contribution arises by virtue of occupancy of a Lot by a person other than a Builder or Declarant or by a Builder holding a Lot for eighteen (18) months after purchase pursuant to Section 2, above the capital contribution shall be paid immediately upon demand by the Community Association.

Section 11. Assessment Roster. A current roster of the Owners, Lot numbers and Assessments (i.e. General, Special or Specific) applicable thereto shall be kept in the office of the Community Association and shall be open to inspection by any Owner. If the Owner does not reside on the Lot, the Owner is required to provide their current mailing address to the Community Association.

Section 12. Initiation Fee. The purchaser of each Lot at the closing of the sale or resale of a Lot after the first Owner shall pay to the Community Association an initiation fee in the amount of \$250.00 or such other amount as may from time to time be set by resolution by the Board of Directors. The initiation fee shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase the initiation fee by resolution of the Board; provided, however, the initiation fee shall not be changed by the Board without Declarant's consent so long as Declarant owns any property in the Community. Notwithstanding anything to the contrary herein, the initiation fee shall not be due from: (1) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Lot is conveyed by a will or through the law of intestacy; (iv) any grantee of a Lot who obtains title pursuant to judicial or nonjudicial foreclosure (or deed in lieu of foreclosure) of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot); or (v) any grantee who is an Approved Builder. The initiation fee shall be an assessment, which is the personal obligation of the Owner, and shall constitute a lien, which may be collected as provided in this article.

ARTICLE 9: ARCHITECTURAL STANDARDS

Section 1. General. No improvements or activities, as described in this Article, shall be placed, erected, installed or made upon any Lot or any other portion of the Community except in compliance with this

Article, and with the prior written approval of the Board under Section 2 of this Article, unless exempted from the application and approval requirements pursuant to Section 2 of this Article.

This Article shall not apply to the activities of the Declarant, exceptions granted by the Declarant either to any Owner or Builder, nor to Improvements to the Community Common Area by or on behalf of the Community Association or to Improvements to any Private Amenity made by or on behalf of the owner of such Private Amenity. This Article may not be amended during the Development Period without the Declarant's written consent.

Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Community acknowledges that, as the developer of the Community, Declarant has a substantial interest in ensuring that all structures and improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Community or the Additional Property.

The Board may, on the behalf of, and in concurrence with the Declarant, establish an Architectural Review Committee (ARC) to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The ARC entity(s) shall consist of one (1) or more persons who may, but are not required to be Members of the Community Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board or ARC. The Board or ARC may establish and charge reasonable fees to review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. In addition, the Board may require deposits while construction is pending on any Lot to ensure completion without damage to the Community.

The Declarant shall have exclusive jurisdiction over all construction on any portion of the Community. Until one hundred percent (100%) of the Community has been developed and conveyed to Owners other than Builders and the Declarant and initial construction on each Lot has been completed in accordance with the Design Guidelines. The Declarant, at any time, may appoint the members of the ARC who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall have the authority to appoint the members of the ARC who shall thereafter serve and may be removed in the Board's discretion. Notwithstanding anything to the contrary contained herein, the Declarant's right to appoint the members of the ARC shall continue for so long as the Declarant, any principal of Declarant, any member or manager of Declarant, or any entity in which Declarant or Declarant's primary principal has a substantial equity interest and majority control, owns any property shown on the Community Master Plan.

Section 2. Guidelines and Procedures.

(a) **Design Guidelines.** The Declarant shall prepare the Design Guidelines for the initial construction on each Lot. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary according to land use and from one (1) portion of the Community to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the reviewing bodies in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the reviewing bodies and compliance with the Design Guidelines does not guarantee approval of any application.

(b) **Application of Design Guidelines.** Until one hundred percent (100%) of the total number of Lots permitted by the Community Master Plan and as may be located on any adjacent property as may be developed by the Declarant have been conveyed to persons other than the Declarant and to affiliated entities and any Builder, the Board may not delete any portion of the Design Guidelines or lessen the restrictiveness of the Design Guidelines without obtaining the approval of the Declarant. After all such Lots

have been conveyed to persons other than the Declarant and its affiliated entities and any Builder, Design Guideline provisions may be deleted or lessened in its restrictiveness. All other amendments shall be made at the sole discretion of the Board. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced. Pursuant to the conditions set forth in this paragraph, the Board is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Board shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Community.

The Board may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the Board. Any architectural guidelines and standards adopted by the Board may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(c) Procedures for Modifications and Renovations. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed modifications, renovations and Improvements shall be submitted to the Declarant or Board for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the Declarant or Board may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations.

Each application to the Declarant or Board shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the Declarant or Board, nor the distribution and review of the plans by the Declarant or Board shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the Declarant or Board shall hold the members of the Declarant or Board, the Community Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon any request for approval, until the Declarant no longer owns any Property or the right to add Additional Property, the Board shall be acting solely in Declarant's interest and shall owe no duty to any other person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The Declarant or Board shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with Design Guidelines.

In the event that the Declarant or Board fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Declarant or Board pursuant to this Article.

Notwithstanding the above, the Declarant or Board by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, modifications to the interior of screened porches, patios, windows, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(d) Modification Construction Period. After commencement of any modification or renovation, or Improvement, each Owner shall diligently continue construction to complete such construction in a timely manner. The modification or renovation of any structure must be completed within one (1) year after commencement of such modification or renovation, unless extended or shortened by the Declarant or Board in its sole discretion.

For the purpose of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the Board; (b) If necessary, a building permit has been issued for the modification or renovation by the appropriate jurisdiction; and (c) modification or renovation of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that an inspection of the modification or renovation has been completed and it has been determined that the modification or renovation is in compliance with submitted application.

(e) No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

(f) Variance. The Board may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with rules and regulations adopted by the Board. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

(g) Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Community only, and shall not create any duty to any person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Community Association nor the Board shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Residences are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, Community Association, Board, committee, or member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Community Association as provided in this Declaration.

(h) Enforcement. The Declarant, any member of the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or Improvement is in violation of this Article. Any structure, Improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the Board, Owners shall, at their own cost and expense, cure any violation or nonconformance or remove such structure or Improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore the property as required, any authorized agent of Declarant or the Board shall have the right to enter the property, cure or remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant and the Board by any means of enforcement described in Section 5 of Article 4 above. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment.

Unless otherwise specified in writing by the Board, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any person fails to diligently pursue to completion all approved work, within the specified timeframe, the Community Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

Neither the Board, nor any member of the foregoing nor the Community Association, the Declarant, or their members, officers or directors shall be held liable to any person for exercising the rights granted by this Article.

(i) Delinquent Assessments and Other Charges. Notwithstanding the provisions of this Section 2 any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent Assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of Assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 3 (g) of this Article and Section 5 of Article 4 above.

Section 3. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and Improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any Residence, dwelling or accessory building; exterior alteration of existing Improvements; installation or replacement of hardscape, such as driveways, walkways, or parking area; mailboxes; conversion of any carport or garage to furnished space; basketball hoops; trampolines; clotheslines; garbage cans; wood piles; swimming pools; gazebos; window air-conditioning units or fans; hot tubs; wells; solar panels; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials.

(b) Illustrative Items. In addition to the foregoing activities and items requiring prior approval, the following items are strictly regulated, and the Board shall have the right, in its sole discretion, to prohibit or restrict these items within the Community. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the Board. The Board may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

i. Signs. No sign of any kind shall be erected, placed or allowed to remain within the Community by an Owner or occupant without the prior written consent of the Board, except (a) such signs as may be required by legal proceedings; (b) not more than (1) professional security sign of such size deemed reasonable by the Board in its sole discretion; and (c) one (1) sign of not more than one square foot may be used to indicate the name of the Owner and/or Residence number. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or occupant within any portion of the Community, including the Community Common Area, any Lot, any structure or dwelling located on the Community Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the reviewing body's sole discretion) or within any Private Amenity.

"For sale", "for rent", and "for lease" signs are prohibited except as may be expressly, in writing, approved by the Board, which shall have the right to locate all such signs on a Community posting as opposed to on Lots. The Declarant and the Board reserve the right to prohibit other types of signs and to restrict the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant, Board or its duly

authorized agent as may be necessary or convenient for the marketing, management and development of the Community.

ii. Trees. In addition to, and not in lieu of, any governmental law, rule, regulation or ordinance regulating the removal of trees, no trees that are more than three (3) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Board. Dead, diseased, or trees damaged by acts of God may be removed without Board approval. The Board may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any trees removed. Board or ARC approval is required for the selection and planting of trees to ensure adherence to the Design Guidelines.

iii. Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Community; (5) seasonal decorative lights during the usual and common seasons as approved by the Board; (6) front house illumination of model homes; or (7) any additional lighting as may be approved by the Board. All lights shall be installed or aimed so that they do not present a disabling glare to drivers or pedestrians or create a nuisance by projecting or reflecting objectionable light onto a neighboring property.

iv. Temporary or Detached Structures. Except as may be permitted by the Board, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Lot. No mobile home, trailer home, travel trailer, camper, commercial vehicle or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling, provided, the Declarants may park trailers (and permit Builders to park trailers) on and within the Community during periods of construction and sales.

v. Accessory Structures. With the approval of the Board, detached accessory structures or Improvements may be placed on a Lot to be used for recreational equipment, tool shed, swimming pool, tennis court, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the Residence on the Lot. With the exception of a garage that is attached to a Residence and except as may be provided otherwise by the Board, an accessory structure placed on a Lot shall be located only behind the Residence as such Residence fronts on the street abutting such Lot or in a location approved by the Board. All accessory structures shall be located within side and rear setback lines as may be required by the Board or ARC or by applicable zoning law.

vi. Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

vii. Mailboxes. Mailboxes shall be located in the Community at such locations as permitted by the United States Postal Service.

ARTICLE 10: USE RESTRICTIONS

Section 1. Introduction.

(a) General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Declarant and/or Builders, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of the Property, offices for any property manager retained by the Community Association, business offices for the Declarant or the Community Association, and related parking facilities) consistent with this Declaration and any Supplemental Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding

upon all Owners and Occupants of Lots until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Total Association Vote and the consent of Declarant (so long as Declarant owns any Lot for development or sale). Notwithstanding the above, so long as Declarant owns any Lot for development or sale, no rules and regulations which affect Declarant, may be adopted, modified, or deleted without the written consent of the affected Declarant.

(b) Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with this Declaration and the Bylaws, in order to enforce the provisions of this Section.

(c) Residential Use. Lots may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Community; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Community; (d) the activity does not increase traffic or include frequent deliveries within the Community; and (e) the activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their 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 to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Community or its use of any Lots which it owns within the Community.

(d) Occupancy of Unfinished Residences. No Residence erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the Residence being fully completed.

Section 3. **Use of Community Common Area.** There shall be no obstruction of the Community Common Area, nor shall anything be kept, parked or stored on any part of the Community Common Area without consent of the Board. With written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Community Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Community Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Community Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Community Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Community Association, its agents or employees. The board may delegate by resolution the authority to reserve Community Common area to the Community Manager or Community Lifestyle Director.

Section 4. **Weapons.** The discharge of weapons within the community is prohibited. The term weapons includes, without limitation, crossbows, bows and arrows, "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration.

Section 5. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period, and the prior written consent of the Board thereafter. In addition, no Residence shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Lots or other portion of the Community which it owns without the consent of any Owner or Mortgagee holding a Mortgage on any Lot. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations, if any.

Section 6. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge, shrub or other obstruction shall be placed or permitted to remain where it would cause a traffic or sight problem.

Section 7. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No Improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or re-channel the drainage flow after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Community or any Private Amenities with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Community Association, nor the Declarant, bears any responsibility for remedial actions to any Lot.

(d) Use of any areas designated as "drainage easement areas" on any Plat of the Community, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any drainage easement area.

(e) No person shall alter the grading of any Lot without prior written approval pursuant to Article 10 of the Declaration. The Declarant hereby reserves for itself and the Community Association a perpetual easement across the Community for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's written consent.

(f) All persons shall comply with any and all applicable erosion control ordinances and regulations in construction of improvements on any Lot and in conducting any activity within non-disturbance buffer zones.

(g) All persons shall comply with any and all applicable state or county ground disturbance laws, including, but not limited to N.C.G.S. § 87-115 *et seq.*, also referred to as the Call-Before-You-Dig law.

Section 8. Wetlands. All areas designated on a Plat as "wetlands" (if any) shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a

regulatory wetland. All proposed fill and/or excavation within delineated wetlands on an Owner's Lot will require compensatory mitigation prior to gaining permit approval and will need to be coordinated with the approved wetland mitigation plan for the Community. Notwithstanding anything contained in this Section, the Declarant, the Community Association and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

Section 9. Screen Enclosures. No screen enclosures may be constructed on any Lot except as approved by the Board and after all necessary approvals and permits have been obtained from all governmental agencies. No screen enclosure may be constructed in any designated building setback area on any Lot unless the Community Association and the City/County in which the Community is located approve a variance. This section shall not apply to screen enclosures constructed at the time of the original construction and approved by the Declarant.

Section 10. Building Location. Buildings shall be located in conformance with the requirements of Mecklenburg County in which the Community is located and any specific zoning approvals thereunder, or as originally constructed on a Lot by Declarant or its successor or assignee. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so by the municipality, said variance or special exception is hereby adopted as an amendment to this Section and any future variance or special exception as to building location or other item shall constitute an amendment of this Section.

Section 11. Landscaping of Easements. In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the Plat(s). Within these easements no Improvement, structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Community and the Community Association, and its successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots and/or the Community Common Areas under and through the utility easements as shown on the Plat(s). Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the Community, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

Section 12. Nuisances. No noxious or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Lot Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted in writing to the Board for a decision in writing, which decision shall be final. In addition, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain on any Lot; and in the event that an Owner shall fail or refuse to keep his Lot free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. No activities shall be carried on which emit foul or obnoxious odors. All garbage or trash containers must be stored in areas so that they shall not be visible from adjoining Lots or from the street. Provided, however, any portion of the Community not yet developed by Declarant, shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition. The development, construction and sale activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of any Owner or occupant.

Section 13. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Community nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Community. No derrick or other

structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

Section 14. Animals and Pets. No reptiles, animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets not to exceed two (2) of any one type in number. The keeping of a dog, cat, or other domestic pet is not a right of an Owner, but is a conditional license. This conditional license is subject to termination at any time by the Board of Directors upon a finding that a dog, cat, or other pet is vicious, is annoying to other residents, or has in any way become a nuisance. The owner of a pet assumes liability for all damages to persons or property caused by the pet or resulting from its presence in the community.

This license is subject to the following conditions:

(a) Pets shall be kept on a leash at all times when outside a building and not enclosed within a fenced-in area.

(b) Pets shall be registered, licensed, and inoculated as required by law. The keeping of pets within the Community is subject to applicable Mecklenburg County ordinances.

(c) Pets are permitted to have excrements upon the Community Common Areas provided that the Owner shall immediately remove such excrement from the Community Common Areas with a "Pooper Scooper" or other appropriate tool and deposit said waste in an approved trash receptacle.

(d) The owner of a pet shall be responsible, and by virtue of ownership, assumes responsibility for any damage to persons or property caused by his pet(s).

(e) Any pet whose owner violates the provisions and intent of these rules shall be deemed a nuisance and subject to removal in accordance with the provisions of this Declaration.

Section 15. Age Restrictions (Adult Housing).

(a) **General.** The Residences to be built upon the Lots are intended for the housing of persons fifty-five (55) years of age or older. The provisions of this Article are intended to be consistent with and are set forth in order to comply with the Federal Fair Housing Amendments Act, 42 U.S.C. §3601, *et. seq.* (1988), and the exemption therefrom provided by HOPA and SFHA, (as may be amended from time to time). Declarant or the Community Association shall have the power to amend this Section without the consent of the Owners in order to make this Section consistent with the HOPA and SFHA existing or, as may be amended, the regulations adopted pursuant thereto, and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this Section.

Moreover, the Community Association must ensure that at least 80% of the Residences are occupied by at least one person fifty-five (55) years of age or older per home, except that the Community Association is not obligated to comply with this requirement until 25% of the Residences are occupied. The Community Association shall also publish and adhere to policies and procedures demonstrating an intent to provide housing for persons fifty-five (55) years of age or older.

(b) **Restrictions on Occupancy.**

i. At least 80% of all occupied Residence(s) within the Community shall at all times have as a permanent occupant therein at least one person who is fifty-five (55) years of age or older (the "Qualifying Occupant"); provided, in the event of the death of a person who has the sole Qualifying Occupant of a Residence, the spouse of such Qualifying Occupant may continue to occupy the Residence as long as the provisions of the HOPA and SFHA and the regulations adopted thereunder are not violated by such occupancy.

For purpose of this Section, an occupant shall not be considered a permanent occupant unless such occupant considers the Residence his or her legal residence and actually resides in the Residence for at least six months during every calendar year.

ii. No persons who have yet to attain eighteen (18) years of age shall be permitted to reside in any Residence on a Lot within the Community except as provided herein. Children under eighteen (18) years of age may be permitted to visit and temporarily reside in a residence on a Lot within the Community provided that such temporary residence shall not exceed sixty (60) days in any one calendar year or sixty (60) days within any consecutive twelve (12) month period, whichever may provide the least permissible residence.

iii. Nothing in this Section is intended to restrict the ownership of or transfer of title to any Lot; provided, no Owner may occupy his or her Residence on the Lot unless the requirements of this Section are met nor shall any Owner permit occupancy of the Residence in violation of this Section. Owners shall be responsible for including the statement that the Residences within the Property are intended for the housing of persons fifty-five (55) years of age or older in conspicuous type in any lease or other occupancy agreement or contract of sale relating to any Owner's Lot. Every lease of a Residence shall provide that failure to comply with the requirement and restrictions of this Section shall constitute a default under the lease.

iv. Any Owner may request in writing that the Board of Directors make an exception to the requirements of this Section with respect to his or her Residence, and the Board may, but shall not be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from the Act still would be met. The Board, however, shall be under no obligation to make any exception under any circumstances. A request for an exception shall set forth the names and ages of all proposed occupants of the Residence, the reason the exception is being requested and the length of time for which the hardship exception is requested. Any Owner or resident making such a request shall also provide the Board with such other information as the Board may request.

(c) Change in Occupancy-Notification of Association. In the event of any change in occupancy of any Residence, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent Residence, or otherwise, the Owner of the Residence shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Residence and such other information as the Board may reasonably require to verify the birthdates of each occupant. In the event an Owner fails to notify the Board and provide all required information within seven (7) days after a change in occupancy occurs, the Community Association shall be authorized to levy monetary fines against the Owner and the Residence for each day after the change in occupancy occurs until the Community Association receives the required notice and information, regardless of whether the occupant continues to meet the requirements of this Section, in addition to all other remedies available to the Community Association under this Declaration. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

(d) Monitoring Age Compliance by Community Association. The Community Association shall be responsible for maintaining age records on all occupants of Residences. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Section, including policies regarding visitors, updating of birth records, granting of exemptions, and enforcement. The Community Association shall periodically distribute such policies, procedures and rules to Owners and make copies available to Owners and their tenants and mortgagees upon reasonable request.

(e) Community Association as Attorney-In-Fact. EACH OWNER BY ACCEPTANCE OF TITLE TO A LOT APPOINTS THE COMMUNITY ASSOCIATION AS HIS OR HER ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER RESIDENCE AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION. Owners shall promptly and truthfully respond to any and all requests by the Community Association for information regarding the occupancy of his or her Residence which in the judgment of the Board are reasonably necessary to monitor compliance with this Section.

(f) Hold Harmless by Owners. Each Owner shall be responsible for ensuring compliance of his or her Residence with the requirements and restrictions of this Section and the rules of the Community Association adopted hereunder. EACH OWNER, BY ACCEPTANCE OF TITLE TO A LOT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE COMMUNITY ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES AND CAUSES OF ACTION WHICH MAY ARISE FROM THE FAILURE OF SUCH OWNER'S RESIDENCE TO COMPLY.

(g) Enforcement. The Community Association shall enforce the terms and conditions of this Section through all of the rights and remedies available to it pursuant to this Declaration, including but not limited to the right to levy fines and liens.

(h) Additional Policies and Procedures. The Board is authorized to adopt such other policies and procedures which may be necessary from time to time in order for the Community to meet all of the requirements of such exemption. A copy of such additional policies and procedures shall be (i) provided by every Owner to any prospective buyer or lessee to read and acknowledge, and (ii) included in any purchase or lease agreements.

(i) Facilities and Services for Older Persons. The Community Association shall ensure that the Community has significant facilities and services specifically designed to meet the physical or social needs of older persons. Such facilities and services may include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, environment, emergency and preventative health care programs, and services designed to encourage and assist residents to use the services and facilities available to them (provided however such facilities and services need not have all of these features to qualify for exemption).

Section 20. Commercial Trucks, Trailers, Campers and Boats. No commercial vehicles, campers, mobile homes, motor homes, recreational vehicles, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, during such short temporary periods as needed for loading and unloading, and except that they may be stored wholly within garages. Small pick-up trucks or vans of the type commonly used as private passenger vehicles may be parked or stored in approved parking areas, so long as no commercial equipment or lettering or graphics is exposed to view. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment which bear signs or shall have printed on same some reference to any commercial undertaking or enterprise. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services.

No vehicle that is unlicensed or inoperable may be kept or stored on the Community, unless kept fully enclosed inside a garage. No repair work to any type of motor vehicle, boat or trailer, unless fully enclosed inside a garage, shall be conducted on any Lot other than minor repairs, cleaning or waxing which is completed in less than 24 hours.

Section 21. Fences. No fence, wall or other structure shall be erected in the front, back, or side yard except as approved by the Board or as installed by the Declarant. All fences shall be uniform throughout the Community and shall be in compliance with the all codes. The Board may establish rules that are more restrictive than the city code.

Section 22. Hedges. No hedge shall be erected in the front yard except as approved by the Board or as installed by the Declarant.

Section 23. Garbage, Trash, and Debris Disposal.

(a) Storage. Garbage, refuse, trash, rubbish, glass clippings, leaves, or other debris shall be stored in a fashion to protect it from view from the street, including any Private Street, or another Lot, provided

however, that the requirements from time to time of the City/County in which the Community is located for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage placed out for collection must be in covered plastic garbage cans-supplied or approved by the garbage collecting authority. Trash, recyclables, and/or vegetation shall not be placed curbside earlier than 6:00 P.M. the evening before collection. Empty receptacles or uncollected refuse shall be removed from curbside before midnight of the day of collection.

(b) **Burning.** Unless expressly authorized by the Board, the outside burning of trash, leaves, or other debris is strictly prohibited except during the normal course of construction.

(c) **Dumping.** Unless expressly authorized by the Board, dumping garbage, grass clippings, leaves, or other debris, fertilizers, or other potentially toxic substances at any location within the Community is strictly prohibited. An exception from this rule is provided for application of fertilizer on Lots, provided that care is taken to minimize runoff, and the Declarant and Builders may dump and bury rocks removed from a building site on such building site.

Section 24. Gas Storage Tanks. There shall be no storage of gasoline, kerosene, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers, grills, and similar tools or equipment and except as may be approved in writing by the Board. No gas tank, gas container, or gas cylinder (except those placed by the Declarant or approved by the Board in connection with the installation of swimming pools and/or permanent barbecues, indoor ranges, hot water heaters, home heating equipment and fireplaces, and except those used for portable barbecues) shall be permitted to be placed on or about the outside of any Residence or any ancillary building, and all such items (except those placed by the Declarant in connection with the installation of swimming pools and/or permanent barbecues, and except those used for portable barbecues) shall be installed underground in any instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the Board.

Section 25. Communication Equipment. Except as may be installed by the Declarant or as may be permitted by the Board or as may be required by law, no antennas, including HAM radio antennas, satellite dishes, aerials, or lines, wires or other devices for communication or transmission of current shall be placed on any portion of the Community Common Area. The following are permitted on a Residence: (a) direct broadcast satellite (DBS) antennas and multipoint distribution service (MDS) antennas one meter (39.37") or less in diameter, and (b) television broadcast antennas of any size. Such items shall be installed in the least conspicuous location available on the Residence which permits reception of an acceptable signal, and must be installed in accordance with the rules of the Federal Communication Commission ("FCC") and any requirements of the Board and Community Association that are consistent with the rules of the FCC. In no event, however, shall lines or wires for communication or the transmission of current be constructed, placed, or permitted to be placed within the Community Common Areas unless the same shall be installed by the Community Association for the common use of all Members, and shall be protected cables, and any of said lines or wires which are not located in buildings shall be constructed or placed and maintained underground. Any line or wire installations permitted by the Board pursuant to this Section shall be protected cable and shall only be installed underground.

Section 26. Window Treatments. Window treatments shall consist of drapery, blinds, shutters, decorative panels or other tasteful window covering, of the type customarily found in single family homes, and no newspaper, sheets or other temporary window treatments are permitted, except for periods not exceeding two (2) months after an Owner first moves into a Residence or when permanent window treatments are being cleaned or repaired.

Section 27. Leasing. No lease may be entered into for less than a one (1) year period, and all leases must be in writing and approved in advance by the Board. Owners are required to provide to the Community Association, within ten (10) days of the execution of a lease, the Owner's current mailing address, together with the names of those residing on the Lot, along with such other additional information as the Board may require. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any

person residing on his Lot, and for all guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Community Common Areas, or any liability to the Community Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Community Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by any resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

With respect to any tenant or any person present on any Lot or any portion of the Community, other than an Owner and the members of his/her immediate family permanently residing with him/her in the Lot, if such person shall materially violate any provision of this Declaration, the Articles, or be a source of annoyance to the residents of the Community, or shall willfully damage or destroy any Community Common Areas or personal property of the Community Association, then upon written notice by the Community Association, such person shall be required to immediately leave the Community and if such person does not do so, the Community Association is authorized to commence an action to evict such tenant or compel the person to leave the Community and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Community Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Community Association.

Section 28. Hazardous Materials. No hazardous or toxic materials shall be discharged, maintained, stored, or disposed of in or under the Community, except in strict compliance with all applicable federal, state, and local laws and rules. Flammable, combustible, or explosive fluids or materials for ordinary household use may be stored or used on the Community, subject to strict safety codes and shall be stored in containers specifically designed for such purposes.

Section 29. Noise. Unless expressly authorized by the Board, use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable annoyance to others, as determined in the Board's discretion, except alarm devices used exclusively for security purposes is prohibited.

Section 30. Timeshares. Unless expressly authorized by the Board and the Declarant, use of any unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited.

Section 31. Blight. Structures, equipment, or other items on the exterior portions of a Lot which become rusty, dilapidated, or otherwise have fallen into disrepair are strictly prohibited.

Section 32. Untidy Activities. Activities and hobbies which tend to cause an unclean, unhealthy, or untidy condition outside of enclosed structures on the Lot are prohibited unless written permission is received from the Board.

Section 33. Garages. Each Lot with a completed Residence shall contain an enclosed garage capable of parking at least two (2) motor vehicles. Garages shall be maintained at all times in a manner capable of parking at least two (2) motor vehicles and shall not be converted to another use other than primarily for parking for motor vehicles.

ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Community Association, the Owners, the Occupants, and the owners of any Private Amenities, and their successors-in-title.

Section 1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots, between each Lot and any adjacent Community Common Areas, between Community Common Area and adjacent Private Amenity, and between each Lot and any adjacent Private Amenity due to the unintentional placement or settling or shifting of the improvement constructed, or altered thereon (in accordance with the terms of these restrictions). However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement.

Section 2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Community Association and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all the Community (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; monitoring, limited access or similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity systems, lines, and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Community, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television/satellite service provider or any utility sub-metering company, the easements set forth herein across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

All utilities, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of the Declarant, in connection with the orderly development of the Property.

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the person exercising the easement. Nothing contained herein shall obligate the Declarant, the Community Association or the Board to pursue legal recourse against any person damaging a Lot or any portion thereof as a result of the exercise of this easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Community, or at any other time, (i) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

Section 3. Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates, and declares non-exclusive, perpetual, appurtenant easements, for itself, the owner of any Private Amenity and the Community Association and their respective representatives,

successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purpose of:

- (a) Controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;
- (b) Drainage of natural or man-made water flow and water areas from any portion of the Community or any Private Amenity;
- (c) Changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Community Common Area;
- (d) Dredging, enlarging, reducing or maintaining any water areas or waterways within the Community; and
- (e) Installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Community or any Private Amenity.

Section 4. Easement to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, the owners of any Private Amenities, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, over the Community Common Area, for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Community Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Community Common Area as a result of vehicular traffic connected with development of the Additional Property.

Section 5. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Community Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Community Association officers, committee members, agents, employees, and managers of the Community Association and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

Section 6. Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Community Association to enter all portions of the Community, including each Lot but excluding the interior of any Residence, to (i) perform its maintenance responsibilities, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Community Association at its expense.

(b) The Community Association may also enter a Lot, excluding the interior of any Residence, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or

condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 2 of the Article.

Section 7. Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Community Common Area, every Lot, and any improvement which contributes to the lateral support of another portion of the Community Common Area, of another Lot, or of a Private Amenity for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

Section 8. Easements for Private Amenities. The owner of any Private Amenity designated as such by the Declarant within or adjacent to any portion of the Community, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Community Common Area reasonably necessary to the operation, maintenance, repair, access, and replacement of its Private Amenity. There is hereby established for the benefit of the owner of any of the Private Amenities and their members (regardless of whether such member are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Community reasonably necessary to travel between the entrance to the Community and the Private Amenities and over those portions of the Community (whether Community Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, access and replacement of the Private Amenities.

Section 9. Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Community Common Area for the purpose of conducting or allowing its designees to conduct marketing, sales, educational, cultural, entertainment, promotional or sporting events, and other activities regarding sales and marketing of Lots or Residences or action of a general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

Section 10. Rights to Storm Water Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Community, and each Owner agrees, but acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

Section 11. Easement for Greenbelt Maintenance.

(a) Declarant reserves for itself and its successors, assigns, designees and the Community Association the nonexclusive right and easement, but not the obligation, to enter upon greenbelts, buffer zones and non-disturbance areas located within the Common Area to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be automatically transferred to the Community Association at the expiration of the Development Period or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Community Association and their designees shall have an access easement over and across any of the Community abutting or containing any portion of greenbelt, buffer zone or non-disturbance area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over, or across greenbelts, buffer zones and non-disturbance areas shown on any Plat of the Community is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with this Declaration herein. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any person holding, or intending to hold, an interest in the Community, or at any other time, (i) to release all or any portion of the Community from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits or scope of any such easements.

Section 12. Improvements to Community Common Areas. The Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Community Common Area for the purpose of making, constructing and installing such improvements to the Community Common Area as it deems appropriate in its sole discretion.

Section 13. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, the Community Association, their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any Plat for the Community, except in cases of willful or wanton misconduct.

ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Community Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Community Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Community Common Area.

Section 3. Notice to Community Association. Upon request, each Owner shall be obligated to furnish to the Community Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Community Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Community Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 5. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

ARTICLE 13: GENERAL PROVISIONS

Section 1. Duration.

The provisions of this Declaration shall run with, bind the Community and remain in effect to the extent permitted by N.C.G.S. § 47-5-1-101 *et seq.*

(a) Unless otherwise provided by North Carolina law, this Declaration may be terminated within the first thirty (30) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Lots within the Community, which instrument is recorded in the Public Records; provided however, regardless of the provisions of North Carolina law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After thirty (30) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least sixty-seven percent (67%) of the Lots and constituting at least sixty-seven percent (67%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Community, which instrument complies with the requirements of N.C.G.S. § 47F-2-118 and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the Consent of the holder of such easement.

Section 2. Amendment.

(a) **By Declarant.** Until termination of the Development Period, Declarant may unilaterally amend this Declaration for any purpose. The foregoing may include, but not be limited to the Declarant's right to amend this Declaration if such amendment is in the discretion of the Declarant deemed necessary (i) to further Declarant's development plan of the Community or Declarant's rights hereunder, (ii) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iv) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Community Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (v) to satisfy the requirements of any local, state or federal governmental agency or the U.S. Army Corp of Engineers. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, including annexation of any Additional Property. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner.

(b) **By the Board.** The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Community to the North Carolina Planned Community Act, N.C.G.S. § 47-5-1-101 *et seq.* and conforming this Declaration to any mandatory provisions thereof or (ii) to correct scrivener's errors and other mistakes of fact provided that amendments under this

provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Community Association and, during the Development Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Section 3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or application.

Section 4. Fair Housing Amendments Act. The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. §3601, et seq., (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents, including this Declaration, and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the HOPA, or SFHA, the Board of Directors, without the consent of the Members or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA, HOPA, or SFHA. Furthermore, the Board shall have the unilateral right to assign portions of the Community Common Area as Exclusive Community Common Area or to reassign Community Common Area previously assigned as Exclusive Community Common Area to one (1) or more Lots to one (1) or more Owner(s) or occupant(s) should such action be required in order to make a reasonable accommodation under the FHAA, HOPA or SFHA.

Section 5. Excavation and Other Construction Activities. All owners are hereby placed on notice that Declarant, or any affiliate of Declarant, and/or its agents, contractors, subcontractors, licensees and other designees, successors, or assignees, may be, from time to time, conducting excavation, construction, and other activities within or in proximity to the Community. By acceptance of a deed or other conveyance of Mortgage, leasehold, license, easement, or other interest, and by using any portion of the Community, each Owner acknowledges, stipulates, and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, any affiliate of Declarant, and all of its agents, contractors, subcontractors, licensees, and other designees, successors, and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses, damages (compensatory, consequential, punitive, or

otherwise), injuries, or deaths arising from or relating to the aforesaid activities; and (d) that any purchase or use of any portion of the Community has been and will be made with full knowledge of the foregoing.

Section 6. Dispute Resolution.

(a) It is the intent of the Community Association and the Declarant to encourage the amicable resolution of disputes involving the Community and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Community Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Community, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application, or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

(b) For so long as any claim may be asserted against the Declarant by the Community Association or any Owner under any warranty or for any claimed act or omission relative to the development, construction, sale or marketing of the Community, Lots or Residences, the Community Association and each owner asserting any such claim shall as a material condition precedent to any filing thereof, furnish to the Declarant all documentation prepared on behalf of the Community Association or such Owner(s) asserting any such claim concerning the inspection, testing and surveying of the Community Common Area, Lot or Residence not relative to analyzing such areas. Failure of the Community Association or of a respective Owner to provide such access to reports or documentation shall be a bar to assertion of any such claim. This covenant shall be deemed in addition to relevant applicable North Carolina.

Section 7. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Community Association unless approved by Members holding seventy-five percent (75%) of the total Class "A" votes in the Community Association. This Section shall not apply, however, to (a) actions brought by the Community Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of Assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Community Association in proceedings instituted against it or (e) actions brought by the Community Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 8. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Community, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Community and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Community shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

Section 9. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Community. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

Section 10. Use of the "Cresswind Charlotte" Name and Logo. No person shall use the words "Cresswind Charlotte" or the logo for "Cresswind Charlotte" or any derivative in any printed or promotional

material without the Declarant's prior written consent. However, Owners may use the words "Cresswind Charlotte" in printed or promotional matter where such terms are used solely to specify that particular property is located within the Community, and the Community Association shall each be entitled to use the words "Cresswind Charlotte" in its names.

Section 11. Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be ground for an action by the Community Association the Declarant, or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Community Association in Article 4 Section 5.

Section 12. Notice of Sale or Transfer of Title. Any Owner, excluding, however, Declarant, desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligation, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Section 13. Exhibits. Exhibits "A", "B", and "C" attached to this Declaration are incorporated by this reference and amendment of such Exhibits shall be governed by the provisions of Section 2 of this Article, above.

Section 14. Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent if delivered by one of the following means: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the Owner or to a person in the Owner's home who would reasonably be expected to communicate such notice promptly to the Owner; (iv) telecopier transmission to the Owner's home, with confirmation of receipt by the receiving telecopier; (v) overnight or same days delivery, charges prepaid; or (vi) electronic mail or e-mail using Internet accessible equipment and services if the Owner has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the Owner's telephone or telecopier number or sent to the Owner's home address as shown on the records of the Community Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed or e-mailed.

[signature(s) appear on the following page(s)]

IN WITNESS WHEREOF, the undersigned have executed this instrument under seal as of the day and year first above written.

DECLARANT:

KH MINT HILL LLLP, a Florida limited liability partnership

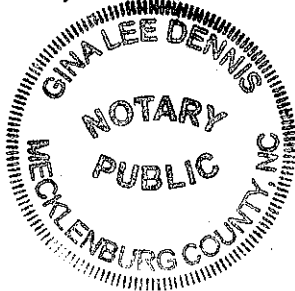
By: 
Name: L. Kyle Rush
Title: Authorized Signer - Board Director

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Gina Lee Dennis a Notary Public in and for Mecklenburg County and the State of North Carolina, do hereby certify this 5th day of July, 2017, that L Kyle Rush personally appeared before me this day and acknowledged that s/he is Authorized Signer - Project Director of KH Mint Hill LLLP, and that s/he voluntarily signed said instrument on behalf of said limited liability partnership for the purposes therein by its authority duly given.

WITNESS my hand and notarial stamp and seal.



Gina Lee Dennis
Notary Public

Notary Typed Name: Gina Lee Dennis

My Commission Expires: April 13, 2019

Exhibit A
The Property

Lying and being situate in the Town of Mint Hill, Mecklenburg County, North Carolina and being more particularly described as follows:

BEING ALL of the real property shown on those certain plat(s) entitled "Final Plat of Cresswind Phase 1, Map 1" dated October 7, 2016 and recorded on February 2, 2017 in Map Book 60 at Page 679 of the Mecklenburg County Public Registry.

AND ALL of the real property shown on those certain plat(s) entitled "Final Plat of Cresswind Phase 2, Map 1" dated March 21, 2017 and recorded on May 26, 2017 in Map Book 61 at Page 304 of the Mecklenburg County Public Registry.

Exhibit B
The Additional Property

Any real property located within 5,000 feet of any boundary of the Initial Property.

Exhibit C
Community Association Bylaws

[see attached]

BY-LAWS
OF
CRESSWIND CHARLOTTE HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS OF

CRESSWIND CHARLOTTE HOMEOWNERS ASSOCIATION, INC.

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1. Name. The name of the corporation is Cresswind Charlotte Homeowners Association, Inc. (the "Association").

1.2. Principal Office. The principal office of the Association shall be located in 7231 Matthews-Mint Hill Road, Charlotte, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Cresswind Charlotte filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference. The Declarant may establish additional classes of membership as set forth in the Declaration.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical. Meetings may be held by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other, to the extent permitted by law. Participation by one of these methods shall constitute presence in person at such meeting.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4. Special Meetings. The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by resolution of the Board or upon a petition signed by Members representing at least twenty percent (20%) of the total Class "A" votes in the Association or upon written request of the Declarant.

2.5. Notice of Meetings. Written notice stating the place, day, and time of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) Days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

2.9. List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with North Carolina law.

2.10. Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of

notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. The presence, in person or by proxy, of Members representing twenty percent (20%) of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association. If a quorum is present, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.12. Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within sixty (60) Days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of North Carolina filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Lot may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Lot is delinquent. A "resident" for the purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Lot within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class "B" Member or the Declarant.

3.2. Number, Nomination and Election of Directors. Except as provided in Section 3.3, the Board shall consist of three (3) directors elected by the Class "A" Members of the Association. The number of directors may be changed by resolution of the Board.

Elected directors shall be nominated from the floor at a meeting of the Members and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Each Owner may cast all votes assigned to such Owner's Lots for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.3. Directors During Class "B" Membership. All directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during the Class "B" membership. Furthermore, the Association may have only one (1) director during the Class "B" membership.

3.4. Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding two-thirds (2/3) of the votes entitled to be cast for the election of such director, but shall not be subject to removal solely by the Class "B" Member. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) Days delinquent (or is the resident of a Lot that is delinquent or is the representative of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term.

In the event of the death, disability, or resignation of an elected director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.5. Organizational Meetings. Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.6. Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each year.

3.7. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two (2) directors.

3.8. Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed, e-mailed or given to the telegraph company.

3.9. Waiver of Notice. The transactions of any meeting of the Board, 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 minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.11. Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. 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 at least a

Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board, excluding the interested director.

3.13. Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.14. Open Meetings. Subject to the provisions of Sections 3.10 and 3.15, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on a Member's behalf by a director. In such case, the president may limit the time any Member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Members to discuss matters of a sensitive nature.

3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things which the Governing Documents or North Carolina law do not direct to be done and exercised exclusively by the membership generally.

3.17. Duties. The duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the costs of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and
- (o) indemnifying a director, officer or ARC or committee member, or former director, officer or ARC or committee member of the Association to the extent such indemnity is required or permitted under North Carolina law or the Governing Documents.

3.18. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.19. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided however, upon written request of any holder, guarantor or insurer of any first Mortgage on a Lot, the Association shall provide an audited financial statement.

3.20. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members holding at least sixty-seven percent (67%) of the total votes allocated to Lots prior to borrowing such money.

3.21. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without

limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations.

3.22. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within fifteen (15) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee, as the case may be, may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee, as the case may be, may impose a sanction without further notice to the violator. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) Days after the hearing date.

ARTICLE 4: OFFICERS

4.1. Officers. The officers of the Association shall be a president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one (1) or more vice presidents, one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority

and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interest of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the 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.

4.6. Execution of Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12.

ARTICLE 5: COMMITTEES

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided however, no Class "A" Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the Association without the consent of the Board.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a covenants committee consisting of at least three (3) and no more than five (5) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and

resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.22 of these By-Laws.

ARTICLE 6: MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection maybe made;
and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) 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 a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

6.6. Amendment.

(a) By Declarant. During the Class "B" membership, the Declarant may unilaterally amend these By-Laws. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members to correct scriveners' errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members. During the Development Period, any such amendment shall require the consent of the Declarant.

(c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. In addition, the approval requirements set forth in Article 12 of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

(e) HUD/VA Approval. As long as there is a Class "B" membership, the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Lot, or the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgage on any Lot, shall have the right to disapprove any amendment to the By-Laws.