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**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR
CRESSWIND WESLEY CHAPEL**

**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 please return to:
Woodward & Woodward PLLC (RSW)
200 S. College Street Suite 200
Charlotte NC 28202

Submitted electronically by "Woodward & Woodward PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Union County Register of Deeds.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CRESSWIND WESLEY CHAPEL

This Declaration of Covenants, Conditions, and Restrictions is made on the date set below by **KH WESLEY CHAPEL, LLC**, a Florida limited liability company ("Declarant").

WITNESSETH:

WHEREAS Declarant is the Owner of the real property located in Union 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 Declarant. This generally includes one who purchases one or more Lots for the purpose of constructing Initial Improvements thereon for later sale to consumers or who purchases one 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 Wesley Chapel 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 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 Declarant and may be more specifically determined by the Board of Directors.

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

(p) “Declarant” means KH Wesley Chapel, LLC, a Florida limited liability company 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 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 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 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. 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” means 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” means 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 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, flags, 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. “Membership” means all Members 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 Person occupying all or any portion of a Lot in the Community overnight, regardless of whether such Person is a Lessee of the Owner of such Property. “Occupy” or “Occupancy” shall refer to the condition when a Person occupies a Lot for any period.

(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.

(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) "Public Records" means the Register of Deeds for Union County, North Carolina.

(pp) "Qualifying Occupant" means a person fifty-five (55) years of age or older, as referenced in HOPA, who resides in a Residence.

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

(rr) "Resident" shall mean any natural person eighteen (18) years of age or older whose principal dwelling place is a Residence.

(ss) "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.

(tt) "Supplemental Declaration" means an instrument filed in the 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.

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

(vv) "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.

(ww) "Violator" means any Class A Member who violates any provision of the Governing Documents and any such Owner's family member, guest or Occupant who violates such provisions; provided, however, if a Class A Member's family member, guest or Occupant violates the Governing Documents, the Class A Member who owns the relevant Lot also shall be considered a Violator.

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 Union 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 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 Community Association for their pro-rata share of the Common Expenses.

Section 3. 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 votes of the Community Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of 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 4. Withdrawal of Property by Declarant. 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.

Section 5. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Community to additional covenants and easements, including but not limited to 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, and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property.

Such additional covenants and easements may be set forth in a Supplemental Declaration or a separate declaration of protective covenants, declaration of condominium or other document filed either concurrently with or after the annexation of the subject property. Any such document filed by the 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 Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements or similar instrument without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the Public Records.

Notwithstanding anything to the contrary herein, any separate declaration of protective covenants, declaration of condominium, or other document filed either concurrently with or after the annexation of additional property shall be subordinate to the terms and conditions of this Declaration and in the event of a conflict between the provisions of such additional covenants and the provisions of this Declaration, the provision of this Declaration shall control.

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. In furtherance of this objective, 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 and rules establishing reasonable admission and other fees for the use of Community recreational and social facilities;

- (d) The right of the Board 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 and such fees as may be established by the Board; The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Community Common Area pursuant to Article 4, Section 5, below;
- (e) 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;
- (f) 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;
- (g) 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, subject to the approval of Owners of at least two-thirds (2/3) of the Lots and the approval of Declarant;
- (h) The right of the Community Association, acting through the Board of Directors and without a vote of the membership, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company, cable television company or broadband internet provider;
- (i) The right of the Community Association, acting through the Board, to transfer all or any portion of the Community Common Area, subject to the affirmative vote or written consent of Owners of at least two-thirds (2/3) of the Lots and the written consent of Declarant;
- (j) The right of the Declarant and a Builder with the approval of Declarant (which approval shall not be unreasonably withheld, conditioned or delayed) to conduct activities and establish facilities within the Community as provided in this Declaration, and
- (l) The right of the Board to enforce use restrictions, the Declaration and Bylaws provisions, and any rules and regulations established by the Community Association by imposing reasonable monetary fees, exercising self-help powers, and suspending the voting privileges of an Owner.
- (m) 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, 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; and
- (n) The rights of the Board to regulate use of lakes and other bodies of water and associated improvements set forth in Article 3, Section 4 below and elsewhere herein, and/or to delegate this right of regulation to another entity or body through a cost-sharing or similar agreement;

Owners, Occupants, and their guests shall use the Community Common Area maintained by the Community Association and all other Community Common Area and all portions of the Community not contained within a Lot, including, without limitation, the Community Common Area recreation facilities, the lakes and the trail system, at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and Occupants shall have an affirmative duty and

responsibility to inspect the Community Common Area and all portions of the Community not contained within a Lot for any defects, perils, or other unsafe conditions relating to the use and enjoyment thereof. The Community Association, Declarant, Builder(s) and their respective officers, directors, employees, representatives and agents shall not be held liable for: (1) personal injury to any person occurring on the Community Common Area or on any other portion of the Community; (2) loss or damage to personal belongings used or stored on the Community Common Area or on any other portion of the Community; or (c) loss or damage, by theft or otherwise, of any other property of an Owner or Occupant or any of their guests.

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 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 2. 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 during the Development Period only with the written consent of 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 votes of the Community Association and, during the Development Period, 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 the Community Association may use such award or net funds or such purposes as the Board shall determine.

Section 3. View Impairment. Neither Declarant, a Builder, 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.

Section 4. Lakes, Ponds and Other Water Bodies. All lakes, ponds, streams and any dams or bridges associated therewith within the Community or to which Owners have access by reason of any easement agreement, if any, shall be used only in accordance with the rules and regulations adopted by the Board, which may include without limitation operating policies for the use of any lake, limits on the persons entitled to use the lake, hours of permitted use of the lake, size of boats, and hours of operation for boats. Swimming, boating, fishing, and other active uses of lakes, ponds, or other bodies of water within or adjacent to the Community shall be permitted subject to the rules and regulations promulgated by the Board for use of such areas, provided, however, that the Board shall have the authority to prohibit any active use of any of body of water located on Community Common Area. Gasoline powered engines or diesel engines are not to be operated on any lake, except as may be otherwise permitted or used by the Community Association. Except as is necessary for maintenance by the Community Association, no Person shall dig or disturb the earth, concrete or trees or other vegetation located on any dam or rearrange any fish screens and/or debris screens located at or near the dam. No Person shall be allowed access to any dam or spillway unless authorized by the Community Association.

Neither the Community Association nor Declarant, nor any of their respective Board members, officers, agents, or employees shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or other bodies of water within or adjacent to the Community, nor any dams or bridges associated therewith. Lakes, detention or retention ponds, or other wetlands in the Community, may be designed as water management areas and are not necessarily designed as recreational or aesthetic features. Due to fluctuation in ground water elevations within the immediate area, the water level of lakes and other areas may rise and fall. Neither Declarant nor the Community Association shall be responsible for maintaining, increasing, or decreasing the water level within any of the lakes or other areas or removing animals or vegetation from any of the lakes or other areas. Notwithstanding anything contained in this section, 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 any regulatory body responsible for any such water body and use of any such water body, shall be subject to regulations, if any, adopted by any such regulatory body responsible for any such water body.

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** All Owners shall be Class A Members, 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 Declarant (or any successor so designated, in writing) shall be the sole Class B Member. 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, 2051; or

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

When the Class B membership terminates, 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) Declarant shall have the right to disapprove actions of the Board, the ARC, and committees as provided in the Governing Documents, and (ii) 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 thirty (30) 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. Declarant and its designees, with 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 necessary, Declarant's reasonable judgment for the development of the Community, or needed by Declarant to adjust 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.

Declarant shall determine the identity and Improvements constituting the Community Common Area in its sole discretion.

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. The Community association shall accept any such conveyance or transfer of Common Area 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.

Section 5. Enforcement of Governing Documents and Rules and Regulations. 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. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall 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 the Community Common Area, including any recreational facilities located thereon; provided however, nothing herein shall authorize the Board to deny 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) Deactivation of gate codes, remotes, gate cards and any other devices affording entry into the Community through Community gates; provided however, nothing herein shall authorize the Board to deny ingress or egress to or from a Lot;
- (g) 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; and

(h) 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 regulations 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 actually incurred, incurred in such action, regardless of whether suit is filed and including any appeals. Any such costs, including attorney's fees and court costs, shall be a specific assessment against the Lot of the violating Owner, Occupant, or guest.

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, the Board may exercise all rights and powers of the Community Association without a vote of the membership.

Section 7. Governmental Interests. During the Development Period, 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, Declarant, nor any successor to 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, and 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. 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 Declarant, the Community Association, its Members, their tenants, occupants, guests, and invitees.

Section 12. Relationship With Tax-Exempt Organizations. 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, stormwater management and control, street and sidewalk maintenance and repair, 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. 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, 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. Declarant shall determine the identity and Improvements constituting the Community Common Area in its sole discretion, without limitation on the right of 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. Owner Responsibility. Except as specifically provided otherwise in this Article 5, the maintenance of the Lot, including the Residence, Improvements and landscaping thereon shall be the responsibility of the Owner(s) thereof to maintain, repair and replace. Each Owner shall keep all parts of his Lot, including the Residence, clean and free of debris, and in good order and repair. Such duties shall include, without limitation, repair or replacement of the roof, windows and doors (including glass or screens), exterior of the Residence, and all landscaping on the Lot except for that performed by the Community Association pursuant to Section 2(a) below. Exterior maintenance, including painting, shall be periodically performed by the Owner as reasonably required. Paint and roof colors shall not be changed unless approved under Article 9 hereof, and all paint/roof colors shall be harmonious with other improvements within the Community, as determined by the ARC in its sole discretion. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any Improvement on a Lot.

Each Owner's responsibility hereunder shall specifically include the inspection, maintenance, repair, and replacement of the individual landscaping irrigation system installed on the Lot in a manner such that all parts thereof, including but not limited to the lines, sprinkler heads and pumps, are operational and in good working order, along with the cost of water use for irrigation. An Owner's failure to maintain and/or operate his or her irrigation system as required herein may result in sanctions and the denial of any lawn maintenance. Each

Owner shall be responsible for ensuring that the irrigation controllers are accessible to the Community Association for the Community Association's use in performing the Community Association's maintenance obligations with regard to Owner's lawn. Lawns shall be primarily grass, and shall not be paved or covered with gravel, artificial turf, or other covering unless permitted under Article 9 hereof.

In performing their maintenance responsibility hereunder, Owners are responsible for compliance with rules and regulations adopted by the Board pertaining to Lot maintenance, including but not limited to rules establishing schedules and procedures for applicable of pine straw, mulch and other ground coverings, as well as frequency and timing of irrigation.

Owners shall maintain the Lots in a manner consistent with the Governing Documents and the Community-Wide Standard.

Section 2. Community Association Responsibility. The Community Association shall be responsible for performing, or causing to be performed, the following:

(a) **Lot Maintenance.** The Community Association shall be responsible for performance of the following maintenance on the Lots: (1) lawn maintenance, limited to mowing, fertilizing, weed control and edging the grass; (2) the pruning of shrubs and bushes installed on the Lots as part of the initial construction of the Lots, or installed by or on behalf of the Lot Owner upon approval in accordance with Article 9 hereof (subject to such conditions or requirements as are imposed in connection with such approval); (3) in the Community Association's discretion, removal of excessive weeds, underbrush or unsightly growth and the addition of pine straw as ground covering; (4) maintenance and repair of any portions of retaining walls, perimeter fencing, and/or Detention Facilities installed by the Declarant and that serve more than one Lot; and (5) any portion of a Community-wide Trail System originally installed by Declarant and located on a Lot. The Board shall determine the type, frequency, specifications, and extent of the aforementioned maintenance in its discretion, and may change the landscaping in the Community at any time and from time to time and may, with the consent of Declarant, change the level of yard maintenance performed. The Community Association shall be authorized to use Owner's irrigation facilities as reasonably necessary to perform its maintenance responsibilities hereunder. Owners shall be responsible for ensuring that the Community Association has full access to all areas of Owner's Lot as necessary to perform the Community Association's maintenance responsibility with regard thereto.

If a fence is erected or installed on a Lot by a Builder or an Owner pursuant to Article 9 hereof, the Community Association shall continue to maintain the area enclosed by said fence; provided, however, the Owner must allow access through an unlocked gate and no pet shall be present in such area in order for the area enclosed by said fence to be maintained by the Community Association. In the event that an Owner refuses access to the area enclosed by the fence, a pet is present in the area or the gate is locked at the time that maintenance is performed to such area by the Community Association or its agents, said Owner shall not be entitled to a reduction in the liability for assessments due in the event the Community Association is unable to maintain the property enclosed by said fence and such Owner shall be obligated to maintain such area in a manner consistent with the Community-Wide Standard.

(b) **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. For purposes of illustration, Community Common Areas may (but are not required to) include, but are not limited to: entrance features; the irrigation system serving the Common Areas, all Detention Facilities and stormwater system components, fences associated with any Detention Facilities, lakes, dams, trails, docks, conservation areas, tracts designated for open space, greenbelts, private Community streets and sidewalks, the Community entrance/exit gate system, buffer areas and non-disturbance areas, tennis courts and other recreational facilities on the Plat. As part of its maintenance obligations hereunder, the

Community Association shall also maintain portions of any property, whether included within or without the Community boundaries, which it is obligated to maintain pursuant to any Cost Sharing Agreement.

The Community Association may, as a Common Expense, maintain other property it does not own, including but not limited to parts of the Lots, property adjacent to the Community, or property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Community Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities

(c) 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.

(d) Offsite Signage & Landscaping. The Community Association shall have the obligation to maintain any signage installed by Declarant or the Community Association, regardless of where it is located, that advertises and promotes the name of the Community and to maintain the landscaping surrounding said signs.

(e) Lift Station and Surface Water Management System. Unless and until dedicated or conveyed to Union 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. Notwithstanding the foregoing, the Community Association shall not be responsible for any maintenance or repair to any storm water management system which exclusively serves a Lot.

(f) Storm Water Drainage Facility & Drainage Improvements. The Community Association shall maintain, repair and replace all storm water drainage facilities and drainage improvements on the Community Common Areas, including without limitation within all platted storm water ponds, 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.

(g) Irrigation System. Declarant presently plans 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.

(h) Wooden Bridges. The Community Association shall maintain, repair all wooden bridges located on roadways within the Community.

(i) Maintenance Disclaimer. Neither the Community Association nor Declarant shall be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Area or from any pipe, drain, lake, Detention Facility, conduit, appliance or equipment which the Community Association is responsible to maintain hereunder. Neither the Declarant nor the Community Association shall be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Community Association's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Community Association's failure to discharge its responsibilities. In addition, neither the Declarant nor the Community Association shall be liable to any Owner, or any Owner's Occupant, guest or family for any delay in repairs or maintenance of any part of the Common Area if such delay is due to inclement weather, terrorism, severe economic disruption, labor strikes, pandemics and similar public health emergencies, and any government shut-downs or work stoppages outside of the control of the Community Association. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Community Association to take some action or perform some function required to be taken or performed by the Community Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Community Association, or from any action taken by the Community Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(j) Damage to Areas of Community Association Maintenance Responsibility. In the event that the Community Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Community Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Community Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

(j) Damage to Areas of Community Association Maintenance Responsibility. In the event that the Community Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Community Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Community Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

Section 3. Maintenance Expense. Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Community Common Area 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, any cost sharing agreement or any agreements with the owner(s) thereof.

Section 4. 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 or personal and/or real property the Community Association or Declarant, shall attempt to contact Owner(s). If the Community Association 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 5. 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.

Section 6. Garbage Pick-Up and Recycling. The Community Association shall have the right, but not the obligation, to designate and contract with a private trash removal company on behalf of all Owners and Occupants in the Community to pick up all usual and customary household trash and recycling on a regular basis. In the event the Community Association enters into a contract with a private trash removal company as provided above, all charges for usual and customary trash collection and recycling shall be assessed to each Unit equally as part of the general assessment. While the removal of normal household trash and recycling will be covered by such contract, additional charges may be incurred for the removal of used appliances, other large items or any other extraordinary pick-up needs and such additional charges incurred by the Community Association may be specifically assessed against the applicable Lot. If a Lot Owner, for any reason, refuses trash collection and recycling service provided by the Community Association, such Owner shall nevertheless be obligated to pay the full amount of the General Assessment.

Section 7. Cost Sharing Agreements & Easement Agreements. Adjacent to or in the vicinity of the Community, there may be certain residential, nonresidential, or recreational areas, including without limitation single family residential developments, retail, commercial, or business areas and, that are not subject to this Declaration and that are neither Lots nor Common Area as defined in this Declaration (hereinafter "Adjacent Properties"). The owners of such Adjacent Properties shall not be Members of the Community Association, shall not be entitled to vote, and shall not be subject to assessment under Article 8 of this Declaration. Either the Declarant, or the Community Association with the Declarant's written consent during the Development Period, may enter into cost sharing agreements and/or easement agreements with owners or operators of portions of the Adjacent Properties:

- (a) To obligate the owners or operators of such Adjacent Properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Common Areas, if any, that are used by or benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties;
- (b) To permit use of any recreational and other facilities located on such Adjacent Properties by the Owners of Lots and/or to permit owners and occupants of the Adjacent Properties to use the Community Common Areas, including but not limited to any lakes, trails and roadways;
- (c) To obligate the Community Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of such Adjacent Properties, if any, that are used by or benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties; and/or
- (d) To establish rules and regulations regarding the use of areas that benefit jointly the owners or operators of such Adjacent Properties and the owners within the Properties.

The owners or operators of such Adjacent Properties shall be subject to assessment by the Community Association only in accordance with the provisions of such Cost Sharing Agreement(s). If the Community Association is obligated to share costs incurred by the owners of such Adjacent Properties, the Cost Sharing Agreement shall provide whether such payments by the Community Association shall constitute Common Expenses of the Community Association. The owners or operators of the Adjacent Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.

Section 8. **Gate System.** Declarant may, but shall have no obligation to, install a mechanical gate system that limits vehicular access to the Community (the "Gate System"). Each Owner, by accepting a deed to a Lot, shall be deemed to acknowledge and agree to the following:

(a) The Board of Directors, with the consent of the Declarant, shall determine when the Gate System will be operational.

(b) Neither Declarant, Builder, the Community Association nor their respective officers, directors, members, representatives or agents shall be responsible for the security of Owners, Occupants or their family members, guests, invitees or property. NEITHER DECLARANT, BUILDER, THE ASSOCIATION NOR ANY OWNER GUARANTEES OR ASSURES TO ANY OTHER OWNER NOR ANY OTHER PARTY WHOMSOEVER THAT THE GATE SYSTEM WILL IN ANY MANNER WHATSOEVER PROVIDE PERSONAL PROTECTION OR SECURITY TO ANY OWNER OR OCCUPANT, THEIR PERSONAL POSSESSIONS OR TO GUESTS OR INVITEES, OR TO ANY OTHER PERSON, AND EACH OWNER, BY THE ACCEPTANCE OF A DEED TO A LOT, SHALL HAVE ASSUMED THE ENTIRE RISK AS BETWEEN SUCH OWNER AND DECLARANT, BUILDER, OR THE ASSOCIATION FOR ANY LOSS OR DAMAGE TO PERSON OR PROPERTY WITHIN THE COMMUNITY ARISING FROM ANY DEFICIENCY, FAILURE OR DEFECT IN THE GATE SYSTEM OR OTHERWISE.

(c) All governmental authorities shall have access to the Community for law enforcement, safety, and emergency purposes. Each Owner shall look solely to the applicable governmental authority for the provision of law enforcement and police protection.

(d) The Gate System is not intended to replace or to serve in lieu of individual alarm systems or other measures designed to provide security at a Residence or within any Lot. Each Owner is encouraged to install personal security devices upon and within such Owner's Lot to the same extent that would be prudent if the Gate System did not exist.

(e) The Gate System will be installed based upon the representations of vendors regarding the operation and performance capabilities of the components of the Gate System.

(f) DECLARANT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER REGARDING THE GATE SYSTEM, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSES FOR WHICH IT WAS DESIGNED. Declarant does not guarantee that the Gate System will avert or prevent occurrences or consequences which the Gate System is designed to avert or prevent.

(g) The Gate System shall be owned, operated, and maintained by the Community Association at its sole cost and expense.

(h) Each Owner shall use the Gate System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Board of Directors.

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; and

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

viii. contain a cross-liability provision.

(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, also 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. Declarant Control of the Board of Directors. Notwithstanding any provisions to the contrary, Declarant may appoint all members of the Board of Directors until the first to occur of the following;

(a) 90 days after one hundred percent (100%) of the total number of Lots permitted by the Community Master Plan for the property described on Exhibit A and Exhibit B have been conveyed to Owners other than Declarant or Builders or affiliates of Declarant, and neither Declarant nor any Builder nor affiliate of Declarant owns any property within Exhibit A or Exhibit B hereto; and

(b) When, in its discretion, the Declarant so determines and voluntarily relinquishes such right by recording in the Public Records a document agreeing to termination of the Declarant Control Period.

The period during which the Declarant has authority to appoint all members of the Board of Directors shall be referred to as the "Declarant Control Period." Upon termination of the Declarant Control Period, the Declarant shall have the right to disapprove actions of the Board, the ARC and committees as provided in the Governing Documents.

Section 2. Sales Activity. Notwithstanding any provision herein to the contrary, until 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 Declarant, whether related to the Community or other developments of Declarant. 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 3. Replatting. It may be necessary for Declarant to re-plat a portion of the Community. Declarant shall have the right to re-plat unsold portions of the Community without requiring the joinder or consent of any Owner or Mortgagee holding a Mortgage on any Lot.

Section 4. Utility and Construction Payments and/or Deposits. If a utility company or governmental authority requires a deposit to be made by Declarant, and such deposit shall be refunded at some time in the future, then Declarant (and not the Community Association) shall be entitled to receipt of the refunded funds. In addition, should construction payments made by Declarant be refunded by a utility company or governmental authority at some time in the future, then Declarant (and not the Community Association) shall be entitled to receipt of the refunded funds or the Community Association shall reimburse Declarant for such payments prior to the time that Owners other than Declarant elect a majority of the members of the Board of Directors of the Community Association.

Section 5. 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. 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 6. Assignment of Declarant Rights. Declarant shall have the right to assign to any other person or entity, including the Community Association, any or all of 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 Declarant's rights. Such acquisition, development or construction lender shall have the right to assign Declarant's rights to a subsequent purchaser, without regard as to whether the lender assumed Declarant's rights. No such assignment or transfer shall be effective unless in a recorded instrument signed by Declarant and recorded in the Public Records.

Section 7. Right of Declarant to Disapprove Actions. Until Declarant no longer owns any portion of the Community or has the right to annex unilaterally any Additional Property pursuant to the terms of this Declaration, 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 Declarant, would tend to impair rights of 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 Declarant in the Governing Documents:

(a) 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 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. Declarant may waive its right to receive notice in the same manner as provided in the Bylaws.

(b) 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. 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) 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 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. 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 8. Use of Facilities. 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 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 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 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 9. Approval of 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 being void and of no force and effect unless subsequently approved by a recorded consent signed by Declarant.

Section 10. Annexation by Community Declarant. Until thirty (30) years after the date of recording of this Declaration in the Public Records, 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 Declarant or may never be subjected hereto. 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 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 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.

Nothing in this Declaration shall be construed to require 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 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 11. **Amendment.** This Article shall not be amended 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 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 Declarant or any affiliate of 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. 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 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 Community Association Assessments) shall be reduced by the amount allocated for incomplete amenities or facilities. The Community 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 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.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses and contributions to reserve funds on which the Board establishes the General Assessment.

Section 4. Reserve Budget. The Board shall annually prepare a reserve budget which considers the number and nature of replaceable assets within the Community 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 access reserves may be considered in establishing the next year's budget and may be applied to defray general expenses incurred thereunder. During the period Declarant is funding any deficit in the budget, 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) to pay the 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) to pay any other charge which is not a general expense.
- (c) to cover any unbudgeted or unanticipated general expense, or general expense which exceeds the amount budgeted.

Special Assessments may be levied against any or all Lots by a majority vote of the Board of Directors; provided, however, if the total amount of Special Assessments levied in a fiscal year is greater than the amount of the General Assessment, then the Special Assessment must be approved by 67% of the votes in the Community Association (and Declarant during the Development Period). 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 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 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;

(c) For unpaid late charges, user fees, fines and penalties;

(d) For reimbursement for damages caused by an Owner, Owners, their family members, Occupants, guests, invitees, or tenants; and

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

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. Delinquent Assessments. All assessments and other charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and other charges, the Community Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within fifteen (15) days of the due date, or such later date as may be provided by the Board of Directors:

- (a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid may be imposed without further notice or warning to the delinquent Owner;
- (b) interest at the rate of 18% per annum shall accrue from the due date;
- (c) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Community Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any General or Special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and
- (d) the Community Association may bring legal action to collect all sums owed under the Declaration and North Carolina law and/or foreclose on its lien.

If assessments or other charges, or any part thereof, remain unpaid more than thirty (30) days after the due date, then the Owner's right to vote and use the Community Common Area shall be suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot. If assessments or other charges, or any part thereof, remain unpaid more than thirty (30) days after the due date, the Community Association may also suspend the right to receive and enjoy such services and other benefits as may then be provided by the Community Association, which may include but are not limited to any internet, cable, telephone or other telecommunications services as well as the deactivation of any card access system, gate code or other method used in connection with the Gate System which limits or restricts vehicular access to the Community.

As provided in N.C.G.S. § 47-3-116, each Owner's obligation for payment of assessments and fees arising hereunder shall also include costs of collection, including, without limitation, reasonable attorney's fees actually incurred. If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

The Community Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Community Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Community Association. The Community Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Section 9. 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 10. Deficit. During the Declarant Control Period, Declarant may 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 Declarant Control Period 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 Declarant Control Period 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 Declarant Control Period, 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. 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 Declarant, or a loan, in Declarant's discretion. The Board of Directors, specifically including members of the Board appointed by Declarant, shall be authorized to execute a promissory note or notes on behalf of the Community Association to evidence the repayment obligation of the Community Association to Declarant for its funding of the deficit, with interest on such note not to accrue until demand, at which time interest shall commence to accrue at the prime rate quoted in the Wall Street Journal, as from time to time adjusted, until such advances are paid in full; provided, however, that failure to execute such a note shall in no way diminish such obligation of the Community Association to repay Declarant for amounts paid to fund the deficit. Any such anticipated payment or contribution by Declarant to fund the deficit shall be disclosed as a line item in the Common Expense budget, and Declarant shall provide an annual statement to all Owners describing how the deficit funding amount was calculated. 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, 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 Declarant, with respect to Lots owned by Declarant and shall not be calculated into any determination of a deficit and the approval for a Special Assessment set forth in Section 5 hereof shall not apply. 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 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 \$1,500.00. 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 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 fifteen (15) months after purchase pursuant to Section 2, above the capital contribution shall be paid immediately upon demand by the Community Association.

Section 11. Capital Contribution. 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 a capital contribution in the amount of \$1,500.00 or such other amount as may from time to time be set by resolution by the Board of Directors. The

capital contribution shall not be deemed an advance payment of regular or special assessments. The Board shall have discretion to increase the capital contribution by resolution of the Board; provided, however, the capital contribution 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 capital contribution 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 capital contribution 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, including but not limited to Exterior Structures and Improvements and Initial Improvements as defined herein, and/or activities, shall be placed, erected, constructed, commenced, 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 Architectural Review Committee ("ARC") 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 Declarant, exceptions granted by the Declarant either to an Owner or Builder, nor to Improvements to the Community Common Area by or on behalf of the Community Association. 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 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 ARC may require deposits while construction is pending on any Lot to ensure completion without damage to the Community.

Until one hundred percent (100%) of the Community has been developed and conveyed to Owners other than Declarant or any Builder, initial construction on each Lot has been completed in accordance with the Design Guidelines, and conclusion of the Development Period, Declarant shall have exclusive jurisdiction over all construction on any portion of the Community and shall have the right to 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. 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 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 Declarant have been conveyed to persons other than Declarant and to affiliated entities and any Builder and the Development Period has terminated, the Board may not delete any portion of the Design Guidelines or lessen the restrictiveness of the Design Guidelines without obtaining the approval of Declarant. After all such Lots have been conveyed to persons other than Declarant and its affiliated entities and any Builder, and the Development Period has terminated, the Design Guideline provisions may be deleted or lessened in their 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 Improvements, Modifications, and Renovations. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed modifications, renovations and Improvements (including Initial Improvements) shall be submitted to the ARC 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 ARC 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 ARC 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 Declarant or Board, nor the distribution and review of the plans by Declarant or Board shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to Declarant or Board shall hold the members of Declarant or Board, the Community Association, and 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.

Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARC 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 ARC 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 ARC pursuant to this Article.

Notwithstanding the above, the ARC 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 the originally approved color scheme or to rebuild in strict 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 ARC 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 ARC; (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 complies with the submitted application.

(e) No Waiver of Future Approvals Approval. Any 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 ARC 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 ARC. 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 ARC 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 Declarant, the Community Association, the Board, nor the ARC 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 Declarant, Community Association, Board, committee, nor 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 on 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. Declarant, any member of the Board and/or ARC, 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 ARC, 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, Declarant, nor 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, then the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in 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; 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 trees and landscaping materials.

(b) Minimum Dwelling Size. The Design Guidelines may establish a minimum square footage of enclosed, heated and cooled living space for Residences, which minimum may vary from one portion of the Community to another. In the event the Design Guidelines set such a minimum square footage requirement, the Community Association shall cause a notice of the minimum square footage requirement to be recorded in Public Records. Upon written request of an Owner, the ARC may waive the minimum square footage requirement if, in the ARC's sole discretion, the resulting appearance of such residential dwelling will preserve the overall appearance, scheme, design, value and quality within the Community.

(c) 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 ARC, except (a) such signs as may be required by legal proceedings; and (b) not more than (1) professional security sign of such size deemed reasonable by the ARC in its sole discretion. 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 ARC, 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, a Builder, 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 ARC. Dead, diseased, or damaged trees may be removed without Board approval. The ARC may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any trees removed. 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) street lights installed by Declarant, Builder or the Community Association in conformity with an established street lighting program for the Community; (3) such seasonal decorative lights during the usual and common seasons as approved by the ARC and specified in its written Rules; (4) front house illumination of model homes by Declarant;

or (5) any additional lighting as may be approved by the ARC. All lights shall be installed or aimed so that they do not present a disabling glare to drivers or pedestrians.

iv. Temporary or Detached Structures. Except as may be permitted by the ARC, 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, Declarant 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 ARC, Improvements may be placed on a Lot to be used for recreational equipment, 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 ARC. All accessory structures shall be located within side and rear setback lines as may be required by the Board or by applicable zoning law. Notwithstanding anything to the contrary herein, no storage sheds, playground equipment, trampolines, or similar play equipment is permitted on any Lot.

vi. Utility Lines. Household 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 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 to assist in the sale of the Property, offices for any property manager retained by the Community Association, business offices for 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 a 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 Declarant or a Builder approved by 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 2. 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 3. 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, tasers, stun guns, and firearms and similar projectiles of all types. The Board may impose fines and exercise other enforcement remedies for any violation of this restriction, as set forth in this Declaration.

Section 4. 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 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 5. 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 6. 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 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 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. 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 7. 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, 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 8. 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 Declarant.

Section 9. Building Location. Buildings shall be located in conformance with the requirements of Union County 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 Union County, 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 10. 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 11. 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 Community 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 Declarant shall not be considered a nuisance or a disturbance of any Owner or occupant.

Section 12. 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 13. 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 granted by the Community Association. 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 Union County ordinances.
- (c) Pets may defecate upon the Community Common Areas provided that the Owner shall: (i) immediately remove all excrement from the Community Common Areas with a "Pooper Scooper," pet waste bag, or other appropriate tool and (ii) deposit said waste in an approved trash receptacle. Any Owner who fails or refuses to discard the waste as required herein shall be subject all remedies available to the Community Association for such breach.
- (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 14. 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 a 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 GFHL 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 actually Occupies and 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 Occupy or otherwise 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 Occupy a Residence on a Lot within the Community provided that no person under eighteen (18) years of age shall be permitted to: (1) establish residency in the Lot as defined by state or local law; or (2) Occupy the Lot for more than ninety (90) days, consecutive or non-consecutive, in any three hundred and sixty-five (365) day period.

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 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. By way of illustration and not limitation, the Board may grant a hardship exception to the requirements of this Section to allow a permanent Occupant to house and care for a child less than eighteen (18) years of age in situations where the permanent Occupant assumes responsibility for caring for the child due to urgent circumstances stemming from actions not under the permanent Occupant's control. 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 Community 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 15. Vehicles; Parking.

(a) General. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated parking areas established by the Board, if any. Parking of vehicles on any streets in the Community is prohibited. Also, no vehicle may be parked on or otherwise obstruct any sidewalk, planting strip, or extended driveway apron. The term "vehicles" as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The phrase "parking spaces serving the Lot" shall refer to the number of garage parking spaces and the driveway located on such Lot. All parking shall be further subject to such reasonable rules and regulations as the Board may adopt from time to time.

(b) Commercial Vehicles & Inoperable Vehicles. No commercial vehicles, campers, mobile homes, motor homes, recreational vehicles, boats, personal watercraft, house trailers, golf carts, go carts, minibike, scooter, 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 or vehicles used by Declarant or a Builder in the original construction of a Residence located on a Lot.

No vehicle that is unlicensed or inoperable may be kept or stored in 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 twenty-four (24) hours.

Section 16. 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 Declarant. All fences shall be uniform throughout the Community and shall comply with all codes. The Board may establish rules that are more restrictive than any applicable governmental code. All fences must: (a) include not less than two inches (2") of ground clearance under all gates and fence sections and (b) be constructed with gates not less than forty-two inches (42") wide.

Section 17. Hedges. No hedge shall be erected in the front yard except as approved by the Board or as installed by Declarant.

Section 18. 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 company or 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. All Community trash removal and recycling shall be subject to such further rules and regulations as the Board may adopt, including without limitation, the designation of a particular trash pick-up day throughout all or a portion of the Community.

(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 Declarant and Builders may dump and bury rocks removed from a building site on such building site.

Section 19. 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 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 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 20. Communication Equipment. Except as may be installed by 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 21. 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 22. Occupancy.

(a) **Number of Occupants.** No more than two Occupants per bedroom may Occupy a Lot at any time. Upon written application, the Board of Directors shall grant variances to this restriction in order to comply with provisions of the Fair Housing Amendments Act of 1988.

(b) **Corporate Occupancy.** If an Owner of a Lot is a corporation, limited liability company, partnership, trust, an unincorporated association, or is otherwise not a natural person, then such Owner's Lot may only be occupied by a natural person designated by the Board in writing as meeting the requirements set forth in this Article 10, Section 22 (the "Authorized Corporate Occupant"). An Authorized Corporate Occupant shall only be an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust; provided that to qualify as an Authorized Corporate Occupant: (1) neither the Owner, nor any other interest holder in the Unit or in the Owner, may receive any rent or other consideration for such Occupancy; (2) with the exception of a beneficiary of an Owner that is a trust, the Authorized Corporate Occupant of a Lot must perform a valid corporate/entity/partnership function (s) for the Owner that is unrelated to the Lot or the Authorized Corporate Occupant's Occupancy thereof; and (3) the designation of Authorized Corporate Occupant must be in good faith and not intended to avoid a violation of the requirements of this Article 10, Section 22 or Section 23 of the Declaration, or the purposes thereof, as such is determined by the Board in its discretion.

(c) **Designation.** A Lot Owner, which is not a natural person, may apply to have a natural person designated as an Authorized Corporate Occupant by providing the Board a written application that includes the name of the proposed Authorized Corporate Occupant, age of the proposed Corporate Occupant and any persons residing with him/her, and documentation evidencing the proposed Authorized Corporate Occupant's

relationship with the Owner. The designation of the proposed Authorized Corporate Occupant must comply with Article 10, Section 14.

The Board may require submission of additional true and accurate information that the Board deems necessary, in its sole discretion, to determine whether the natural person proposed as an Authorized Corporate Occupant meets the requirements for Authorized Corporate Occupancy hereunder. Information which may be requested by the Board may include, but not limited to, Owner's organizational documents, books and records, and affidavits from Owner's officers, directors, members and trustees.

Upon a determination that a natural person meets the requirements of this Article 10, Section 22 for designation as an Authorized Corporate Occupant, the Board shall issue a written notice to the Owner designating the natural person as the Authorized Corporate Occupant of Owner's Lot. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon such person ceasing to meet the definition of Authorized Corporate Occupant set forth herein. The designated person to Occupy a Lot shall not be changed more frequently than once every twelve (12) months without the prior written approval of the Board of Directors

Section 23. Leasing.

(a) **Leasing Restriction.** Leasing of Lots is allowed only by: (1) an Owner who has received a Leasing Permit or Hardship Leasing Permit as provided below; or (2) the Community Association. Leasing Permits and Hardship Permits shall be valid only as to a specific Owner and Lot and shall not be transferable between either Lots or Owners (including a subsequent Owner of a Lot where such permit was issued to the Owner's predecessor-in-title). A Leasing Permit or Hardship Leasing Permit will allow an Owner to Lease his or her Lot, provided that such Leasing is in strict accordance with the terms of the Permit and this Article 10, Section 23. The Board of Directors shall have the authority to establish conditions as to the duration and use of such Permits consistent with this Article 10, Section 23.

(i) **Leasing Permit.** The request of a qualified Owner for a Leasing Permit for a Lot shall be approved if the total number of Lots in the Property for which Leasing Permits have been issued is less than 5% of the Lots ("Leasing Cap"). Provided, however, a Leasing Permit shall not be issued to any Owner unless such Owner has occupied the Lot for which the Leasing Permit is sought as his/her primary residence for at least eighteen (18) consecutive months.

(ii) **Wait List for Leasing Permit.** If the total number of current, outstanding Leasing Permits equals or exceeds the Leasing Cap, then no additional Leasing Permits shall be issued until the number of outstanding current Leasing Permits falls below the Leasing Cap. Owners who are otherwise eligible for a Leasing Permit and have been denied a Leasing Permit solely on the basis that there are no available Leasing Permits, shall be placed on a waiting list ("Wait List") to be issued such a Permit, if they so desire, when one becomes available. When a Leasing Permit becomes available, the Owner(s) at the top of the Wait List will be notified in writing of his/her Lot's eligibility to be Leased. The Lot Owner shall have ninety (90) days from the date of the written notice to enter into a Lease for the Lot. If an executed Lease is not presented to the Board within the ninety (90) days, the Leasing Permit will automatically be revoked, and the Owner's name will revert to the bottom of the Wait List and treated as a new request. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the Wait List. An Owner who has been placed on the Wait List for a Leasing Permit may not transfer or assign his, her, or its position on the Wait List.

(iii) **Hardship Leasing Permits.** If the inability to Lease will result in an undue hardship to an Owner, such Owner may apply to the Board of Directors for a Hardship Leasing Permit. Such a permit, upon its issuance, shall allow an Owner to Lease his, her or its Lot provided that such Leasing is in accordance with the terms of the Hardship Leasing Permit and this Declaration. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its

discretion after considering the following factors: (a) the nature, degree, and likely duration of the hardship; (b) the harm, if any, which will result to the Community if the Hardship Leasing Permit is approved; (c) the Owner's ability to cure the hardship; (d) the Owner's involvement in causing the hardship; and (e) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein may include, but not be limited to the following situations: (i) an Owner must relocate his or her residence more than one hundred and fifty (150) miles from the Lot and cannot, within one hundred twenty (120) days from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (ii) where the Owner dies and the Lot is being administered by his or her estate; and (iii) the Owner takes a temporary leave of absence or temporarily relocates his or her residence more than one hundred and fifty (150) miles from the Lot and intends to return to reside in the Lot.

The Board of Directors shall have the authority to establish conditions as to the application for, duration and use of Hardship Leasing Permits consistent with this Article 10, Section 23. Hardship Leasing Permits shall not be transferable between either Lots or Owners. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year and shall automatically expire at the conclusion of such one year term.

(iv) Denials and Revocation of Permits/Removal from the Wait List. Notwithstanding anything to the contrary herein, any Owner who owes the Community Association any delinquent assessments, fines, or other charges (collectively, "Assessments") shall be ineligible to receive a Leasing Permit, or a Hardship Permit, or to be placed on or to remain on the Wait List. Owners who have been denied a Leasing Permit, Hardship Leasing Permit, or been denied placement on or removed from the Wait List for delinquency reasons shall, upon written request following resolution of the delinquency, be placed on the next available spot (bottom of list) on the Wait List to be issued a Leasing Permit.

Leasing Permits, Hardship Permits, and placement on the Wait List shall be automatically revoked upon: (1) the sale or transfer of ownership or record title interest in the Lot (excluding sales or transfers to an Owner's legal spouse); (2) the failure of an Owner to have a written Lease for the Lot (entered into in compliance with the terms of this Declaration and a complete executed copy given to the Community Association) and bona fide lessee Occupying the Lot as his/her primary residence for ninety (90) consecutive days at any time after the issuance of such permit; (3) the Occupancy of the Lot by the Owner; or (4) the occurrence of the date referenced in a written notification by the Owner to the Board of Directors that the Owner will, as of said date, no longer need the Leasing Permit.

The Board shall also have the right, but not the obligation, in its discretion, to revoke an Owner's Leasing Permit or Hardship Leasing Permit upon the following occurrences: (1) when an Owner fails to pay all delinquent assessments, fines, or other charges owed to the Community Association on or before the date being ten (10) days after the Community Association sends a written notice to the Owner stating that the Owner is more than thirty (30) days delinquent and that the Permit shall be revoked unless payment is received on or before such date being ten (10) days after the Community Association sends the written notice; or (2) if the Owner or the Owner's Occupants, Lessees, guests, or invitees violate the Governing Documents of the Community Association in a non-monetary manner, provided, however, the Board shall first provide written notice to the Owner and provide the Owner with a right to hearing in the same manner as for fines as set forth in the Bylaws. The Leasing Permit shall be revoked for such non-monetary violation if the Board so determines after a hearing, or upon the last day of the Owner's right to request a hearing if the Owner fails to request a hearing. An Owner may apply for an additional Leasing Permit at the expiration or revocation of a previous one.

(b) Leasing Definitions. The capitalized terms used in this Section 23 shall have the following definitions:

(i) "Family Member" shall be defined as an Owner's parent or parent-in-law; an Owner's legal spouse; or an Owner's child or legal step-child.

(ii) "Guest" shall be defined as a person who: (a) possesses an established relationship with the Authorized Occupant or Authorized Corporate Occupant that is unrelated to the person's Occupancy of the Residence; (b) Occupies the Residence on a temporary basis for less than ninety (90) days in a year; and (c) who does not provide any Authorized Occupant or Authorized Corporate Occupant any consideration or benefit in exchange for his or her Occupancy of the Residence, including but not limited to any fee, service, gratuity or emolument, as may be determined by the Board in its reasonable discretion.

(iii) "Lease" means any agreement, written or oral, by which a Lot Owner conveys a right to Occupy a Lot or any portion thereof to another Person. Lessee means the person(s) Leasing a Lot.

(iv) "Leasing" is defined as the Occupancy of a Residence by any person(s) other than: (1) the Owner or a Family Member of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant; or (3) a Roommate or Guest when the Residence's Authorized Occupant or Authorized Corporate Occupant: (i) Occupies the Residence at the same time as the Roommate or Guest; and (ii) Occupies the Residence for at least eight (8) months out of each calendar year. Occupancy is defined as the situation when a person, natural or otherwise, stays overnight in a Residence.

(v) "Roommate" shall be defined as any person who Occupies a Residence as his/her primary residence pursuant to an agreement with the Authorized Occupant or Authorized Corporate Occupant thereof (the "Roommate Agreement") under which such person will Occupy the entirety of the Residence for a period of at least ninety (90) consecutive days, during which period the Authorized Occupant or Authorized Corporate Occupant also resides in the Residence.

The Board may require submission of additional true and accurate information that the Board deems necessary, in its reasonable discretion, to determine whether a person identified as Family Member, Roommate or Guest meets the requirements set forth hereunder for Family Members, Roommates and Guests, including but not limited to requesting copies of the written Roommate Agreement.

(c) Leasing Provisions.

Leasing in the Community shall be governed by the following provisions:

(i) Notice. At least fourteen (14) days prior to entering into the Lease of a Residence, the Owner shall provide the Board with a copy of the proposed Lease along with the names and ages of all proposed Occupants pursuant to the lease. All Leases shall be in writing and must comply with this Declaration, the Community Association's Bylaws and any rules and regulations adopted by the Board (the "Governing Documents"). If a proposed Lease does not comply, the Board shall notify the Owner of the action to be taken to bring the Lease into compliance. Nothing herein shall be construed as giving the Community Association the right to approve or disapprove a proposed lessee, provided, however, that the proposed lessee shall comply with the provisions of Article 10, Section 14.

(ii) General. Residences may be Leased only in their entirety; no fraction or portion of a Residence may be Leased. There shall be no subleasing of Residences or assignment of Leases unless approved in writing by the Board. All Leases must be for an initial term of not less than one year, except with prior written Board approval. No Residence or any part thereof shall be Leased, rented, Occupied or used for transient or hotel purposes. For purposes hereof, transient purposes shall be defined as any Lease, rental or Occupation of a Residence by any person other than an Authorized Occupant or Authorized Corporate Occupant, for a period of less than thirty (30) consecutive days, except as expressly permitted below for Guests. All Leases shall include an acknowledgement by the Lessee that it has received and reviewed the Governing Documents and a covenant by the Lessee to comply with the terms of the Governing Documents.

Within ten (10) days after executing a Lease agreement for the Lease of a Residence, the Owner shall provide the Board with: (1) a copy of the executed Lease; (2) the names, ages, phone numbers, e-mail addresses, work locations, and work phone numbers of all of the Occupants of the Residence; (3) the Owner's primary residence address and phone number, e-mail address, work location and work phone number; and (4) such other information required by the Board. The Owner must provide the Lessee copies of the Governing Documents. The Owner must keep the Board of Directors informed in writing of the Owner's current mailing and e-mail address for notice at all times when such Owner's Residence is being Leased.

(iii) Compliance with Declaration, Bylaws, and Rules and Regulations. All Lessees and Occupants shall comply with all provisions of the Governing Documents and shall control the conduct of all other Occupants and guests of the Leased Residence in order to ensure such compliance. The Owner shall cause all Occupants of his, her or its Residence to comply with this Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Residence are fully liable and may be sanctioned for any such violation. If the Lessee, or a person living with the Lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and/or the Lessee, and such fine may be assessed against either the Owner and/or Lessee, at the Board's option. If the Board determines to first assess the fine to the Lessee, and the fine is not paid by the Lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Community Association of the Lessee's failure to pay the fine.

If a Residence is Leased or Occupied in violation of the Governing Documents, or if the Owner, Lessee, any Occupant, invitee or any guest violates same, such violation shall be deemed to be a default under the terms of any Lease or Occupancy agreement for the Residence and the Community Association may require the Owner to evict the Occupants. In addition to all other remedies permitted by this Declaration, such default authorizes the Owner and/or the Community Association, as the Owner's delegate and attorney-in-fact, to terminate the Lease and/or Occupancy and to evict all Occupants, without liability, in accordance with North Carolina law. In any such eviction action by the Community Association, the Community Association may terminate the Occupancy rights upon fifteen (15) days' notice, notwithstanding any notice requirement in the Lease or Occupancy terms. Once the Community Association invokes its right to terminate the Lease or Occupancy and evict the Occupant(s), the Owner no longer has the right to extend or revive the terminated Lease or Occupancy in anyway.

(iv) Liability for Assessments. When an Owner who is Leasing his, her or its Residence fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the Lessee during the period of delinquency. Upon request by the Board, Lessee shall pay to the Community Association all unpaid annual and special assessments and other charges payable during and prior to the term of the Lease and any other period of Occupancy by Lessee. However, Lessee shall not be required to make such payments to the Community Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by Lessee shall reduce, by the same amount, Lessee's obligation to make monthly rental payments to lessor. If Lessee fails to comply with the Board's request to pay assessments or other charges, Lessee shall pay to the Community Association all amounts authorized under the Declaration as if Lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which the Owner would otherwise be responsible.

(v) Use of Community Common Area. The Owner transfers and assigns to the Lessee, for the term of the Lease of a Residence, any and all rights and privileges that the Owner has to use the Community Common Area as a result of owning that Residence, including but not limited to, the use of any and all recreational facilities and other amenities.

(vi) Required Lease Provisions. Any Lease of a Residence shall be required to contain or incorporate by reference the terms set forth in Section 23 (b)(iii) and (iv) above. If such language is not expressly contained or incorporated by reference therein, then such language shall be incorporated into the Lease by the existence of this covenant, and the Lessee, by Occupancy of the Residence, agrees to the applicability of this covenant and incorporation of the above- referenced language into the Lease.

(vii) Lease Administrative Fee. An annual administrative fee in an amount set annually by the Board of Directors as part of its budgeting process, not to exceed two (2) times the quarterly installment of the General Assessment applicable to the Residences for such year, shall be assessed to each Residence that is Leased during a calendar year. Payment is due on January 1st for Residences Leased as of that date and due within ten (10) days after the execution of a Lease after January 1st of any year.

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. 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 were 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 24. 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 25. 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 sole discretion, except alarm devices used exclusively for security purposes is prohibited.

Section 26. Timeshares. Unless expressly authorized by the Board and 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 27. 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 28. 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 29. 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.

Section 30. Garage Sales. No garage sales, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Community without the prior written consent of the Board of Directors. If permitted, such activities shall be subject to all reasonable conditions the Board may impose.

Section 31. Woodpiles, Equipment, Grills, Fire pits and Clotheslines. All woodpiles, ARC-allowed recreational equipment, other similar items, grills and firepots shall be located or screened so as to be concealed from view from any street or road, or as otherwise approved by the ARC. Outdoor clotheslines are prohibited in the Community.

Section 32. Air Conditioning Units. No window air conditioning units that protrude beyond the exterior surface of the dwelling may be installed on any Lot. Condensing units for air conditioners shall only be located in the rear or along the side of a dwelling.

Section 33. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property within the Community, except for ARC-approved artificial vegetation natural in appearance and in good repair. Exterior sculptures, benches, fountains, and similar items may not be placed in the front yard of a Lot or on the front exterior of a dwelling without the prior written approval of the ARC, which may establish rules to limit the size and number of such items on the exterior of a Lot.

Section 34. Flags. Notwithstanding anything to the contrary herein, one national flag of the United States not exceeding fifteen (15) square feet in size may be displayed on a flag holder located on the exterior of a Lot. No flagpoles shall be permitted, and no flag shall be displayed in a manner inconsistent with any provision of the Freedom to Display the American Flag Act of 2005, or any other applicable law. Any other or additional flag may not be placed in the front yard of a Lot or on the front exterior of a dwelling without the prior written approval of the ARC, and no such flags over fifteen (15) square feet will be permitted, without the prior written approval of the ARC.

Section 35. Abandoned Personal Property. Personal property, except for personal property owned by the Community Association, is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty four (24) hours upon any portion of the Community Common Area or on the sidewalks or rights-of-way located within the Community. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Community Common Area in violation of this Section, then the Board may remove and either discard or store the personal property in a location that the Board may determine. If personal property is removed in accordance with this Section, neither the Community Association nor any officer or agent of the Community Association shall be liable to any Person for any claim of damage resulting from the removal. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 36. Streams. No stream that runs across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board.

ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of 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 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 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. 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 the Community Association shall repair any damage 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 attorney's 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 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. 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. 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. 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. Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the Community Association the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within a Community Common Area to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Common Area; (b) draw water from such sources for purposes or irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. 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 any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section. Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Community Association, its assigns and designees, the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Community Common Area and Lots (but not the Residences thereon) adjacent to or within twenty (20) feet of ponds, lakes, dams, streams and wetlands in order to: (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the ponds, lakes, streams, and wetlands within the Common Area; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials upon such areas. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

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, (a) 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 (b) to define the limits of any such easements.

Section 14. Liability for Use of Easements. No Owner shall have a claim or cause of action against 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: AUTHORITY AND ENFORCEMENT

Section 1. Compliance with Governing Documents. All Owners, Occupants and all of their family members and guests shall comply with the Governing Documents. The Community Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Governing Documents directly against all Violators. However, if an Owner's family member, guest or Occupant violates the Governing Documents, the Community Association, in its sole discretion, is permitted to enforce the terms of the Governing Documents against: (1) only the Owner; (2) only the violating family member, tenant, guest or Occupant; or (3) both the Owner and the violating family member, tenant, guest or Occupant. Notwithstanding anything herein to the contrary, the Owner of the Lot is always ultimately responsible for his or her own actions and the actions of all family members, Occupants, guests, and lessees (and their family members and guests) of such Lot.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Governing Documents. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under North Carolina law against the Violator before the Community Association intervenes and commences enforcement action against such Violator.

Section 2. Suspension and Fining Procedure. Except as provided below, before imposing fines or suspending the right to use the Community Common Area or the right to vote, the Community Association shall give a written violation notice to the Violator as provided below.

(a) **Violation Notice.** The written violation notice to the Violator shall:

- (i) Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (ii) Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of suspension(s) or the fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

(b) **Violation Hearing.** If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing to:

(c) **No Violation Notice and Hearing Required.** No violation notice or violation hearing shall be required to:

- (i) impose late charges on delinquent assessments;

- (ii) suspend a violating Owner's voting rights if the Violator's Lot is shown on the Community Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (iii) suspend a Violator's right to use the Community Common Area if the Violator's Lot is shown on the Community Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Violator's right to use the Common Area shall be automatic (which shall allow the Community Association to tow and/or boot a Violator's vehicle located on the Common Area without complying with the Suspension and Fining Procedures described above);
- (iv) engage in self-help;
- (v) impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or
- (vi) impose fines if the same violation occurs again on the same Lot, in which case fine(s) may be imposed on a per diem basis without any further notice to the Violator.

Section 3. Injunctions and Other Suits at Law or in Equity. All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Governing Documents. Therefore, in addition to all other enforcement rights granted herein, the Community Association and/or Declarant are hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or correct any violation.

Section 4. Costs and Attorney's Fees for Enforcement Actions. In any action taken by the Community Association and/or Declarant to enforce the Governing Documents, the Community Association and/or Declarant shall be entitled to recover from the Violator and Lot Owner, any and all costs incurred by the Community Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Lot.

Section 5. Failure to Enforce. The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Community Association or Declarant for failure to enforce if the Board of Directors determines that:

- (a) the Community Association's position is not strong enough to justify taking enforcement action;
- (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person;
- (c) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;

(d) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under North Carolina law; or

(e) the Community Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Community Association does not enforce against the Owner and enforces only against the violating family member, guest or Occupant.

ARTICLE 14: 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 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 Declarant, if 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 Declarant's right to amend this Declaration if such amendment is in the discretion of 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 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 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 Declarant or the Class B Member without the written consent of 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 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. Mandatory Binding Arbitration of Disputes. All "Disputes" (as hereinafter defined) between the Community Association and an Owner or Owners shall be submitted for resolution by binding arbitration to the American Arbitration Association ("AAA") in accordance with this Section. "Dispute," for purposes of this Article 14, Section 6(a), means any dispute, disagreement, action, claim or controversy between two or more parties that involves: the authority of the Board, under any law or under this

Declaration, the Articles or Bylaws to: (1) require any Owner to take any action, or not to take any action, involving that Owner's Lot; or (2) alter or add to a Community Common Area; or the failure of the Community Association, when required by law or this Declaration, the Articles or By-Laws to: (1) properly conduct elections; (2) give adequate notice of meetings or other actions; (3) properly conduct meetings; or (4) allow inspection of books and records.

Notwithstanding anything to the contrary herein, "Dispute" shall not include any disagreement that primarily involves title to any Lot or Community Common Area; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment or any other charge levied against a party; actions brought by the Community Association to enforce the provisions of the Governing Documents against any Owner(s); or the eviction or other legal action instituted to remove an Occupant from a Lot.

(a) Mandatory Binding Arbitration of Disputes Between Owner and Declarant. All disputes, disagreements, actions, claims or controversies between Declarant and an Owner or Owners, other than a claim seeking injunctive relief, shall be submitted for resolution by binding arbitration to the AAA.

(b) Mandatory Binding Arbitration of Disputes Between Community Association and Declarant. All disputes, disagreements, actions, claims or controversies between the Community Association and Declarant arising out of or relating to: (i) the use, condition, design or construction of all or any portion of the Community Common Areas or the Lots; (ii) the management and operation of the Community Association prior to the date of Turnover, including the administration of this Declaration, or (iii) any other agreements, duties or liabilities as between Declarant and the Community Association including disputes which allege strict liability, negligence or breach of implied, express or statutory warranties, shall be submitted for resolution by binding arbitration to the AAA.

NOTWITHSTANDING THE FOREGOING, EACH OWNER, COMMUNITY ASSOCIATION AND DECLARANT AGREE THAT DISPUTES RELATING TO THE SCOPE, VALIDITY, OR ENFORCEABILITY OF ARTICLE 14, SECTION 6 WILL NOT BE SUBJECT TO ARBITRATION.

(c) Arbitration Procedures. The arbitration will take place in Union or Mecklenburg County, North Carolina. The arbitration will be conducted under the Commercial Arbitration Rules of the AAA. A single arbitrator will be used. Declarant (or the Community Association, if Declarant is not a party to the dispute) shall provide a list of at least five (5) AAA arbitrators and the party or parties opposing Declarant in the dispute (or opposing the Community Association if Declarant is not a party to the dispute) shall select the arbitrator from such list. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect the parties' information and other confidential or proprietary information. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in Union County, North Carolina.

If there is a conflict between this Article 14, Section 6 and the Commercial Arbitration Rules of the AAA, this Article 14, Section 6 shall govern. If the AAA will not administer a proceeding under this Article 14, Section 6 as written, it cannot serve as an arbitration organization. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under Article 14, Section 6 as written. If there is a conflict between this Article 14, Section 6 and any other provision of this Declaration, or any document contemplated to be executed in conjunction herewith, this Article 14, Section 6 shall govern.

(d) Choice of Law and Scope of Arbitrator's Authority. The Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") shall govern this Article 14, Section 6. Interpretation and application of these

procedures shall conform to federal court rulings interpreting and applying the FAA. References to state law shall not be construed as a waiver of any rights of the parties under the FAA or the right of the parties to have the procedures set forth in Article 14, Section 6 interpreted and enforced under the FAA. However, to the extent necessary, and whenever such laws are not in conflict with other provisions of Article 14, Section 6, the arbitrator shall apply Georgia law. The arbitrator's award may be enforced in any court of competent jurisdiction.

WHETHER IN COURT OR IN ARBITRATION, EACH OWNER, THE ASSOCIATION AND DECLARANT AGREE TO WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS TO A JURY TRIAL. THESE WAIVERS ARE MADE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY. THIS WAIVER OF JURY TRIAL SHALL APPLY TO ANY ACTION ARISING OUT OF OR IN ANY WAY CONNECTED TO CRESSWIND AT TWIN LAKES, REGARDLESS OF WHETHER IT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THIS ARTICLE 14, SECTION 6.

EACH OWNER, THE ASSOCIATION AND DECLARANT KNOWINGLY WAIVE ANY RIGHT TO PARTICIPATE IN ANY LITIGATION OR ARBITRATION OF ANY DISPUTE ON A CLASS, CONSOLIDATED, JOINT, OR REPRESENTATIVE BASIS (INCLUDING IN ANY PRIVATE ATTORNEY GENERAL CAPACITY).

(e) Severability. If any clause within Article 14, Section 6 is found to be illegal or unenforceable, that clause will be severed from it, and the remainder of Article 14, Section 6 will be given full force and effect.

(f) Amendment. Without limiting the generality of this Article 14, Section 6 hereof, Article 14, Section 6 shall not be added to, amended, or deleted without the prior written consent of the Declarant.

(g) Interpretation. For purposes of Article 14, Section 6, the term "Community Association," in addition to the definition found in Article 1 shall include the following: any director, officer, manager, employee, agent, authorized signatory, or representative of the Community Association, and any contractor, subcontractor, consultant, design professional, engineer, or supplier who provided labor, services, or materials. For purposes of Article 14, Section 6 (b) and 6(c), the term "Declarant," in addition to the definition found in Article 1, shall include the following: any director, officer, shareholder, partner, member, manager, employee, agent, authorized signatory, or representative of the Declarant, any parent, subsidiary, or affiliate of the Declarant (other than an affiliated mortgage lender), and any contractor, subcontractor, consultant, design professional, engineer, or supplier who provided labor, services, or materials

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 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 Wesley Chapel" Name and Logo. No person shall use the words "Cresswind Wesley Chapel" or the logo for "Cresswind Wesley Chapel" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Owners may use the words "Cresswind Wesley Chapel" 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 Wesley Chapel" 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 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. Exhibit A, Exhibit B, and Exhibit 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.

Section 15. Disclosures. Each Owner and Occupant acknowledges and agrees to the disclosures set forth below:

(a) Adjacent Properties. Declarant makes no representations or warranties regarding the future development of or use of other properties adjacent to or in the vicinity of the Community (collectively "Adjacent Properties"). Any plats, plans, drawings and the like, which purport to depict the Adjacent Properties, or any portion thereof, are merely projections, which are subject to change and do not reflect an actual commitment to develop the Adjacent Properties in any particular manner. Owner shall not rely on any projected plans for the future development of the Adjacent Properties as an inducement to acquire a Lot. Adjacent Properties shall not necessarily be restricted exclusively to residential use but shall be subject only to uses allowed by applicable zoning ordinances, which may include, without limitation, office, retail, schools, and other commercial and/or governmental uses. Further, Adjacent Properties shall not necessarily be restricted exclusively to housing for older persons under HOPA, and specifically, the Adjacent Property which shares an entrance drive to the Community shall not be restricted exclusively to housing for older persons under HOPA and the residents of such Adjacent Property will have easement rights to use the Lakes and multi-use trails located within the Community. No assurances are made that the improvements which may be built on the Adjacent Properties will be substantially identical to the improvements in the Community in any way whatsoever, including but not limited to the quality of construction, the principal materials used in such construction and architectural style.

(b) Thoroughfares. The Community is located adjacent to thoroughfares that may from time to time be improved or widened, and to which additional traffic lights, intersections, turn lanes, signage, and other transportation infrastructure and improvements may be added.

[Signature(s) appear on the following page(s).]

**[BEFORE RECORDING, ATTACH EXECUTED LENDER CONSENT AND
SUBORDINATION AS LAST PAGE.]**

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

DECLARANT:

KH Wesley Chapel LLC,
a Florida limited liability company

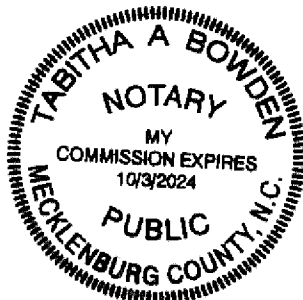
By: The Kolter Group LLC,
a Florida limited liability company,
its sole manager

By: [Signature]
Name: Joshua Donovan
Title: Community Director

STATE OF North Carolina
COUNTY OF Mecklenburg

I, Tabitha A. Bowden, a Notary Public in and for Mecklenburg County and the State of North Carolina, do hereby certify this 15 day of November 2021 that Josh Donovan personally appeared before me this day and acknowledged that he is Community Director of The Kolter Group LLC, a Florida limited liability company, the sole manager of KH Wesley Chapel LLC, a Florida limited liability company, and that he voluntarily signed said instrument on behalf of said limited liability company for the purposes therein by its authority duly given.

WITNESS my hand and notarial stamp and seal.



Tabitha A. Bowden
Notary Public

Notary Typed Name: Tabitha A. Bowden

My Commission Expires: 10/03/2024

[SEAL]

Exhibit A
The Property

Lying and being situate in Union County, North Carolina and being more particularly described as follows:

Tract 1

BEING all of the real property shown on those certain plat(s) entitled "Final Plat - Cresswind Subdivision Phase 1A" dated November 5, 2020 and recorded on June 21, 2021 in Plat Cabinet "P" as Files 976-981 of the Union County Public Registry.

Tract 2

BEING all of the real property shown on those certain plat(s) entitled "Final Plat - Cresswind Subdivision Amenity Center" dated June 28, 2021 and recorded on November 3, 2021 in Plat Cabinet "Q" as Files 224-225 of the Union County Public Registry.

Tract 3

BEING all of the real property shown on those certain plat(s) entitled "Final Plat - Cresswind Subdivision Phase 1B" dated June 28, 2021 and recorded on November 3, 2021 in Plat Cabinet "Q" as Files 226-228 of the Union County Public Registry.

Exhibit B
The Additional Property

Any real property located within Union County, North Carolina may be subjected to the terms of this Declaration in accordance with Article 7.

Exhibit C
Community Association Bylaws

**BYLAWS
OF
CRESSWIND WESLEY CHAPEL COMMUNITY ASSOCIATION, INC.**

ARTICLE I: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1 Name. The name of the corporation is Cresswind Wesley Chapel Community Association, Inc. (the "Association"), a North Carolina nonprofit corporation.

1.2 Principal Office. The initial principal office of the Community Association shall be located in Union County, North Carolina. The Community 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 Community Association may require.

1.3 Definitions. The words used in these Bylaws shall be given their customary, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for Cresswind Wesley Chapel filed, or to be filed, in the Public Records (as amended or supplemented, the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: MEMBERSHIP, MEETINGS, NOTICE, QUORUM, AND VOTING

2.1 Membership. The Community 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. Declarant may establish additional classes of membership as set forth in the Declaration.

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

2.3 Annual Meetings. The first meeting of the Community Association, whether regular or special, shall be held within one year from the date of incorporation of the Community Association. Meetings shall be of the Members. 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 directed by resolution of the Board or upon a petition signed by Members holding at least twenty-five percent (25%) of the total eligible Class A votes in the Association or upon written request by 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 fifty (50) 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. No business shall be transacted at a meeting except as stated in the notice.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Community Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Community 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 a specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a meeting shall also 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 Community 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 Bylaws, 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 electronic voting. If a Lot belonging to a Class A member(s) is shown on the Association's books and records to be more than thirty (30) days past due in any assessment or charge owed to the Association, the Owner of such Lot shall not be eligible to: (1) vote, either in person or by proxy; (2) act as proxy for any other Member; (3) issue a written ballot or written consent; (4) be elected to the Board of Directors; or (5) vote as a Director (if serving on the Board of Directors). In establishing the total number of eligible votes for a quorum, a majority, or any other purposes, such Lot shall not be counted as an eligible vote.

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 the Members, each Member may cast its votes in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner member, manager, or fiduciary 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 Bylaws. 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 Community 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 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 holding ten percent (10%) of the Class A votes entitled to be cast shall constitute a quorum at all meetings of the Community Association.

If a quorum is present at a duly called or held meeting, 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 Community 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 Formal Meeting. In the Board's discretion, any action that may be taken at any annual, regular, or special meeting of the members of the Association may be taken without a meeting if the Association delivers a ballot in writing or by electronic transmission (either shall be deemed a "written ballot") to every Owner entitled to vote on the matter. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

The Association may deliver written ballots by personal delivery, U.S. Mail, facsimile transmission, e-mail, or other electronic means. Owners shall deliver their vote by written ballot to the Association by whatever means is specified by the Board of Directors. All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of Directors; and (3) specify the time by which a ballot must be submitted.

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

A. Composition and Selection.

3.1 Governing Body. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to Directors appointed by the Class B Member or serving as a representative of 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. 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 Community Association signed by such Member, provided that 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 Declarant.

3.2 Number of Directors. The Board shall initially consist of three (3) Directors. Upon conclusion of the Development Period, the number of Directors shall be seven (7). The number of Directors may be changed by resolution of the Board.

3.3 Directors During Class B Membership. For so long as the Class B membership exists, the Class B Member, acting in its sole discretion, shall select the Board Members and the Board Members shall serve at the pleasure of the Class B. Directors appointed by or serving as representatives of the Class B Member or Declarant shall not be subject to the qualifications for Directors set forth in Section 3.1.

3.4 Nomination and Election Procedures.

(a) Nomination of Directors. Except with respect to Directors appointed by the Class B Member, Directors shall be nominated from the floor 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. Directors appointed by or serving as representatives of the Class B Member or Declarant shall not be subject to these nomination requirements.

(b) Election Procedures. Each Member may cast the vote(s) assigned to the Member's Lot(s) for each position to be filled. There shall be no cumulative voting. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office. Notwithstanding any other provision of these Bylaws, not later than the first annual meeting after the termination of Class B membership, the Directors appointed by Declarant shall resign, and the Community Association shall hold an election at which the Class A Members shall be entitled to elect the Directors; provided, however, that during the Development Period, Declarant shall have the right, in its sole discretion, to appoint one of the seven (7) Directors. Three (3) Directors shall serve a term of two (2) years, and three (3) Directors shall serve a term of one year, as such Directors determine among themselves. Upon the expiration of the term of office of each Director elected by the Class A Members, the Class A Members shall elect a successor to serve a term of two (2) years. Upon the expiration of the term of office of a Director appointed by Declarant during the Development Period, Declarant shall have the right, in its sole discretion, to appoint a successor to serve a term of two (2) years.

A member of the Board of Directors elected by the Class A Members shall hold office until his or her respective successor is elected, he or she is removed, or he or she resigns. At the expiration of a Director's term of office, if a successor cannot be elected for any reason, the existing Director shall continue to hold office and begin serving another term until his or her successor is elected to fill the remainder of such new term.

3.6 Removal of Directors and Vacancies.

(a) Removal by the Class A Members. Any director elected by the Class A Members may be removed, with or without cause, by the Class A Members holding at least two thirds (2/3) of the total Class A votes allocated to Lots but shall not be subject to removal solely by the Class B Member. Any director whose removal is sought shall be given at least 10 days' notice prior to any meeting called for that purpose and shall be given an opportunity to be heard at the meeting. 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.

(b) Removal by the Board of Directors. 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 an officer, director, partner, member, employee, or trust officer of a Member who is delinquent) in the payment of any Assessment or other charge due the Community 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.

(c) Vacancies. In the event of the death, disability, or resignation or 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

may elect a successor for the remainder of the term.

This Section 3.6 shall not apply to Directors appointed by the Class B Member nor to any Director serving as a representative of Declarant. The Class B Member or 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 Declarant.

B. Meetings.

3.7 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.

3.8 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 such meeting shall be held during each year.

3.9 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.

3.10 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 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 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, e-mailed, or given to the telegraph company.

3.11 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.

3.12 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.

3.13 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 Bylaws 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.

3.14 Action Without a Meeting. Action taken without a meeting may be taken by less than all members of the board but not less than a Majority of the board. The action must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by no fewer than the required number of Directors and delivered to the corporation for inclusion in the minutes for filing with the corporate records reflecting the action taken. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.15 Compensation. Directors elected by the Class A Members shall not receive any compensation from the Community Association for acting as such unless approved by Members holding a Majority of the total Class A votes in the Community Association at a regular or a special meeting of the Community Association. Any Director may be reimbursed for expenses incurred on behalf of the Community Association upon approval of a Majority of the other Directors. Nothing herein shall prohibit the Community Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Community Association in a capacity other than as a Director pursuant to a contract or agreement with the Community 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 of Directors, excluding the interested director.

3.16 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.

3.17 Open Meetings. Subject to the provisions of Sections 3.12 and 3.17, all meetings of the Board shall be open to all Members, but attendees other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on an attendee's behalf by a Director. In such case, the president may limit the time any individual may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Persons other than Directors, to discuss matters of a sensitive nature, including, but not limited to pending or threatened litigation and personnel matters.

3.18 Powers. The Board shall have all of the powers and duties necessary for the administration of the Community Association's affairs and for performing all responsibilities and exercising all rights of the Community 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.

3.19 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; providing for the operation, care, upkeep, and maintenance of the Community Common Areas;
- (c) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Community 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;
- (d) depositing all funds received on behalf of the Community Association in a bank depository which it shall approve and using such funds to operate the Community Association, provided any reserve funds may be deposited, in the Directors' best business judgment, in depositories other than banks;
- (e) making and amending rules in accordance with the Declaration;
- (f) opening of bank accounts on behalf of the Community Association and designating the signatories required;
- (g) contracting for repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (h) 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 Community Association in accordance with the Governing Documents;
- (i) 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;
- (j) paying the costs of all services rendered to the Community Association;
- (k) keeping books with detailed accounts of the receipts and expenditures of the Community Association;
- (l) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and other books, records, and financial statements of the Community Association as provided in Section 6.4;
- (m) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;
- (n) indemnifying a Director, officer, or ARC or committee member, or former Director, officer or ARC or committee member of the Community Association to the extent such indemnity is required or permitted under North Carolina law or the Governing Documents; and
- (o) serving as members of the Joint Committee established pursuant to any reciprocal easement and cost sharing agreement (or similar agreement) entered into between the Association and any adjacent community association and/or property owner concerning the sharing of common areas.

3.20 Management. The Board may employ for the Community Association a 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. Declarant or an affiliate of Declarant may be employed as managing agent or manager.

The Board may delegate to one 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.

3.21 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 Community 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 Community Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Community Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Community 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.

3.22 Borrowing. The Community 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 Community 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.

3.23 Right to Contract. The Community 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, within and outside the Community.

ARTICLE 4: OFFICERS

4.1 Officers. The officers of the Community 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 or more vice presidents, one or more assistant secretaries and one

(I) 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 officers 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 Community Association at the organizational 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 at any time in its sole discretion with or without cause 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 Community 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 Community 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 Community Association and the Board and for authenticating records of the Community 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 Community 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 3.15.

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 (I) 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 Community Association without the consent of the Board.

ARTICLE 6: MISCELLANEOUS

6.1 Fiscal Year. The fiscal year of the Community 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 Community Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these Bylaws.

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

6.4 Books and Records.

(a) All Owners and any holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) business days before the date on which the Owner or Mortgagee wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect; its Bylaws or restated Bylaws and all amendments to them currently in effect;

(ii) resolutions adopted by either its Members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of Members or any class or category of Members;

(iii) the minutes of all meetings of Members and executed consents evidencing all actions taken or approved by the Members without a meeting for the past three (3) years;

(iv) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years; and

(v) a list of the names and business or home addresses of its current directors and officers.

(b) All Owners and any holder of a first Mortgage shall be entitled and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the Member's demand is made in good faith and for a proper purpose that is reasonably relevant to the Member's legitimate interest as a Member; the Member describes with reasonable particularity the purpose and the records the Member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under Section 5.9(a) above;

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Community Association may impose a reasonable charge, covering the cost of labor and material, for

copies of any documents provided to the Member. Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association Membership, as applicable, at a subsequent meeting.

(c) 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 may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(d) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Community Association and the physical properties owned or controlled by the Community Association. The right of inspection by a Director includes the right to make a copy of relevant documents at the expense of the Community Association.

6.5 Notices.

(a) Method of Giving Notice. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, and other communications under the Declaration or these Bylaws shall be in writing and shall be given via:

- (i) Personal delivery to the addressee; or
- (ii) United States mail, first class, postage prepaid; or
- (iii) Electronic mail; or
- (iv) Facsimile; or
- (v) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

(b) Addressee. Notice sent by one of the methods described in subsection (a) above shall be deemed to have been duly given when sent to:

- (i) If to an Owner, at the address, electronic mail address or facsimile number which the Owner 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 Owner. If to an Occupant, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Lot occupied; or
- (ii) If to Declarant, at Declarant's principal office address as shown on the North Carolina Secretary of State's website, or at such other address as shall have been designated in writing and filed with the Secretary of the Association. Provided, however, that notwithstanding anything to the contrary provided herein, unless Declarant has designated in writing to the Secretary of the

Association an electronic mail address and/or facsimile address for use in delivery of notices to Declarant hereunder, Declarant shall only be obligated to accept requests, demands, or notices given and delivered under these Bylaws by personal delivery or United States Mail first class postage prepaid to the principal place of business of Declarant.

(iii) If to the Association, the Board or the managing agent, at the postal address, facsimile number, or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Owners of any such change in address. Provided, however, that notwithstanding anything to the contrary provided herein, the Association may only be obligated to accept from a member consents, requests, demands, or notices given and delivered under these Bylaws to the principal place of business of the corporation or to an officer or agent of the corporation by electronic transmission only as provided by resolution of the Board of Directors of the corporation.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) above shall be deemed to have been duly given and effective:

(i) if sent by United States mail correctly addressed with first class or higher priority postage prepaid, when deposited with the United States Postal Service;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery or as indicated in a record by the delivery person;

(iii) if sent by electronic mail, upon transmission to an e-mail address at which the Owner has consented to receive notices;

(iv) if sent by fax, upon transmission to a facsimile number at which the Member has designated in writing with the Secretary or property manager;

(v) if by any other form of communication, when transmitted to the Member.

(d) Electronic Notices. Without limiting the manner by which notice otherwise may be given effectively to members, any notice to members given by the Association under these Bylaws shall be effective if given by a form of electronic transmission consented to by the member to whom the notice is given. For purposes hereof, a member's written provision of an e-mail address for such member to the Association's Secretary or property manager constitutes such member's consent to receipt of notices from the Association to such e-mail address.

Any such consent shall be revocable by the member by written notice to the Association. Any such consent shall be deemed revoked if:

(i) The Association is unable to deliver by electronic transmission two consecutive notices given by the Association in accordance with such consent; and

(ii) Such inability becomes known to the secretary or to the property manager or other person responsible for the giving of such notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

6.6 Amendment.

(a) By Declarant. Until termination of the Development Period, Declarant may unilaterally amend these Bylaws for any purpose.

(b) By the Board. The Board shall be authorized to amend these Bylaws 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. §47F-1-101, et seq. and conforming these Bylaws to any mandatory provisions thereof, (ii) to correct scrivener's errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members; and (iii) for the purpose of bringing any provision contained herein into compliance with the Fair Housing Amendments Act of 1988, as more fully set forth in the Declaration. During the Development Period, any such amendments shall require the written consent of Declarant.

(c) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least two-thirds (2/3) of the total Class A votes in the Community Association, and, during the Development Period, the written consent of Declarant.

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

(d) Validity and Effective Date. Any amendment to these Bylaws 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 conclusively to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class B Member without the written consent of the: Declarant, the Class B Member, or any assignee of such right or privilege. If a Member consents to any amendment to the Declaration or these Bylaws, 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.

CONSENT

The undersigned, **REGIONS BANK**, an Alabama state banking corporation, in its capacity as administrative agent on behalf of itself and other lenders ("Beneficiary"), is the holder of that certain Amended and Restated Deed of Trust, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing dated February 3, 2021, recorded in **Book 7977, Pages 700-728** of the Union County NC Register of Deeds (the "Deed of Trust"), which encumbers all of the property described in Exhibit A attached to the foregoing Declaration of Covenants, Conditions and Restrictions for Cresswind Wesley Chapel (the "Declaration"). Beneficiary hereby consents to the foregoing Declaration and consents to the execution, delivery, and recording of the Declaration, and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration.

IN WITNESS WHEREOF, Lender has caused this Consent to be executed effective as of November 15, 2021.

BENEFICIARY:

REGIONS BANK, an Alabama state banking corporation, as Administrative Agent

By: _____

Fred Behnke, Senior Vice President

STATE OF FLORIDA)
COUNTY OF PINELLAS)

THE FOREGOING INSTRUMENT was acknowledged before me by means of ☒ physical presence or ☐ online notarization on July 28th, 2021, by Fred Behnke, as Senior Vice President of **REGIONS BANK**, an Alabama state banking corporation, on behalf of the bank. He ☒ is personally known to me, or ☐ produced _____ as identification.

[NOTARIAL SEAL]

Print Name: Chad Fleming

Notary Public, State of Florida

My commission expires: October 26, 2024

