

WAKE COUNTY, NC 259
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
09/29/2009 AT 14:18:07

BOOK:013711 PAGE:01147 - 01197

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NORTH CAROLINA

WAKE COUNTY

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR CHESWICK SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for CHESWICK SUBDIVISION (this "Declaration") is made this 14th day of September, 2009, by PANTHER ROCK, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant" and CHESWICK BY TERRAMOR HOMES, LLC, a North Carolina limited liability company.

WITNESSETH:

WHEREAS, Declarant and Cheswick by Terramor Homes, LLC are the owners of certain real property in Wake County, North Carolina which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property");

WHEREAS, Cheswick by Terramor Homes, LLC is the owner of Lot 20, Cheswick Subdivision, Phase 1A, Tract 2 as shown on Book of Maps 2008, Page 1131, Wake County Registry, and being the same property conveyed by Declarant to Cheswick by Terramor Homes, LLC by a North Carolina General Warranty Deed recorded in Book 13641, Page 45 Wake County Registry and is executing this Declaration to subject its property owned to the Declaration;

WHEREAS, Declarant is developing a residential community upon the Property, together with such Additional Property as may be subjected to this Declaration, known as Cheswick Subdivision (the "Project"), and will convey Lots (as hereinafter defined) subject to the certain protective covenants, conditions, restrictions and easements as hereinafter set forth;

WHEREAS, Declarant intends to establish a planned community under the North Carolina Planned Community Act, N.C.G.S. §47F-1-101, *et seq.*; and

WHEREAS, Declarant has caused or will later cause to be incorporated under the laws of the State of North Carolina, as a non-profit corporation, CHESWICK HOMEOWNERS ASSOCIATION, INC. to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas (as hereinafter defined), administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the Assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the value of the project, to ensure, for the benefit of each Owner, the specific rights, privileges and easement in the Common Ares, and to provide for the maintenance and upkeep of the Common Areas, as provided in this Declaration and the Organizational Documents.

NOW, THEREFORE, Declarant hereby declares all of the Property described on Exhibit A, including without limitation, every Lot (as hereinafter defined) which is a part of the Property, shall be held, sold, used, occupied, and conveyed subject to the North Carolina Planned Community Act and the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1.01. “Act” is defined as the “North Carolina Planned Community Act”, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements as enacted from time to time.

Section 1.02. “Additional Property” shall mean and refer to additional real estate near or contiguous to the Property, which may be made subject to the terms of this Declaration in accordance with the provisions of Article III of this Declaration.

Section 1.03. “Architectural Control Committee” shall mean a committee of at least three (3) individuals appointed by the Declarant during the Declarant Control Period and after the Turnover Date, by the Board of Directors.

Section 1.04. “Assessment” shall mean and refer to the share of the Common Expenses from time to time assessed against a Lot and its Owner by the Association in the manner herein provided.

Section 1.05. “Association” shall mean and refer to Cheswick Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 1.06. "Association Documents" mean in the aggregate this Declaration, the Articles and Bylaws, and all of the instruments and documents referred to or incorporated therein, as they may be amended from time to time.

Section 1.06. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.07. "Builder" shall mean and refer to Cheswick by Terramor Homes, LLC, a North Carolina Limited Liability Company, its successors and assigns; Declarant shall have the right, at any time, to designate additional or successor Builders.

Section 1.08. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 1.09. "Common Area" shall mean that certain portion of the Property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Residential Owners. Common Area may include Open Space Areas, open space/protective yard, parking areas, and any recreational facilities constructed, erected or installed on the real property that is part of the Common Areas, if any. Any Stormwater Control Measures serving more than one Lot, which are situated outside the public street rights of way, are Common Areas, including any stormwater management area.

Section 1.10. "Common Expenses" shall mean and refer to all sums lawfully assessed against a Lot by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas, expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of this Declaration or the Bylaws; and insurance premiums.

Section 1.11. "Declarant" shall mean and refer to Panther Rock, LLC, a North Carolina limited liability company, its successors and assigns.

Section 1.12. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Cheswick Subdivision and all valid amendments and Supplemental Declarations hereto applicable to the Property recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 1.13. "Deficit" means the difference between the Operating Expenses incurred by the Association during a fiscal year of the Association occurring within the Deficit Funding Period, and the applicable Base Assessments payable by the Residential Owners as provided in Section 6.06 and any assessments payable by Builder.

Section 1.14. "Deficit Funding Period" means the period during which Declarant shall fund the Deficit, as more particularly described in Section 6.06.

Section 1.15. "Dwelling" shall mean and refer to each individual single family place of residence in the Project, and includes the Lot upon which a Dwelling is constructed.

Section 1.16. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

Section 1.17. "FHA" shall mean and refer to the Federal Housing Administration of the U.S. Department of Housing and Urban Development, "HUD" shall mean the U.S. Department of Housing and Urban Development, and "VA" shall mean and refer to the U. S. Department of Veterans Affairs.

Section 1.18. "Governmental Authorities" means the federal government, the State of North Carolina, the County of Wake, and any agency or instrumentality of them having jurisdiction over the Project Land or any portion thereof.

Section 1.19. "Legal Fees" mean reasonable fees for attorney and paralegal services and court costs incurred in connection with any pending or active litigation, claims or other forms of legal action, including the collection of past due Assessments.

Section 1.20. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Wake or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the portion of the Property, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

Section 1.21. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision Final Map of the Property (provided said map has been approved by Declarant or the Association) with the exception of the Common Area and road rights-of-way which are offered for public dedication. Except where otherwise indicated by context, the term "Lot" shall include the improvements on such Lot.

Section 1.22. "Lot-In-Use" shall mean and refer to any Lot on which a Dwelling has been fully constructed and for which a certificate of occupancy or similar certificate has been issued by the appropriate governmental agency.

Section 1.23. "Final Map" or "Final Maps" shall mean and refer to any final subdivision plat or map of the Property or any portion of the Property creating Lots which may then be legally conveyed individually, which is recorded by Declarant in the Wake County Registry hereafter.

Section 1.24. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.25. "Mortgage" means any mortgage, deed of trust and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of any obligation.

Section 1.26. "Mortgagee" shall include lending institutions which are the beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage. Mortgagees shall include, but

not be limited to (i) the successors and assigns of such lending institutions, (ii) any “secondary mortgage market institution” who typically purchase, insure or guaranty mortgages (such as the Federal National Mortgage Association, the Veterans Administration (“VA”), the Federal Housing Administration (“FHA”), HUD, and similar entities), (iii) Declarant, if Declarant holds a mortgage on any portion of the Project Land.

Section 1.27. “Operating Expenses” mean the expenses for which Residential Owners are liable to the Association as described in Section 6.17 and the Association Documents.

Section 1.28. “Organizational Documents” shall mean and refer to the Articles of Incorporation and Bylaws of the Association, and all lawful amendments thereto.

Section 1.29. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including Declarant.

Section 1.30. “Person” means any individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

Section 1.31. “Project” means Cheswick Subdivision, the residential community to be constructed upon the Property.

Section 1.32. “Property” shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference and such additions thereto as may hereafter be annexed and brought within the jurisdiction of the Association.

Section 1.33. “Registry” shall mean and refer to the Wake County Register of Deeds.

Section 1.34. “Residential Owner” means the owner of fee simple title to a Dwelling (but does not include Declarant or Builder or a Person exercising Declarant rights with regard to Assessments payable to the Association during the Deficit Funding Period).

Section 1.35. “Stormwater Control Measures” shall mean and refer to the stormwater facilities situated outside the public street rights-of-way and serving more than one Lot and located on the Property as private drainage easements or stormwater management areas designated on recorded Final Maps of the Property.

Section 1.36. “Subdivision Plan” is defined as the most current development plan approved by the local municipality for any portion of the Property or the Additional Property, including a subdivision plan, site plan, group housing plan or cluster unit development plan. When two or more Subdivision Plans are approved for the same portion of the Property (for

example, a phase or section within a cluster unit development), the most current and most specific plan controls.

Section 1.37. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the offices of the Register of Deeds of Wake County, to bring Additional Property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described below.

Section 1.38. “Total Planned Dwellings” means the total number of Dwellings planned for the Project by the Subdivision Plan as may be modified from time to time with the approval of the Governmental Authorities, which currently is 208 Dwellings.

Section 1.39. “Town” shall mean and refer to the Town of Knightdale, North Carolina.

Section 1.40. “Turnover Date” means the earlier of (i) the date when ninety percent (90%) of the Total Planned Dwellings have been conveyed to a Residential Owner, or (ii) the date on which Declarant records in the Public Records a document relinquishing its control of the Association to the Members.

ARTICLE II
PLAN OF DEVELOPMENT

Currently, Declarant plans to develop a total of two hundred eight (208) Lots upon the Property, which number may be subject to change as development of the Project progresses. Declarant may add and develop Additional Property as part of the Project in accordance with Article III. Declarant’s general plan of development for the Property contemplates the construction of Dwellings thereon and, further, that various improvements will be constructed on other portions of the Property which will enhance the Project and benefit the Residential Owners, however there is no obligation imposed by this Declaration on the Declarant or any Builder to build a Dwelling on any particular Lot or portion of the Property. The general plan of development further contemplates that such Dwellings shall be whatever types of structures Declarant may choose, subject to the applicable zoning and density requirements of the applicable Governmental Authorities and all other applicable laws and regulations. Declarant’s general plan of the Project is reflected by the Subdivision Plan and may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to the Project. Declarant reserves the right to increase or decrease the number of Lots or Dwellings reflected and/or permitted by the Subdivision Plan as approved by the Town in accordance with applicable law, and such change shall not require an amendment to this Declaration.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 3.01. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be held, sold, used, occupied, transferred,

mortgaged and/or conveyed by the Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, provisions of the Act, charges and liens set forth in this Declaration.

Section 3.02. Addition of Property by Declarant.

(a) Declarant may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the offices of the Register of Deeds of Wake County, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Any such Supplemental Declaration need only be executed by Declarant and the Owner of the Additional Property (if not the Declarant) being subjected to this Declaration, and shall not require the execution, joinder, or consent of any other party whatsoever. The rights set forth in this subsection (a) may be exercised by Declarant at any time and from time to time until the Turnover Date.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein and may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property.

(c) In addition to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any phase, section or portion of the Property owned by Declarant to additional covenants, conditions, restrictions, easements, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Wake County covering only such phase, section or portion of the Property.

(d) Declarant is not obligated to add to the Project, to develop any Additional Land under a common scheme, or be prohibited from changing development plans with respect to future portions of the Project comprised of any Additional Land. All Residential Owners by acceptance of a deed to their Dwellings and Lots, consent to any change, rezoning or addition made by Declarant and shall evidence such consent in writing if requested to do so by Declarant at any time without obviating the effect of this provision.

(e) Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

(f) Any annexation of Additional Property or removal of any portion of the Property pursuant to Section 3.02 (a) or Section 3.02 (c) shall first be approved in writing by the Town Attorney.

Section 3.03. Annexation of Additional Property by Association. After the Turnover Date, upon the vote or written consent of seventy five percent (75%) of the votes held by the entire Membership of the Association, any real property which is contiguous to the Property or which is contiguous with a public or private street adjacent to the Property may be brought under the provisions of this Declaration and thereby added to the Project, provided that the annexation of such real property is for the purposes of reflecting changes or modifications to the Site Plan which have been approved by the appropriate Governmental Authorities. To the extent that any contiguous property approved for annexation by the Members after the Turnover Date is thereafter made part of the Project, reference herein to the Property shall be deemed to include such Additional Property. The annexation of Additional Property by the Association shall follow the following procedure:

(a) Annexation of Additional Property shall be accomplished by recording in the Wake County Registry a Declaration of Annexation duly executed by the Association, describing the lands annexed and incorporating the provisions of this Declaration either by reference or by fully setting out said provisions of this Declaration. The Additional Property shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation. Upon annexation, the land shall be used only for residential and ancillary purposes and shall be subject to this Declaration, and all Owners shall automatically become Members of the Association.

(b) The additions authorized above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Property in the Wake County Registry which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Property and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including, but not limited to, Assessments as herein determined. Such Supplemental Declarations, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration. At the time of the filing of each Supplementary Declaration, there shall be recorded in the Wake County Registry a Final Map or Final Maps which show the boundary line of each Lot annexed pursuant to such Supplementary Declaration and which delineates all Common Area annexed pursuant to such Supplementary Declaration. All Common Area situated within the Additional Property shall be deeded to the Association in the same manner as set forth in this Declaration.

(c) The obligation for Residential Owners of Lots in any portion of the Additional Property to pay the Assessments described in Article VI hereof shall commence upon the filing of the Supplementary Declaration in the Wake County Registry annexing such portion. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Property, and such voting rights shall commence as of the date of the filing of the Supplementary Declaration.

(d) Any annexation of Additional Property pursuant to this Section 3.03 shall first be approved in writing by the Town Attorney.

Section 3.04 Common Area within Additional Property. If any Additional Property is subjected to this Declaration as permitted in this Article III, any Association Additional Property located within such newly annexed portion of the Additional Property shall be conveyed to the Association as provided in Section 4.01.

Section 3.05 HUD/VA Approval. If prior to the Turnover Date, the Project is subject to any requirements of VA, FHA, the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency that insures, guaranties, or purchases mortgages, and such requirements make the annexation of any Additional Land subject to the approval of such agency, then the annexation of any such Additional Land will require the prior approval of such agency.

Section 3.06. Withdrawal. Prior to the Turnover Date, Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any Person, other than the Town Attorney, for the purpose of removing certain portions of the Project then owned by Declarant or Builder from the provisions of this Declaration to the extent that such real property was included originally in error, or as a result of changes in the Site Plan for the Project.

ARTICLE IV
PROPERTY RIGHTS

Section 4.01. Title to the Common Area. Declarant hereby covenants for itself, its successors and assigns that in accordance with the Act it will convey fee simple title to the Common Area within any portion of the Property shown on the same Final Map to the Association prior to the conveyance of any Lot within such portion of the Property, which Common Area shall include any private roads or drives which may have been previously created free and clear of all encumbrances and liens, except utility and drainage easements and those easements stated in Article XII. The Common Area shall be preserved for the perpetual benefit of the Owners of the Lots, and the Common Area is restricted against private or public ownership for any reason other than as provided by the Act. Common Area shall not be subsequently subdivided or conveyed by the Association except as permitted by and in accordance with this Declaration, the Act and the ordinances, rules, regulations and procedures, including variances, of the local municipality.

Section 4.02. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and a right and easement over the Common Area for access, ingress and egress to and from streets, parking areas, walkways and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Admission and Other Fees: Subject to the Act and to ordinances of the Governmental Authorities, if any, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of recreational facilities, if any, which may constitute a portion of the Common Area;

(b) Suspension of Use of Common Area: The right of the Association to suspend the voting rights and right to use any of the recreational facilities, if any, which may constitute a portion of the Common Area by a Residential Owner, his family, occupants, tenants, guests and invitees for any period during which any Assessment against his Lot remains unpaid. Such rights also may be suspended, after reasonable notice and hearings, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for any infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;

(c) Borrowing for Improvements: The right of the Association, in accordance with its Organizational Documents and the Act, to borrow money for the purpose of constructing, repairing or improving the Common Area and its facilities, and in aid thereof, with the assent of Members entitled to cast at least eighty percent (80%) of the votes of the entire membership, but in any event not less than sixty-seven percent (67%) of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder;

(d) Dedication and Transfer of Common Area: Except as restricted by applicable law, including but not limited to the ordinances, regulations and procedures, including variances of the local municipality, the right of the Association to dedicate or transfer all or any part of the Common Area, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, and provided that (i) such transferee agrees to maintain such Common Area; and (ii) said dedication or transfer shall be approved as provided herein. No such dedication or transfer shall be effective unless Members entitled to cast at least eighty percent (80%) of the votes of the entire membership, but in any event not less than sixty-seven percent (67%) of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Act and the ordinances, regulations and procedures, including variances of the local municipality, have been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;

(e) Guests: The right of the Association to limit the number of guests that a Member may allow to use the Common Area and facilities, if any;

(f) Use of Common Area: The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and facilities, if any, by the Members and others and to formulate, publish, impose and enforce rules and regulations and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules an regulations concerning parking;

(g) Easements: The right of the Declarant, so long as the Declarant owns a Lot, with regard to the Property which may be owned for the purpose of development, to grant easements

in and to the Common Area and facilities, if any, to any public agency, authority, or any utility for such purposes as benefits the Property or any portion thereof;

(h) Declarant's Rights to Use Common Area: Declarant, hereby expressly reserves for both Declarant and Builder, the right to use the Common Area, the Lots and the unsold Dwellings in connection with the sale and marketing by Declarant and Builder of Dwellings or Lots in the Project, including, but not limited to, the holding of sales and marketing meetings, sales promotions and related activities.

(i) Exchanges: The right of the Association, as provided by and consistent with the local municipal laws and regulations, as the same may be amended from time to time, to exchange all of part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Act; and

(j) Rules and Regulations: The right of the Association or Board to formulate, publish, impose and enforce rules and regulations as provided by this Declaration for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

. Section 4.03. Delegation of Use. Subject to Section 4.02 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area to the members of his family, his lawful tenants, contract purchasers who reside on such Owner's Lot and to his guests, invitees and licensees.

Section 4.04. Parking Rights. If a Lot is improved with a garage and/or is served by a driveway for which an easement is provided under this Declaration, then each of the following areas shall constitute an assigned parking space for such Lot: the garage, the driveway and the space in the common parking areas, if any, in front of such driveway. Residential Owners of Lots, members of their family, their guests or tenants shall not be permitted to park any vehicles on the streets of the Property. Except by Declarant and Builder for use as a sales model, office, etc., garages shall be used for parking of motor vehicles and shall not be used as storage areas nor converted to other uses, such as conversion to living area. The Board may regulate all parking on the Common Areas including but not limited to the parking of boats, trailers, and other such items on the Common Areas. No boats and other water craft, trailers, campers, tractors, trucks other than pickup trucks rated at three-fourths (3/4) tons or less, and motor vehicles other than passenger motor vehicles for eight (8) or fewer passengers shall be parked within the right of way of any street within the Property, nor shall any of these be regularly parked on the Property except in an enclosed garage or in areas on the Property designated by the Board. No inoperable motor vehicles shall be regularly stored on any Lot or on the streets of the Property. The Board may from time to time adopt appropriate rules for the temporary parking of any of these items on the Property.

Section 4.05. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, including but not limited to the Amenities and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Residential Owners prior to their effective date. Such rules and regulations shall be binding upon the Residential Owners (with the exception of the

Declarant or Builder), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice and opportunity to be heard, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Residential Owner's rights to use the Common Area. All rules and regulations shall be uniform with respect to the Lots. Notwithstanding anything to the contrary in this Declaration, the Board of Directors may not suspend an Residential Owner's right of ingress and egress over the Common Areas and right to the use of parking spaces as provided in this Declaration.

ARTICLE V
THE ASSOCIATION

5.01. Membership. Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Association and the Members shall be governed by the Bylaws. In addition, as long as Declarant owns any part of the Property, Declarant shall be a Member of the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Property as a planned community under the provisions of the Act, all Persons who are entitled to distributions of proceeds under the Act shall be Members of the Association.

5.02. Membership Classes. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all Owners, including the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant or its designated assign, and shall be entitled to three (3) votes for each Lot owned by the Class B Member, until the Turnover Date. Thereafter, Declarant will exercise votes only as to its Class A Membership. The Class B membership shall be reinstated if before December 31, 2027, Additional Property is annexed to this Declaration as provided in Article III.

5.03 Declarant Control Period. "Declarant Control Period" means the period of time during which the Declarant shall at all times be entitled to appoint and remove the Association's Board of Directors and the officers of the Association, and during which the Class A Members shall have no right to nominate, elect, or remove, or exercise any vote to nominate, elect, or remove, the Board of Directors, such period of time beginning on the date that the Association is incorporated and ending at the Turnover Date. During the Declarant Control Period, the Board

shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as determined by the Board in its sole and absolute discretion, and those acts that the Act or other applicable laws provide may not be undertaken unilaterally by the Board, such as, to the extent required, ratification of the budget, borrowing of funds to pay operational costs of the Association and conveying fee simple title to all or any part of the Common Area.

ARTICLE VI

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 6.01. Affirmative Covenant to Pay Operating Expenses. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in this Declaration and the Organization Documents; and (ii) maintain, operate and preserve any Common Area for the welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Dwelling and Residential Owner, the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Base Assessments, Special Assessments, Individual Expense Assessments, and Working Capital Contributions. Each Residential Owner, by acceptance of a deed or other instrument of conveyance of a Dwelling from Declarant or Builder, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Operating Expenses in accordance with the provisions of the Association Documents.

Section 6.02 Establishment of Liens. Any and all Assessments made by the Association in accordance with the Association Documents with Interest thereon and costs of collection (including, but not limited to, Legal Fees) are declared to be a charge and continuing lien upon each Dwelling against which each such Assessment is made. Each Assessment against a Dwelling (together with Interest thereon and costs of collection) shall be the personal obligation of the Residential Owner thereof. Said lien shall be effective only from and after the date a written, acknowledged statement of the Board setting forth the amount due to the Association as of the date the statement is signed, is recorded in the Public Records. The Association may record such statement at any time following the expiration of thirty (30) days following the date such Assessment(s) or installment(s) thereof became due and payable. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Where a Mortgagee obtains title to a Dwelling as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such Mortgagee shall not be liable for the share of Assessments pertaining to such Dwelling that became due prior to the acquisition of title by such Mortgagee as a result of the foreclosure or deed in lieu thereof, unless the Assessment is secured by a claim of lien for Assessments recorded prior to the recording of the applicable mortgage.

Section 6.03. Amount of Base Assessment. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Association Documents. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) shall be

apportioned equally among the Dwellings by dividing the total anticipated Operating Expenses as reflected by the Budget, by the total number of Dwellings, with the quotient thus arrived at being the "Base Assessment". Provided, however, the first Budget and all subsequent Budgets prepared during the Deficit Funding Period referred to below, shall be based upon a projection of the total Operating Expenses at full build-out of the Project and the Base Assessment shall be determined by dividing the amount of the total anticipated Operating Expenses at full build-out by a number equal to seventy-five percent (75%) of the Total Planned Dwellings. On any Budget, the Board shall have the right to make adjustments to the amount of the total Operating Expenses anticipated at full build-out of the Project or any component thereof, from the amounts reflected on the previous Budget. Such adjustments shall be made based on the Board's reasonable determination of actual or potential increases or decreases in the costs associated with the services and materials covered in the Budget, however, such adjustments shall not increase the Base Assessment by more than twenty percent (20%) more than the previous years Base Assessment without a vote of the Membership. Accordingly, the amount of the Base Assessment may vary from year to year during the Deficit Funding Period, as long as the Base Assessment is calculated according to the formula described in this Section.

Within 30 days after adoption of a Budget, the Board shall provide to all Residential Owners, a summary of the Budget and a notice of the meeting to consider ratification of the Budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The Budget is ratified unless at that meeting, ninety percent (90%) or more of the Residential Owners reject the Budget. If the Budget is rejected, the Budget last ratified by the Residential Owners or in effect for the preceding fiscal year of the Association, shall be continued until such time as the Residential Owners ratify a subsequent Budget adopted by the Board.

Section 6.04. Special Assessment. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Association Documents, those Assessments which are levied for capital improvements which include the costs of constructing or acquiring Improvements on or for the Common Area or the costs of reconstructing or replacing such Improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Dwellings shall be paid by the Residential Owners in addition to any other Assessments. Special Assessments shall be assessed in the same manner as the Base Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. In any fiscal year of the Association after the Turnover Date, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. In any fiscal year of the Association prior to the Turnover Date, the levying of any Special Assessment which exceeds five percent (5%) of the budgeted Operating Expenses of the Association for that fiscal year, shall require the affirmative assent of at least two-thirds (2/3) of all votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the Turnover Date in an amount equal to 5% or less of the budgeted Operating Expenses of the Association for a fiscal year may be levied by the Board without the approval or consent of the Residential Owners or any other party.

Section 6.05. Individual Expense Assessments. Individual Expense Assessments include any Assessment levied against a Residential Owner as a result of such Residential Owner's use, maintenance, or treatment of the Common Area or such Residential Owner's failure to comply with the Association Documents, including, but not limited to, non-compliance of Dwellings and any other Improvements or personal property contained therein with the standards set forth in the Association Documents. The amount of the Individual Expense Assessment(s) shall be equal to the amount of any additional costs and expenses incurred by Declarant or the Association as a result of such Residential Owner's failure or refusal to comply with the Association Documents. The Individual Expense Assessment and any late charges relating thereto shall be assessed and collected and enforced in the same manner as any other Assessments hereunder as provided herein. Individual Expense Assessments shall be in addition to and not part of any other Assessment. For the purposes of this Section, the term "Residential Owner" shall also mean any such Residential Owner's family members, guests, or lessees, and such lessee's family members, or guests.

Section 6.06. Deficit Funding Period. Declarant covenants and agrees with the Association and the Residential Owners that for the period ("Deficit Funding Period") commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the date upon which seventy five percent (75%) of the Total Planned Dwellings have become certified for occupancy by the applicable Governmental Authorities, or (ii) the date that is five (5) years after the date this Declaration is originally recorded in the Public Records, that (a) the Base Assessment will be determined by spreading the total anticipated Operating Expenses projected at full build-out of the Project as set forth in the Budget, by a number equal to 75% of the Total Planned Dwellings; and (b) Declarant will pay the "Deficit," being the difference, if any, between the Operating Expenses incurred by the Association during the Deficit Funding Period, and the Base Assessments paid by other Residential Owners.

During the Deficit Funding Period, Declarant shall not be obligated to pay any Assessments with respect to any Dwellings owned by Declarant. Declarant hereby reserves the right to extend the Deficit Funding Period to a date ending not later than the Turnover Date at Declarant's sole election by providing written notice to the Association of such election at least thirty (30) days prior to the expiration of the current Deficit Funding Period.

Declarant's obligation to fund the Deficit during the Deficit Funding Period as set forth above is hereby declared to be a charge and continuing lien upon each Lot owned by Declarant. Said lien shall be effective only from and after the time of the recordation in the Public Records of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, Declarant shall be entitled to a satisfaction of the statement of lien in recordable form.

Section 6.07. Assessments for Unimproved Lots. Although any Lot or Dwelling owned by Builder which is not a Lot-In-Use is not subject to Base Assessments, Special Assessments or Individual Assessments, an Assessment for any Lot or Dwelling owned by Builder which is not a Lot-In-Use shall be levied on such Lot or Dwelling in an amount equal to two hundred dollars (\$200.00) per year for each Lot or Dwelling. Upon a Dwelling becoming certified for occupancy by issuance of a certificate of occupancy from the Governmental Authorities, such Dwelling

shall become subject to the regular Base Assessment (and other Assessments applicable to a Dwelling owned by a Residential Owner even if such is owned by Builder) determined as provided in Section 6.03 above.

Section 6.08. Working Capital Contribution. Each Residential Owner who purchases a Dwelling from Declarant or Builder, shall pay to the Association at the time title is conveyed to such Residential Owner a "Working Capital Contribution". The Working Capital Contribution shall be an amount equal to a six (6) months share of the Base Assessment. The purpose of the Working Capital Contribution is to insure that the Association will have cash available for initial start up expenses including, but not limited to Operating Expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of Base Assessments and shall have no effect on future Base Assessments. Working Capital Contributions are payable only by the first Residential Owner of a Dwelling and any Residential Owner who is not the first purchaser of a Dwelling, but buys the Dwelling from another Residential Owner shall have no obligation to pay a Working Capital Contribution.

Section 6.09. Collection of Assessments. If any Residential Owner shall fail to pay any Assessment (or installment thereof) charged to such Residential Owner within thirty (30) days after the same becomes due, then the Association shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessments levied on the applicable Dwelling for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
2. To advance on behalf of the Residential Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Residential Owner(s) is liable to the Association. The amount of any funds so advanced, together with Interest and all costs of collection thereof (including, but not limited to, Legal Fees), may be collected by the Association and such advance by the Association shall not waive the Residential Owner's default.
3. To record a written, acknowledged statement of the Board as provided above setting forth the amount due to the Association as of the date the statement is signed in the Public Records and file an action in equity to foreclose its lien at any time after the effective date of such lien. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, or as otherwise provided in the Planned Community Act.
4. To file an action at law to collect said Assessment plus interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.
5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five Dollars (\$25.00) by the Association to defray additional collection costs.

Section 6.10. Collection by Declarant. If for any reason the Association shall fail to collect the Assessments, then prior to the Turnover Date, Declarant shall have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments (and if applicable, any such sums advanced by Declarant); using the remedies available to the Association against a Residential Owner as set forth above, all of which remedies are hereby declared to be available to Declarant.

Section 6.11. Payments by Declarant and Mortgagees. Declarant and any Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Dwellings. Declarant and any Mortgagees shall also have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association when overdue and when lapses in policies or services may occur. Declarant and any Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection. The Association shall execute an instrument in recordable form evidencing the Association's obligation to make such immediate reimbursement and deliver the original of such instrument to each party who is so entitled to reimbursement.

Section 6.12. Rental and Receiver. If a Residential Owner remains in possession of his Dwelling or Lot and the claim of lien of the Association against his Dwelling is foreclosed, the court, in its discretion, may require the Residential Owner to pay a reasonable rental for the Dwelling, and the Association is entitled to the appointment of a receiver to collect the rent.

Section 6.13. Assignment of Claim and Lien Rights. The Association, acting through its Board, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments and any other monies owed to the Association, to any third party.

Section 6.14. Certificate of Payment. Within fifteen (15) days after written request by any Residential Owner or any Mortgagee, the Association shall provide the requesting party a written certificate as to whether or not the Residential Owner of the Dwelling is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration. Any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Dwelling shall be protected thereby.

Section 6.15. Application of Payments. Any payments made to the Association by any Residential Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the Association incidental to the collection of Assessments and other moneys owed to the Association by the Residential Owner and/or for the enforcement of its lien; next towards interest on any Assessments or other moneys due to the Association, as provided herein, and next towards any unpaid Assessments owed to the Association, in the inverse order that such Assessments were due.

Section 6.16. Assessment Payments. The Base Assessments shall be payable in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board.

Section 6.17. Liability of Residential Owners for Individual Assessments. By the acceptance of a deed or other instrument of conveyance of a Dwelling, each Residential Owner thereof acknowledges that the Residential Owners are jointly and severally liable for their own Base Assessment and their applicable portion of any Special Assessments as well as for all Individual Expense Assessments for which they are liable. Such Residential Owners further recognize and covenant that they are jointly and severally liable with all Residential Owners for the payment of Operating Expenses. Each Residential Owner recognizes and agrees that if other Residential Owners fail or refuse to pay their Assessments or any portion thereof, then the remaining Residential Owners may be responsible for increased Base Assessments or a Special Assessment or other Assessments levied as a result of such nonpayment. Any such increased Base Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments in accordance with the Association Documents.

Section 6.18. Operating Expenses. The Assessments for Operating Expenses are payable by each Residential Owner to the Association notwithstanding the fact that Declarant may not have yet conveyed title to the Common Area (if any) to the Association. Operating Expenses shall include the cost of all items or expenses benefiting the Association, the Common Area, the Project, the Lots, the Dwellings, and the Residential Owners, as determined to be an appropriate item of Operating Expense by the Board. Operating Expenses include, but are not limited to, the following expenses, costs, fees and charges:

1. Taxes. Any and all taxes levied or assessed at any and all times by any and all taxing authorities against the Common Area and against any and all personal property and Improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.
2. Utility Charges. All charges levied for utilities providing services for the Common Area whether supplied by a private or public firm, including (but not limited to) all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge. Operating Expenses shall also include any charges levied and paid by the Association for utility services provided to the Dwellings through a master metering system, if any, including but not limited to, water consumption charges for a common irrigation system.
3. Insurance. The premiums on any policy or policies of insurance required to be maintained by the Association under this Declaration and the premiums on any policy or policies the Association determines to maintain even if not required to be maintained by the specific terms of this Declaration.
4. Destruction of Buildings or Improvements on the Common Area. Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Common Area by fire, windstorm, flood or other casualty regardless of whether or not the same is covered in whole or in part by insurance shall be Operating Expenses. In the event insurance money shall be payable, such insurance money shall be

paid to the Association who shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage. The Association shall pay into such account, either in addition to the insurance proceeds or in the event there are no insurance proceeds, such sums as may be necessary so that the funds on deposit will equal the costs of repair and reconstruction of the damage or destruction. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments and subject to the limitations therein set forth with respect to Special Assessments. The Association agrees that it will commence the Special Assessments process to provide the funds for the cost of reconstruction or construction within ninety (90) days from the date the destruction takes place and shall go forward with all deliberate speed so that the construction or reconstruction, repair or replacement, shall be completed within a reasonable period of time from the date of damage.

5. Maintenance, Repair and Replacements. All expenses necessary to keep and maintain, repair and replace any and all buildings, other Improvements, personal property and furniture, fixtures and equipment upon the Common Area, including landscaping, lawn and sprinkler service, in a manner consistent with the standards and requirements in the Association Documents and in compliance with the requirements and regulations of all applicable Governmental Authorities having jurisdiction over the Project. Except for any annual contributions to Reserves, any expenses for replacements which would not be in the nature of normal repair and maintenance shall be the subject of a Special Assessment as provided herein and subject to the limitations thereon set forth with respect to Special Assessments.

6. Additional or Offsite Maintenance. The expenses of any additional maintenance that the Board elects to provide in order to enhance the overall appearance of the Project for or on any property or Improvements located within or outside of the Project, if permitted by the owner of such property or the Governmental Authority responsible for maintaining same.

7. Indemnification. The costs of fulfilling the Association's covenant of indemnification in this Declaration.

8. Administrative and Operational Expenses. The costs of administration of the Association including, but not limited to, any secretaries, bookkeepers and other employees, and the costs of retaining a management company, as necessary to carry out the obligations and covenants of the Association.

9. Compliance with Laws. The cost and expense of the Association's compliance with all applicable laws, statutes, ordinances and regulations of any Governmental Authority, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions, environmental conditions, and fire hazards.

10. Non-Payment of Base Assessments. Funds needed for Operating Expenses due to the failure or refusal of Residential Owners to pay the Assessments levied. Provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of Residential Owners to pay a Special Assessment shall, itself, be deemed to be a Special Assessment.

11. Costs of Reserves. The funds necessary to establish an adequate reserve fund ("Reserve") for periodic maintenance, repair, and replacement of the Common Area and the facilities and Improvements thereupon in amounts determined sufficient and appropriate by the Board from time to time. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Residential Owner shall have any interest, claim or right to such Reserves.

12. Miscellaneous Expenses. The cost of all items or costs or expenses pertaining to or for the benefit of the Association, the Common Area, the Lots, the Dwellings, the Project, or any part thereof, not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

ARTICLE VII
INSURANCE

Section 7.01. Ownership of Policies. All insurance policies upon the Common Area, which shall be purchased by the Association, shall be for the benefit of all the Association and the Residential Owners and their mortgagees as their interest may appear.

Section 7.02. Coverage. The Board of Directors or its duly authorized agent have the authority to and shall obtain insurance for the Common Area, including but not limited to the recreational facilities, if any, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form liability policy covering the Common Area and all damage or injury caused by the negligence of the Association or any of its agents in an amount as determined by the Board of Directors and shall include an endorsement to cover liability of the Residential Owners as a group to a single Residential Owner. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. There also shall be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary. Such policies shall contain clauses providing for waiver or subrogation, if possible. All such insurance coverage shall be written in the name of the Association.

Section 7.03. Fidelity Insurance or Bond. The Association may maintain banker fidelity bonds or other similar insurance coverage for all officers, directors, trustee and employees of the Association and for all other Persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds or to otherwise deal in the assets of the Association to a management agent, such management agent shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as

the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to one-half (1/2) of the total annual assessments on all Lots plus reserve funds accumulate.

Fidelity bonds required herein shall:

- A. name the Association as an obligee;
- B. contain waivers by the issuers of the fidelity bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and
- C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

Section 7.04. Premiums. Premiums for contracts of insurance and fidelity bond coverage purchased by the Association shall be paid by the Association and charged ratably to all Residential Owners as an assessment according to the provisions of Article VI above.

Section 7.05. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Residential Owners, and shall provide that all proceeds thereof shall be payable to the Association, as insurance trustee under this Declaration. The sole duty of the Association, as insurance trustee, shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 7.06. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association, as insurance trustee, shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

- (a) the proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.
- (b) any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

Section 7.07. Planned Community Act. The insurance maintained by the Association and the application, allocation or distribution of the proceeds thereof shall be subject to Section 47F-113 of the Planned Community Act and any other applicable terms and provisions of the Planned Community Act.

ARTICLE VIII
ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

Section 8.01. Purposes. The Property are hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Property; to protect the Residential Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereof of poorly designed or proportioned structures, add structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive Dwellings thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Property and thereby to enhance the values of investments made by the purchasers of Lots therein. It is specifically disclosed that different architectural styles, sizes and prices of Dwellings may be built by the Declarant or its assigns to provide a variety of housing options.

Section 8.02. Plan Approval Requirement. Other than improvements constructed, installed, planted or otherwise made by the Declarant or its assigns, and by Builder, no building, sign, fence, outside lighting, hedge, wall, rook, shingle replacement, walk, antenna, deck, porch, carport, garage, or other structure or landscape planting shall be commenced, constructed, erected, altered, permitted or planted on any Lot, nor shall any addition, alteration, replacement, repair to the exterior or other change in exterior appearance of a Dwelling or Lot be made thereto, nor shall any building, wall, fence, or other structure be rebuilt after destruction by any hazard until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation shall have been submitted to and approved in writing by the Declarant or its assigns before the Turnover Date, and thereafter the Architectural Control Committee.

The Architectural Control Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure, landscaping and materials or location on which the same are built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property.

In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within thirty (30)

days after written request for final approval or disapproval such plans and specifications shall be deemed approved. To the extent not prohibited by the Act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require approval for any improvements, constructed, made, installed or planted by the Declarant, or its assigns, and by Builder, nor to permit interference with the development of the Property by the Declarant, or its assigns, so long as said development follows the general plan of development of the Property approved by FHA and/or VA, if any, or by the local municipality from time to time.

Section 8.03. Architectural Committee. The Board of Directors shall designate the number of and appoint the members of the Architectural Control Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Control Committee, the remaining members of the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time with or without cause, and without prior notice, by the Board.

Section 8.04. Procedures. No improvement shall be erected, remodeled or placed on any Lot, except by the Declarant, or its assigns, or by Builder, until all plans and specifications and a site plan have been submitted to and approved in writing by the Architectural Control Committee as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any improvements situated thereon and drainage arrangement; and
- (d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Control Committee, or matters in which the Architectural Control Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications (including a site plan showing the location of the contemplated improvements on the Lot) for all improvements proposed to be constructed on a Lot shall be submitted to the Architectural Control Committee for approval or disapproval. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the set of plans and specifications (specifically including, but without limitation, the above described site plan) approved by the Architectural Control Committee must again be submitted to the Architectural Control Committee for its inspection and approval. The Architectural Control Committee's approval or disapproval as required herein shall be in writing. Once the Architectural Control Committee has approved the plans and specifications for the proposed improvements, the construction of

such improvements must be promptly commenced and diligently pursued to completion. If such construction is not commenced within the time set therefore by the Architectural Control Committee in the written approval (but in no event later than one (1) year after such approval), such approval shall be deemed rescinded, and before construction of improvements can thereafter be commenced on the Lot in question, the plans and specifications therefore must again be approved by the Architectural Control Committee pursuant to this Article.

The Architectural Control Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Current copies of the architectural standards bulletins shall be available to interested persons at the principal office of the Association for a reasonable cost.

Section 8.05. Enforcement. The Architectural Control Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney fees in connection therewith.

Section 8.06. Conditions. As a condition to the granting of approval of any request made under this Article, the Declarant or the Board or the Architectural Control Committee, as the case may be, may require the Residential Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Residential Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Declarant or the Board as the case may be. Thereafter, the Residential Owner, and any subsequent Residential Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such improvement shall be added to and become a part of the annual assessment or charge applicable to such Lot, and subject to the lien rights provided in this Declaration.

Section 8.07. Grounds for Disapproval/Defects. Denial of approval of such plans, locations or specifications may be based upon any grounds, including purely aesthetic and environmental, which the Declarant, Board of Directors or Architectural Control Committee, as the case may be, in its sole discretion, shall deem sufficient. The Declarant, Board of Directors and Architectural Control Committee shall not be responsible for any deficiencies or defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

Section 8.08. Verification of Compliance with Plans. The Declarant, Board of Directors or Architectural Control Committee, as the case may be, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of improvements, to inspect the work being undertaken and to determine such work is being performed in conformity with the approved

plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 8.09. Limitation of Liability. Neither the Architectural Control Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Residential Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this Article or the Declaration. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, he will not bring any action or suit against the Association, Declarant or Architectural Control Committee to recover any such damages.

Section 8.10. Compensation. No member of the Architectural Control Committee shall be entitled to compensation arising out of services performed pursuant to this Article. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

Section 8.11. Building Location. No building shall be located on any Lot nearer to the front line, rear line or side line than as indicated on the recorded Final Map or per the Governmental Authorities. The Architectural Control Committee may for good cause waive a violation of the set-back requirement provided for herein. This waiver shall be in writing and recorded in the Wake County Registry. The waiver executed by the Architectural Control Committee shall be, when recorded, conclusive evidence of compliance with the requirements of this Article and the Declaration. A waiver is allowed so long as it does not violate local government zoning regulations. Declarant reserves the right to waive in writing any minor violation of this Article, and for purposes hereof, any violation which does not exceed twenty percent (20%) shall be considered a minor violation.

Section 8.12. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Final Map and over the rear ten (10) feet on each Lot and five (5) feet on each side, on each Lot, unless shown in excess of such distances on a recorded Final Map, in which case the Final Map shall control. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Residential Owner of the Lot, except for those improvements that are included as Common Area and those improvements for which a public authority or utility company is responsible. No easement shall exist along an interior Lot line on any Lot on which a house is constructed within an area which would otherwise be an easement, if the placement of the house is permitted in these covenants. So long as Declarant owns at least one Lot within the Property, Declarant reserves the right to waive in writing this rear and side line easement requirement.

ARTICLE IX
MAINTENANCE AND REPAIR

Section 9.01. Association Maintenance of Common Area. Except as otherwise specifically set forth herein, the Association shall repair, maintain and replace any and all Improvements located on the Common Area commencing with the completion of same by Declarant, all Common Areas, and installations not located within a Lot and that are the responsibility of any Owner, included those contemplated in Sections 12.04 and 12.12 . The Improvements shall be maintained in the same condition as originally constructed by Declarant. In the event of any damage or destruction to the Common Area, or to the Improvements and facilities located thereon by fire, storms, acts of God, acts of government, acts of third parties or other calamity, the Association shall be required to rebuild such improvements and facilities as quickly as practicable.

Section 9.02. Maintenance by the Residential Owners.

1. Dwellings and Lots. Each Residential Owner shall maintain his Dwelling and all improvements and personal property upon his Lot in good condition at all times. The exterior of all Dwellings including but not limited to, doors, windows, patio areas, pools, screenings, and awnings shall be maintained in good condition and repair and in a neat and attractive manner. All exterior painted areas shall be painted as reasonably necessary, with colors which are harmonious with other Dwellings. No Residential Owner shall change the exterior color of his Dwelling without the consent of the Architectural Control Committee. All sidewalks, driveways and parking areas within the Residential Owner's Lot or serving the Residential Owner's Dwelling shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary.

2. Association's Right to Perform Maintenance. If a Residential Owner fails to maintain his Lot or Dwelling in accordance with this Declaration, the Association shall have the right, but not the obligation, upon fifteen (15) days' written notice to the Residential Owner, to enter upon the Lot for the purpose of performing the maintenance and/or repairs described in such notice to the Residential Owner, as applicable. Provided, however, if the maintenance or repair is necessitated due to an emergency, the Association shall have the right to perform the maintenance and/ or repairs upon 24 hours advance written notice. The cost of performing such maintenance and/or repairs and the expense of collection (including, but not limited to, Legal Fees) shall be assessed by the Association against the Residential Owner as an Individual Expense Assessment.

ARTICLE X
USE RESTRICTIONS

Section 10.01. Permitted Use. No Lot shall be used for any purpose other than a single family residential Dwelling; provided, however, the Declarant excepts and reserves the right for itself and its assigns and Builder to use any Lot or Dwelling as construction or sales offices and/or models which may be shown to prospective purchasers of Lots. Except by Declarant or Builder, no garage shall be converted or used as a bedroom, storage room or other living space, nor shall the number of bedrooms in a Dwelling on any Lot be increased without the approval of

the Association and the local municipality. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family Dwelling not to exceed two and one-half stories in height and have a private garage for not more than three (3) cars. No attached or detached garage shall be used for human habitation temporarily or permanently.

Section 10.02. No Businesses. Except as specifically provided in this Section, no trade, business, industry, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot or other part of the Property, except that any Residential Owner may lease his Dwelling for residential purposes in accordance with this Declaration if prior approval is granted by the Declarant in writing; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Property and sales of the Lots and the construction and maintenance of Dwellings and other improvements on the Lots, and to the various activities of the Association in furtherance of its powers and purposes. The Declarant and its agents and Builders may use any Lot or Lots and any Dwelling thereon for office, sales or display purposes.

A Residential Owner or occupant residing in a Dwelling on any Lot may conduct business activities within such Dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning requirements without the need for a variance; (c) the business activity does not involve door-to-door solicitation of residents of the Property; (d) the business activity does not, in the reasonable judgment of the Board of Directors, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; (e) the business activity is consistent with the residential character of the Property, does not create a hazardous or dangerous condition nor threaten the security or safety of other occupants of the Property, and is not a nuisance nor an unreasonable annoyance or offensive use, all as may be determined in the sole discretion of the Association's Board of Directors.

The terms "business", "trade", "industry", "occupation" and "profession" as used in this Section, shall be construed to have their ordinary, generally-accepted meanings and shall include, without limitation, any occupation, work or activity which involves the provision of goods or services to persons other than the provider's immediate family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or whether a license is required. The leasing of a Lot in accordance with this Declaration shall not be considered a business or trade within the meaning of this Section.

Section 10.03. Prohibited Structures. No Residential Owner shall at any time place on such Residential Owner's Lot or any other portion of the Property, any mobile, manufactured or modular home, nor shall any tent, shack, barn, other outbuilding, camper or other temporary structure of a similar nature be used as a residence either temporarily or permanently upon any Lot, with the limited exception of construction trailers, sales offices and the like for use by Declarant or its assigns or designees for overseeing construction and sales during the

construction process. Accessory buildings of any nature whatsoever, including but not limited to detached garages, storage buildings, dog houses, greenhouses, etc. shall not be placed on any Lot without the prior written approval of the Architectural Control Committee. No exposed above-ground tanks, except for recreational swimming pools approved by the Architectural Control Committee, will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must exceed in height by at least one (1) foot any such tank as may be placed therein. No fence, wall, hedge or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the Architectural Control Committee. The use of chain link fencing is not permitted on the Property.

Section 10.04. Animals. No animal, livestock or poultry of any kind shall be raised or kept on any Lot, except that no more than three (3) dogs, cats or other usual household pets may be kept and maintained thereon, provided that such pets shall not be a danger or menace to others, that they are not kept or maintained for any commercial purposes or in such a manner to be offensive, threatening or dangerous to the residents of the Property and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable laws, ordinances and regulations of the State of North Carolina, Wake County and the local municipality, (ii) such rules and regulations as the Board of Directors may adopt from time to time, and (iii) the keeping of such animals does not increase the premiums for any insurance maintained by the Association, or which will result in the cancellation of any such insurance. Pit Bulls and Rotweilers are specifically not allowed on the Property at any time. In the event of a dispute over whether an animal is a permitted household pet for purposes hereunder, the determination of the Declarant during the period of Class B Membership and thereafter by the Board of Directors shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the absolute power to prohibit any particular pet from being kept on the Property, including inside a residence, if the Board of Directors in its sole and absolute discretion determines the pet is threatening, menacing, dangerous, a nuisance, or otherwise has a negative impact on the Property. Additionally no kennel or dog run or similar structure shall be constructed or allowed to remain on any Lot.

Section 10.05. Outside Antennas. No outside radio or television antennas or discs shall be erected on any Lot or Dwelling within the Property, but a satellite dish with a diameter of two (2) feet or less may be installed, in a location that is not visible from the street in front of the Dwelling, upon receipt of permission for the same granted by the Declarant or the Board of Directors or its Architectural Control Committee. To the extent this restriction may later be determined to be unenforceable pursuant to applicable laws, including but not limited to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), a Residential Owner nevertheless shall be restricted in its placement of said antennas to an area which is least visible from the front of the Lot or Dwelling and which causes or is likely to cause the least interference with the placement and use of antennae and disks by other Residential Owners. Any permitted antenna or disk shall be installed, maintained and replaced in accordance with rules and regulations adopted by the Board from time to time. Nothing in this section, however, shall prohibit (but shall not obligate) the Declarant or the Association from erecting a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the Lots and charging fees for usage thereof.

Section 10.06. Insurance Risks. Nothing shall be kept and no activity shall be carried on in any Dwelling, Lot or on the Common Areas, nor shall any Residential Owner do or keep anything, nor cause or allow anything to be done or kept on his Lot, or in his Dwelling or on the Common Area, which will increase the rate of insurance, applicable to residential use, for the Property or the contents thereof or which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Areas.

Section 10.07. Signs. Except as otherwise required by the City, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant or Builder to advertise Dwellings for sale during the construction and sales period, and one sign of not more than six (6) square feet advertising the property for sale. No signs advertising a Dwelling "for rent" or "for lease" shall be permitted within the Project without the prior written consent of Declarant (until the Termination of Declarant Control of the Committee) and the Committee.

Notwithstanding the foregoing, political signs or signs intended to influence the outcome of any election may be displayed no earlier than 45 days prior to the subject election, and no later than seven (7) days after the subject election. The number and size of such signs shall be in compliance with all local ordinances regulating such signs or, in the absence of any such ordinance, shall be limited to one (1) such sign with maximum dimensions of 24" by 24".

No Residential Owner shall be permitted to install any signs on or in the following: (i) the Common Area, (ii) within the right of way of any residential street within the Project, or (iii) on any other portion of the Project located outside the boundaries of such Residential Owner's Lot.

Section 10.08. Rental or Leasing of Dwellings. No Dwelling shall be rented or leased to or occupied by a greater number of unrelated individuals than the number of bedrooms in the Dwelling. No Lot shall be rented to or occupied by a number of individuals, whether or not unrelated, which exceeds twice the number of bedrooms in the Dwelling; provided, however, a Lot may be rented to or occupied by a number of individuals which is not more than three (3) times the number of bedrooms in the Dwelling so long as all such individuals occupying such Dwelling are within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) or who are legal guardian and ward. For purposes of this Section, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless one of their parents or legal guardian also occupies the same Lot as such parent's or legal guardian's principal residence.

Any lease between an Residential Owner and a tenant for the lease of such Residential Owner's Dwelling shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Dwellings shall

be in writing and shall be for a term of not less than one hundred eighty (180) days. All leases shall contain this Declaration as an addendum to the lease, and a copy of such lease shall be delivered to the Association.

Section 10.09. Garbage Cans and Trash Removal. Garbage cans or approved dumpsters shall be located or screened so as to be concealed from view of neighboring Lots, Common Areas and street rights of way. All rubbish, trash, and garbage shall be regularly removed from any Lot and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Residential Owner for removal. Yard waste must be disposed of properly and not deposited on any other Lot, the Common Areas or street rights of way within the Property. Notwithstanding the foregoing, the Declarant reserves for itself and its approved Builders of Dwellings within the Property the right to dump and bury rocks, trees, stumps and similar debris as needed for efficient development of the Property provided that such dumping and burying are done according to good building practice and in accordance with all applicable governmental laws and regulations.

Section 10.10. Nuisances. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, orders, rules, requirements, ordinances and regulations of all governmental agencies having jurisdiction thereof relating to any portion of the Property shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Property, nor shall anything be done thereon which may be or become a nuisance or an unreasonable annoyance to the neighborhood. Activities associated with the development of the Property and the construction of Dwelling or Common Area facilities on the Property shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the local municipality. Other than in connection with the development of the Property or the construction and sale of Lots and Dwelling by the Declarant or its assigns, no trade materials or inventories may be stored upon a Lot.

Section 10.11. Rules and Regulations. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard spaces of each Lot and the Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Residential Owners and available to them for reasonable inspection during normal business hours.

Section 10.12. Subdivision of Lot. No Lot shall be subdivided nor its boundary lines changed except with the prior written approval of the Declarant or its assigns, if before the Turnover Date, and thereafter with the prior written approval of the Board; provided, however, the Declarant reserves the right to subdivide, re-subdivide or recombine any Lot or other property in the Property owned by the Declarant. Any subdivision, re-subdivision or recombination of the Property or any portion thereof shall be done in accordance with all applicable laws and regulations.

Section 10.13. Open Space Preservation and Protection Areas. Within any portion of the Common Area which is designated or approved as open space preservation and protection areas, no land-disturbing activity, placement of impervious surfaces, removal of vegetation, encroachment, construction or erection of any structure shall occur except with approval of the Association and in accordance with a watercourse buffer permit first being issued by the local municipality.

Section 10.14. Stormwater Control Measures – Potential Fines & Liens. Portions of the Common Area are or may be subject to drainage easements, as shown on the recorded Final Maps. If so required, the Stormwater Control Measures shall be maintained by the Association in accordance with the requirements of the local municipality. Stormwater Control Measures are required to comply with the local municipality's requirements, and the failure to maintain the Stormwater Control Measures is a violation potentially subjecting each Owner to significant daily penalties and other enforcement action.

Section 10.15. Development Rights Reserved. Notwithstanding any provisions or restrictions contained in this Declaration, rules and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and Builder so long as Declarant or Builder owns a Lot to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Property, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

Section 10.16. Government Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 10.17. Stormwater Ponds. Any stormwater ponds located in the Common Areas of the Property which are part of the Stormwater Control Measures shall be maintained by the Association. The following provisions and conditions apply to said stormwater ponds:

- (a) no boats shall be allowed or permitted on the ponds except for a boat used by the Association for maintenance, care and repair of the pond or facilities attendant thereto;
- (c) no net fishing shall be allowed or permitted on the ponds;
- (d) no dumping or discharging of any substance into the ponds shall be allowed or permitted;
- (e) the Association shall not be responsible for supervision of any activities or unauthorized use of or on the ponds by Residential Owners, their family members or guests or by any other person not authorized to access to the pond; and

(h) there shall be no docks on the pond.

The Association may modify these rules and regulations and preempt new rules and regulations so long as they do not violate the purposes of said stormwater ponds and the Code requirements of the Governmental Authority.

Section 10.18. Negligence, etc. In the event that the need for maintenance or repair of any Lot or Common Area is caused through the willful or negligent acts or omissions of a Residential Owner, or such Residential Owner's family, tenants, contract purchasers, guests, invitees, contractors, employees or authorized representatives, such Residential Owner shall be responsible for the cost of such maintenance and repair, which shall be added to and become a part of the assessment applicable to the Lot owned by such Residential Owner.

Section 10.19. Permanently Undisturbed Open Space Areas. No land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction or erection of any structure or Improvement shall occur within any "Permanently Protected Undisturbed Open Space Areas", except in accordance with a permit issued by the applicable Governmental Authorities.

ARTICLE XI
ENFORCEMENT; NON-MONETARY DEFAULTS; ASSOCIATION REMEDIES

Section 11.01 Enforcement. The covenants and restrictions herein contained may be enforced by Declarant, Builder (so long as Declarant or Builder holds an equitable or legal interest in any portion of the Property), the Association, any Residential Owner, any Mortgagee holding a mortgage on any portion of the Project Land, in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any Person violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to Legal Fees. All rights, remedies and privileges granted to the parties entitled to enforce the covenants, restrictions and provisions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude a party entitled to enforce the provisions of this Declaration from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

Section 11.02 Non-Monetary Defaults of Residential Owners. In the event of a violation by any Residential Owner or any tenant of a Residential Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association shall notify the Residential Owner and any tenant of the Residential Owner of the violation, by written notice. If such violation is not cured as

soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Residential Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, the Association may, at its option:

1. Impose a fine against the Residential Owner or tenant as provided in this Article; and/or
2. Commence an action to enforce the performance on the part of the Residential Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
3. Commence an action to recover damages; and/or
4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the Architectural Control Committee or erected in accordance with the Architectural Control Committee's approval (as herein defined), or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable Legal Fees, shall be assessed against the applicable Residential Owner as an Individual Expense Assessment. The Association shall have a lien for any such Individual Expense Assessment and any associated Interest, costs or expenses, including Legal Fees, and may take such action to collect such Assessment or foreclose said lien in the manner of any other Assessment as provided in this Declaration. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records or applicable court of jurisdiction.

Section 11.03 Fines. The amount of any fine shall be determined by the Board, and shall not exceed any amount mandated by applicable law, if any. Prior to imposing any fine, the Residential Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Residential Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this Declaration, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Residential Owner of a leased Dwelling shall have the right to participate in any hearing involving the tenant of such Dwelling, and the Association shall provide notice to the Residential Owner of such Dwelling concurrently with the Association's notice to the tenant of the subject Dwelling. The Residential Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Residential Owner or tenant. If the Residential Owner or tenant fails to attend the hearing as set by the Board, the Residential Owner or tenant shall be deemed to have admitted the

allegations contained in the notice to the Residential Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against a Residential Owner shall be deemed an Individual Expense Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

Section 11.04 Negligence. A Residential Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or Dwelling or the Common Area.

Section 11.05 Responsibility for Occupants, Tenants, Guests, and Invitees. Each Residential Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Dwelling, and for all guests and invitees of the Residential 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 Common Area, or any liability to the Association, the Residential 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 Association. Furthermore, any violation of any of the provisions of this Declaration, the Articles, or the Bylaws, by any resident of any Dwelling, or any guest or invitee of a Residential Owner or any resident of a Dwelling, shall also be deemed a violation by the Residential Owner, and shall subject the Residential Owner to the same liability as if the violation was that of the Residential Owner.

Section 11.06 Eviction of Tenants, Occupants, Guests, and Invitees. To the extent permitted by applicable law, if any tenant or any person present in any Dwelling other than a Residential Owner and the members of his immediate family permanently residing in the Dwelling, shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to other residents of the Project, or shall willfully damage or destroy any Common Area or Limited Common Area, or personal property of the Association, then upon written notice by the Association such Person shall be required to immediately leave the Project. If such person does not immediately leave the Project, the Association is authorized to commence an action to evict such tenant or compel the Person to leave the Project and, where necessary, to enjoin such person from returning, provided such actions are permitted by applicable law. The expense of any such action, including Legal Fees, may be assessed against the applicable Residential Owner as an Individual Expense Assessment, and the Association may collect such Assessment and have the same lien rights as for other Assessments provided for herein. The foregoing remedy, if permitted by applicable law, shall be in addition to any other remedy of the Association. The Association shall provide notice to the Residential Owner of a leased Dwelling concurrently with any notices sent to the tenant of such Dwelling pursuant to this Section, and such Residential Owner shall have the right to participate in any hearings or eviction proceedings involving the

tenant of such Residential Owner's Dwelling. The right of eviction provided for in this Section shall be inserted in every lease, but the omissions from the lease agreement of such right shall not affect the right to evict as set forth herein. Notwithstanding the foregoing, the Association's rights granted by this Section are expressly subject to the provisions of all applicable law and as such, may not be enforceable or may be invalidated according to such law.

Section 11.07 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

Section 11.08 Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

ARTICLE XII
EASEMENTS/BUFFERS

Section 12.01. Utilities. Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage facilities are reserved as indicated on the recorded Final Maps of the Property. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the power and authority to grant and establish upon, over and across the Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Common Areas or Lots.

Section 12.02. Encroachments. In the event that any improvements on a Lot shall encroach upon any Common Areas or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Residential Owner or agents of such Residential Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Areas into any such Lot for so long as such encroachment shall naturally exist. Notwithstanding anything hereinabove to the contrary, this provision does not authorize any encroachments except those encroachments which exist by virtue of original construction by the Declarant or its assigns or with Declarant's express approval, and do not encroach more than three (3) feet into or upon an adjacent Lot or Common Area.

Section 12.03. Easement for Governmental Agencies. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, utility companies and public service agencies (and any other Person providing services to the Property under agreement with or at the direction of the Association) as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage channels and facilities, utilities, and fire lines and acting for other purposes consistent with public safety and welfare, including without limitation, law enforcement, fire protection, emergency and rescue services, garbage collection and delivery of mail. An easement is hereby established for the benefit of the local municipality over the Common Area and over the front five (5) feet of each Lot for the setting, removal and reading of water meters, the maintenance and replacement of water, sewer and drainage channels and facilities and the collection of garbage.

Section 12.04. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to the conveyance of such Lots or the Common Area by the Declarant. The Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property. If a Lot is served by a driveway as indicated on a recorded Final Map of the Property (provided such Final Map was approved by the Declarant or the Association), there is created an appurtenant easement over the Common Areas in favor of such Lot for the construction, reconstruction, repair and maintenance of such driveway and for the exclusive use of such driveway for ingress, egress, regress and parking purposes. Such driveway easement is subject to water, sewer and utility lines lying under such driveway and the repair and maintenance of such lines. The Association and the other Residential Owners shall not obstruct or interfere with the use of such driveway except as is incident to the repair and maintenance of Common Areas and water, sewer and utility lines. If the Association obstructs or interferes with the permitted uses of such driveway, the Association shall make reasonable efforts to provide alternative parking for such Lot during the period of obstruction or interference.

Section 12.05. Easements Appurtenant to Lots. All private streets and driveway areas in the Common Areas shall be subject to an easement in favor of every Lot to which they are adjacent or which they are intended to serve and shall be deemed appurtenant to each such Lot, whereby the Residential Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 12.06. Emergencies, Etc. Every Lot and Dwelling shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Dwelling on any Lot and that endangers any Lot or portion of the Common Areas, or as necessary to correct any grading for drainage purposes.

Section 12.07. Easements to Association. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection

with the exercise of any right, duty or obligation of the Association under this Declaration or its Organizational Documents.

Section 12.08. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Each Owner of a Lot shall have a perpetual access easement over the adjoining Lots and/or Common Area to the extent reasonably necessary to repair, maintain or reconstruct the Dwelling on such Owner's Lot. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable laws, ordinances and regulations. Upon completion of the work, the Owner performing such work shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable. No fence, wall, storage shed or similar type of structure or any other kind of obstruction shall be permitted within the area lying within five (5) feet of the adjoining Lot that will obstruct such access to the adjoining Lot.

Section 12.09. Access Easement. Each Owner shall have the right to ingress and egress over, upon and across the Common Area as necessary for access to his Lot and shall have the right to lateral support for his Lot.

Section 12.10. Easement Reserved by Declarant for Development. Until December 31, 2027, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself, its successors and assigns including, but not limited to Persons constructing Dwellings and other improvements on the Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Property, including but not limited to construction of the recreational facilities and installation of utilities. The reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to:

- A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Property with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Property any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;
- B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;

- C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any portion of the Property, including, without limitation, Lots or Common Areas conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto;

Section 12.11 Additional Easements. Declarant, (until the Turnover Date) and the Association, on their behalf and on behalf of all Residential Owners, each shall have the right to (i) grant additional easements over, upon, under and/or across the Common Area in favor of Declarant or any Person, entity, Governmental Authority or utility company, or modify, relocate, abandon or terminate existing easements benefiting or affecting the Project Land. In connection with the grant, modification, relocation, abandonment or termination of any easement, Declarant reserves the right of Declarant and Builder to relocate roads, parking areas, utility lines, and other Improvements upon or serving the Property. So long as the foregoing will not adversely interfere with the use of Dwellings for dwelling purposes, no consent of any Residential Owner or any mortgagee of any Dwelling shall be required, otherwise only the consent of the Residential Owners and Mortgagees adversely affected shall be required. To the extent required, all Residential Owners hereby irrevocably appoint Declarant and/or the Association as their attorney-in-fact for the foregoing purposes; and this section may not be amended without the written consent of Declarant.

Section 12.12. Drainage. The Declarant reserves for itself and its assignees, including but not limited to the Association, the right and easement to enter upon any Lot or the Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Common Area in order to correct surface water drainage problems existing on any Lot or the Common Area. Any alterations made pursuant to the foregoing easement shall be made at the sole cost and expense of the Declarant or its assigns, as the case may be, and shall not unreasonably interfere with the Residential Owner's use and enjoyment of his Lot. Declarant hereby agrees in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Declarant may give its written consent to a Residential Owner to alter the flow of surface water in, on or across such Residential Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Control Committee, as the case may be, must give its written approval to the Residential Owner's plan to alter the flow of surface water on such Residential Owner's Lot.

Section 12.13 Assignments. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any Governmental Authority, or any duly licensed or franchised public utility, or any other designee of Declarant, provided such Governmental Authority or duly licensed or franchised public utility agrees to maintain such easement(s). The Residential Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other

instruments as may from time to time be necessary to grant easements over and upon the Project Land or portions thereof in accordance with the provisions of this Declaration.

Except as may be expressly provided otherwise, all easement rights reserved or granted to Declarant shall terminate upon Declarant no longer owning any portion or interest in the Property. In addition, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

ARTICLE XIII
RIGHTS RESERVED TO INSTITUTIONAL LENDERS

Section 13.01. Entities Constituting Institutional Lenders. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

Section 13.02. Obligation of Association to Institutional Lenders. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- A. To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by an accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by May 15th of each calendar year;
- B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Organizational Documents of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association;
- C. To receive notice of any condemnation or casualty loss affecting the Common Area or any portion thereof;
- D. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- E. To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article IV hereof; and
- F. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Residential Owner owning a Lot encumbered by a mortgage held by the

Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender or to the place which it may designate in writing.

Section 13.03. Requirements of Institutional Lender. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address of the Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage together with sufficient pertinent facts to identify such mortgage or identifying any Lot or Lots owned by such Institutional Lender. Such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

ARTICLE XIV
AMENDMENT

The process of amending or modifying this Declaration shall be as follows:

Section 14.01. Prior to Turnover Date. Until the Turnover Date and except as specifically provided otherwise in this Article, only Declarant may amend this Declaration, which amendment can be made without the approval of any Member provided the amendment does not materially alter or change any Residential Owner's right to the use and enjoyment of such Residential Owner's Dwelling, or of the Common Area as set forth in this Declaration, and the amendment does not adversely affect the title to any Dwelling. Any amendment of this Declaration prior to the Turnover Date shall first be approved in writing by the Town Attorney.

Section 14.02. After the Turnover Date. After the Turnover Date, and except for the annexation of Additional Land which shall be accomplished pursuant to the provisions of Article III, this Declaration may be amended by: (i) the consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association as such classes are set forth in the Association Documents; together with (ii) the approval or ratification of a majority of the Board, provided that the percentage of votes attributable to the Class A Members shall not be less than the prescribed percentage (if any) of affirmative votes attributable to the Owners as specified by the Planned Community Act. The aforementioned consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association may be evidenced by a writing signed by the required number of Members (in lieu of a meeting) or by the affirmative vote of the required number of Members at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association. Any amendment of this Declaration after the Turnover Date shall first be approved in writing by the Town Attorney.

Section 14.03. Certificate of Amendment Form. If any amendment, to these covenants, conditions and restrictions is so approved and executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

- (a) Reasonably assure itself that the amendment has been validly approved by the required percentage of the voting membership. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined);
- (b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner deeds are executed; and
- (c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of their recordation in the Wake County Registry; provided, however, no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 14.04 Scrivener's Errors. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent by the Residential Owners or any other Person.

Section 14.05 Amendments to Declarant's Rights. No amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Mortgagee under the Association Documents without the specific written approval of such party affected thereby. Furthermore, no amendment to this Declaration shall be effective which would prejudice the rights of a then Residential Owner or his family members, guests, invitees and lessees to utilize or enjoy the benefits of the then existing Common Area unless the Residential Owner or Residential Owners so affected consent to such amendment in writing. No amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 15.08 and any such amendment shall be deemed to impair and prejudice the rights of Declarant hereunder.

Section 14.06 FHA/VA Approval Prior to Turnover Date. As long as the Class B membership exists, and except for amendments permitted to be made by Declarant as provided herein, if the Project is subject to any requirements of the Veteran's Administration ("VA"), The Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency which insures, guaranties, or purchases mortgages, and such requirements make any material amendments of this Declaration subject to such agency's approval, a material amendment of this Declaration will require the prior approval of such agency.

Section 14.07 Certification and Recording of Amendments. A true copy of any amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Project Land requesting notice. The amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration setting forth the amendment in the Public Records.

Section 14.08 Amendments to Satisfy Lending Requirements. Declarant may, without the consent of any Residential Owners, file any amendments which may be required by an Institutional Mortgagee for the purpose of satisfying its planned unit development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any of Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by HUD.

Section 14.09 Boundary Adjustments. While Declarant owns any Lot or Dwelling, Declarant reserves the right to make minor boundary adjustments between the Lots owned by Declarant and any Common Area without the consent or approval of any other Person, provided that any such adjustment will not materially decrease the acreage of the Common Area and, if required in order to eliminate any conflict with the Site Plan as a result of such adjustment, will be reflected by a modification of the Site Plan approved by the Town and/or County. If such amendment is to be made following the conveyance of the subject Common Area to the Association, the Association is obligated to sign any plats, deeds, or other instruments or forms necessary to accomplish any of the actions that Declarant is permitted to take in accordance with this Section.

ARTICLE XV
GENERAL PROVISIONS

Section 15.01. Enforcement. The Association, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and the Organizational Documents. Failure by the Association, Declarant or any Owner to enforce any such restriction, condition, covenant, reservation lien or charge herein contained shall in no event be deemed a waiver of the right to enforce any such restriction, condition, covenant, reservation, lien or charge at any other time or in connection with the same or any other event, nor shall it be deemed a waiver of the right to request that law enforcement, public safety and animal control officers enter the Property to facilitate the enforcement of the laws, codes and ordinances of any Governmental Authority.

Section 15.02. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 15.03. Voting. Voting of Members of the Association shall be in accordance with the applicable provisions set forth in the Association's Bylaws.

Section 15.04. Contract Rights of Association. As long as there is a Class B Membership, any contract or agreement entered into by or on behalf of the Association shall contain a provision giving the Association the right to terminate such contract or agreement, with or without cause, upon the giving of not more than thirty (30) days written notice to the other party or parties.

Section 15.05. Underground Utilities and Street Lighting. Declarant reserves the right to subject the Property described hereinabove to a contract with public utility companies for the installation of underground utility service and the installation of street lighting, either of which or both of which may require a continuous monthly charge to the Owner of the Lot. Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of each Lot. Upon acceptance of a deed to a Lot, each Owner agrees to pay said continuing monthly payments therefore as approved by the North Carolina Utilities Commission or other appropriate government authorities.

Section 15.06. Gender and Grammar. The singular, wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

Section 15.07. Liability Exemptions. In no case shall the local municipality be responsible for failing to provide any emergency or regular fire, police or other public service to the Common Area or the Lots or to their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, the Residential Owners or their occupants. In no case shall the local municipality or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 15.08. Certain Rights of Declarant and Builder. Improvements constructed or installed by Declarant or Builder shall not be subject to the approval of the Association or the Committee. During the period that Improvements constructed by Declarant or Builder are owned by such party, such Improvements shall not be subject to the provisions and requirements of this Declaration. Declarant reserves the right for Declarant and its nominees, to enter into and transact on the Project Land any business necessary to consummate the sale, lease or encumbrance of Lots and Dwellings or real property including, but not limited to, the right to maintain models and a sales and/or leasing office, place signs, employ sales and leasing personnel, use the Common Area and show Dwellings. Declarant reserves the right to make repairs to the Common Area and to carry on construction activity for the benefit of the Project Land, and its nominees may exercise the foregoing rights applicable to each without notifying the Association. Any such models, sales and/or leasing office, signs and any other items pertaining to such sales or leasing efforts shall not be considered a part of the Common Area and shall remain the property of Declarant or Builder, as applicable. This Section may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Association Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section, the term "Declarant" or "Builder" shall include any "Lender" which has loaned money to Declarant or Developer to acquire or construct improvements upon the Project Land or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the

Property securing any such loan to Declarant or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant and Builder as set forth in this Section, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant or Builder under any of the Association Documents, shall terminate upon Declarant or Builder no longer owning any portion of the Property (and having any equitable or legal interest therein) or upon such earlier date as Declarant or Builder shall notify the Association in writing of such party's voluntary election to relinquish the aforesaid rights and privileges.

Section 15.09. Association's Indemnification. The Association covenants and agrees that it will indemnify and save harmless Declarant and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Property or the appurtenances thereto from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association. The indemnification provisions of this Section shall not apply to any expenses which may be incurred by Declarant to avoid the performance of any of the obligations to be kept and performed by Declarant, or any liability which may be incurred by a Residential Owner as a result of ownership of a Lot or a Dwelling.

Section 15.10 Disputes as to Use. In the event there is any dispute as to whether the use of the property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Any use by Declarant of the Project or any parts thereof shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

Section 15.11 Delegation. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant. The fees or costs of this or any other management company or contractors so retained shall be deemed to be part of the Operating Expenses hereunder. All contracts with management companies shall contain a provision that allows the Association to unilaterally terminate the contract without cause after ninety (90) days notice.

Section 15.12 Term. This Declaration shall run with and bind the Property and inure to the benefit of Declarant, the Association, the Residential Owners, and their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded in the Public Records, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of any applicable term in effect, an instrument agreeing to terminate this Declaration signed by Residential Owners owning at least two-thirds (2/3) of the

Lots, and Institutional Mortgagees holding first mortgages encumbering at least two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, is recorded in the Public Records, whereupon this Declaration shall be terminated upon the expiration of the applicable term in effect at the time.

Section 15.13. Address. Each Member agrees to keep the Association informed of his address at any time, and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster, and the roster as so completed shall be sufficient evidence of the ownership of each Lot. If a Member fails to provide the Association with its address or otherwise fails to keep its address current, the Association may use the address shown on the Wake County tax records for the Owner of the Lot for which such membership exists as the Member's address.

Section 15.14. Conflicts. In the event of a conflict between the terms and provisions of this Declaration and the Bylaws or Articles of Incorporation of the Association, the terms and provisions of this Declaration shall control. In the event of a conflict between the terms and provisions of the Bylaws and the Articles of Incorporation of the Association, the terms and provisions of the Articles of Incorporation shall control.

Section 15.15. Development Agreement. The development of the Project is subject to a certain Development Agreement entitled "Panther Rock, LLC and Town of Knightdale Development Agreement," which is recorded in Book 12651, Page 2699, Wake County Registry, North Carolina (the "Development Agreement"). To the extent applicable, the Association, Builder, Declarant and the Residential Owners shall comply with the terms and provisions of the Development Agreement, provided that the Declarant shall be responsible for those obligations referred to in (i) Section 2 with regard to the payment of the Town's expenses for the review of the Association Documents and other documents described therein, and (ii) Section 5)(b) with respect to the construction of a second entrance into the Property for fire department and emergency access and use. In the event of a conflict between this Declaration and the Development Agreement, the terms and conditions of the Development Agreement shall control.

Section 15.16. Joinder and Consent of Lender and Trustee. The Bank of Hampton Roads f/k/a Gateway Bank & Trust Co., a North Carolina banking corporation, is the holder and beneficiary of a first lien security interest in a portion of the Property, hereby joins in the execution of this Declaration for the purpose of confirming its recognition of this Declaration and agreeing not to extinguish, terminate or void this Declaration or otherwise alter, diminish or limit the terms and conditions of this Declaration, upon any foreclosure of its lien or otherwise.

[Signature page to follow]

IN WITNESS WHEREOF, the Declarant and Cheswick by Terramor Homes, LLC have caused this Declaration to be executed as of the day and year first above written.

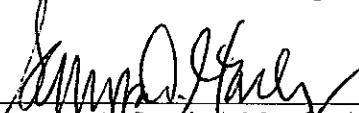
DECLARANT: PANTHER ROCK, LLC, a North Carolina limited liability company

BY: PS Partners, LLC, its sole Manager
BY: its Managers:

Terramor Communities, LLC, Manager

BY: 
Pablo Reiter, Member/Manager

Rock Marsh Lane, LLC, Manager

BY: 
Sampson A. Starling, Member/Manager

CONSENTED AND
AGREED TO BY:

LENDER:

THE BANK OF HAMPTON ROADS f/k/a
GATEWAY BANK & TRUST CO.

BY: 
Printed Name: Robert Capell
Title: Terraplace Regional President
TRUSTEE:

GBTC, INC.

BY: 
Printed Name: Robert F. Capell
Title: Terraplace Regional President

CHESWICK BY TERRAMOR HOMES, LLC,
a North Carolina limited liability company

BY: Terramor Homes, Inc., its sole Manager

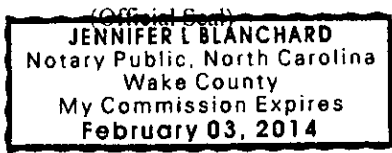
BY: 
Pablo Reiter, Vice President

County of Wake
State of North Carolina

I certify that the following person(s) personally appeared before me this day, and; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Eddie F. Campbell, Regional Triangle President, Lender
Name(s) of principal(s)

Witness my hand and official seal, this the 14 day of September, 2009.



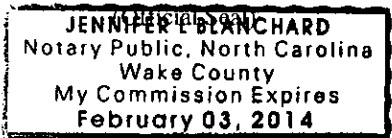
Jennifer L. Blanchard
Official Signature of Notary
JENNIFER L. BLANCHARD Notary Public
Notary's printed or typed name
My commission expires: 2-3-14

County of Wake
State of North Carolina

I certify that the following person(s) personally appeared before me this day, and; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Eddie F. Campbell, Triangle Regional President, Trustee
Name(s) of principal(s)

Witness my hand and official seal, this the 14 day of September, 2009.



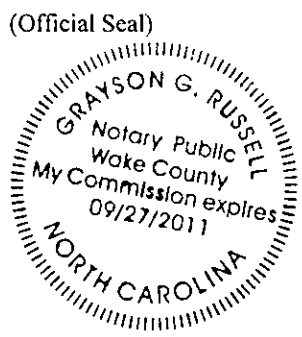
Jennifer L. Blanchard
Official Signature of Notary
JENNIFER L. BLANCHARD Notary Public
Notary's printed or typed name
My commission expires: 2-3-2014

County of Wake
State of North Carolina

I certify that the following person(s) personally appeared before me this day, and; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Pablo Reiter
Name(s) of principal(s)

Witness my hand and official seal, this the 18th day of September, 2009.



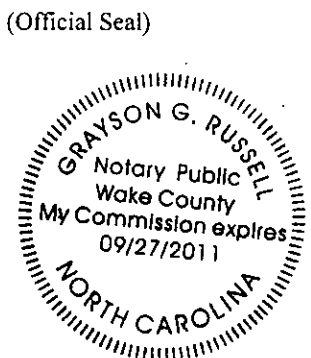
[Signature]
Official Signature of Notary
Grayson G. Russell, Notary Public
Notary's printed or typed name
My commission expires: 9/27/2011

County of Wake
State of North Carolina

I certify that the following person(s) personally appeared before me this day, and; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Sampson A. Starling
Name(s) of principal(s)

Witness my hand and official seal, this the 18th day of September, 2009.



[Signature]
Official Signature of Notary
Grayson G. Russell, Notary Public
Notary's printed or typed name
My commission expires: 9/27/2011

County of Wake

State of North Carolina

I certify that the following person(s) personally appeared before me this day, and; each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Pablo Reiter
Name(s) of principal(s)

Witness my hand and official seal, this the 18th day of September, 2009.

(Official Seal)



[Signature]
Official Signature of Notary

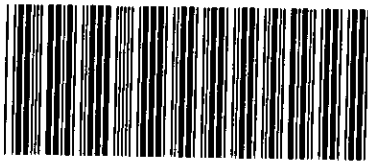
Grayson G. Russell, Notary Public
Notary's printed or typed name

My commission expires: 9/27/2011

EXHIBIT A

Legal description

BEING all of Tract 2, containing 67.646 acres, inclusive of the area of a dedicated public right-of-way containing 0.285 acres, as shown on plat of survey entitled “SUBDIVISION FINAL PLAT – OF 73 ACRE RIVERSIDE PLANTATION LLC TRACT FOR RIVERSIDE PLANTATION LLC – SAINT MATTHEWS TOWNSHIP – WAKE COUNTY – NORTH CAROLINA” dated March 9, 2007, last revised April 7, 2007, prepared by Elinburg Land Survey Co., P.A., and recorded in Book of Maps 2007, Page 1659, Wake County Registry.



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**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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