

Prepared by and mail after recording to:
Greg L. Hinshaw, Burns, Day & Presnell, PA
PO Box 10867, Raleigh, NC 27605

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
FISH HAWK RANCH**

THIS DECLARATION, made this 21st day of August 2019, by Cheyenne Developers, LLC ("Declarant") and H&H Constructors of Fayetteville, LLC ("Builder") for themselves and the Fish Hawk Ranch Homeowners Association, Inc. ("Association").

WITNESSETH:

WHEREAS, Declarant is the owner of all of the real property as shown on plat entitled "FISH HAWK RANCH" as recorded in Book of Maps 2019, Pages 1259 through 1262, Wake County Registry (the "Property"), and which real property Declarant is developing into lots for a residential community of detached single-family hereinafter sometimes referred to as the "Subdivision"); and

WHEREAS, the Association is or will be the owner of Permanent Open Space as shown on the said recorded plat; and

WHEREAS, Declarant, Association and Builder desire to provide for the maintenance and upkeep of the Common Area (hereinafter defined) within the Subdivision and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desire to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each owner thereof; and

WHEREAS, Declarant, Association and Builder have deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated under North Carolina law as a nonprofit corporation, the Fish Hawk Ranch Homeowners Association, Inc., for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant, Association and Builder declare that the Subdivision, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title Or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Fish Hawk Ranch Homeowners Association, Inc. a North Carolina nonprofit corporation, and its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Association.

Section 3. "Book of Resolutions" shall mean and refer to the documents containing rules and regulations and policies adopted by the Board of Directors.

Section 4. "Builder" shall mean H&H Constructors of Fayetteville, LLC, its successors and/or assigns.

Section 5. "By-Laws" shall mean the By-Laws of the Association as they now or hereafter may exist.

Section 6. "Common Expenses" shall mean and refer to all sums lawfully assessed by the Association against its Members, expenses of administration, maintenance, repair or replacement of Common Property, expenses declared to be or described as Common Expenses by the provisions of this Declaration, expenses for landscaping maintenance, as described herein, expenses for the repair of drainage easements, premiums for hazard, liability or other insurance as may be obtained by the Association, public assessments levied on the Common Property owned in fee simple, utility charges for Common Property facilities, purchase of a Lot and the Improvements thereon at a foreclosure pursuant to Article V, Section 12 and expenses agreed by the Members of the Association to be Common Expenses of such Association.

Section 7. "Common Property" or "Common Area" shall mean and refer to those properties

within Fish Hawk Ranch which are for the common use and enjoyment of all Members of the Association. Common Property shall include areas on the recorded maps shown as Open Space identified on the Plat and all subsequent plats for additions brought within the jurisdiction of this Declaration, and may include sign and/or landscape easements shown on any recorded plat of any portion of the Property in which the Association maintains improvements. Common Property shall also include the Mail Kiosk, if any, repair of any drainage easements and utility lines serving more than one Lot and located outside any public Street right-of-way.

Section 8. "Declarant" shall mean Cheyenne Developers, LLC, its successors and assigns, if such successors or assigns should acquire more than one Undeveloped Lot for the purpose of development or if such successors or assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure ("successors" includes any lender with respect to loans obtained by Declarant to develop the Property).

Section 9. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Fish Hawk Ranch as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

Section 10. "Dwelling Unit" or "Dwelling" or "Unit" shall mean a single family detached structure.

Section 11. "Lot" shall mean any of the Lots or any other plot of land regardless of size as shown on a recorded subdivision plat of Fish Hawk Ranch which has been approved as required by this Declaration for a Dwelling Unit. Common Property is not a Lot.

Section 12. "Member" shall mean and refer to every Person or entity entitled to membership in the Association as provided in this Declaration.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more Persons, firms, their successors and assigns, of a fee simple title to any Dwelling Unit or Lot which is part of the Property presently or hereafter made subject hereto, including contract sellers, but notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee, its successors or assigns, until and unless such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an owner. The terms "Owner" and "Declarant" shall not be mutually exclusive.

Section 14. "Person" shall mean any individual, firm, association, corporation, limited liability company or other legal entity.

Section 15. "Fish Hawk Ranch" shall mean and refer to the Property as defined below and such additions and/or deletions thereto as may hereafter be brought within or taken from the jurisdiction of the Association and subjected to this Declaration or any Supplemental Declaration.

Section 16. "Property" shall mean the Lots, Common Property (as defined above) and any and all other property hereafter made subject to this Declaration as provided herein below.

Section 17. "Undeveloped Lot" shall mean a Lot or an area of Fish Hawk Ranch not yet developed and for which no certificate of occupancy has been issued by the appropriate municipality, but intended to contain one or more Dwelling Units as approved by the appropriate municipality, including any additions or deletions thereto.

ARTICLE II

PROPERTY AND PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Property Made Subject to Declaration. The Property is hereby made subject to this Declaration and shall be owned, held, used, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, assessments, development affirmative obligations, guidelines, charges and liens set forth in this Declaration.

Section 2. Common Property. Declarant shall convey, by General Warranty Deed, all Common Property with the exceptions of drainage, utility, greenway and landscape easements not included within the Open Space to the Association. All of the Common Property conveyed to the Association is conveyed free and clear of all liens. Each Member shall have the right of enjoyment of the Common Property and the perpetual right to use the Common Property, subject to the terms of this Declaration and the other governing documents of the Association, including the Book of Resolutions.

Section 3. Delegation of Use. Subject to section 4 below, any Member may delegate in accordance with the By-Laws of the Association, his right of enjoyment to the Common Property and facilities to the members of his family, his tenants, or contract purchasers who reside on such Members' Lot.

Section 4. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Property and in aid thereof to mortgage said properties, provided however, that any such mortgage must be authorized by the vote of eighty percent (80%) of the votes in the Association at a duly called meeting at which a quorum is present and for which written notice of the proposed action is sent to every Member at such Members' address on the records of the Association at least twenty (20) days in advance of any action. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association or the managing agent shall be annexed to any instrument affecting the Common Property, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership; provided, however, that the

mortgagee's interest therein shall be subordinate to the rights of the Owners and Association in such Common Property;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any Member or any tenant of any Member for any period during which any assessment remains unpaid; and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment; and

(d) Subject to the ordinances of the appropriate municipality, the right of the Association to charge fees for the use of the Common Property; and

(e) The right of the Association to exchange Common Property in accordance with the current provisions of the municipal codes may be amended from time to time;

and provided, however, that any exchange of Common Property must be authorized by the vote of eighty percent (80%) of the votes in the Association at a duly called meeting at which a quorum is present and unless written notice of the proposed action is sent to every Member at such Members' address on the records of the Association at least twenty (20) days in advance of any action taken.

(f) The easements and restrictions established in this Declaration.

ARTICLE III

ANNEXATIONS AND MERGERS

Section 1. Annexation of Property.

(a) If Declarant or Builder is the Owner from time to time of any property immediately across a public street right-of-way or adjoining in whole or in part any portion of the land now or hereafter constituting any portion of the Property or Common Property ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record, on or before December 31, 2035, a Supplemental Declaration, in accordance with section 2 of this Article, which shall extend the scheme of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration, 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.

(b) Except as provided above for Declarant or Builder, other property may only be added if it is immediately across a public Street right-of-way or adjoins in whole or in part any portion of the land now or hereafter constituting any portion of the Property or Common Property, and if each voting class as defined in Article IV, Section 2 by a vote of eighty percent (80%) of the Members present and the Declarant and Builder, as long as Declarant or Builder owns any Lots subject to this Declaration, at any annual or duly called special meeting at which the addition of further property is considered, gives written consent thereto. If the foregoing conditions are met, such property shall be considered "Additional Property". No annexation of Additional Property shall become effective until a Supplemental Declaration is prepared and recorded in accordance with Section 2 of this Article.

(c) No property shall be annexed pursuant to this section unless every lender of record on such property subordinates its Interest to this Declaration.

(d) Following the annexation of any Additional Property, but prior to the sale of the first Lot in the applicable portion or phase of such Additional Property, the Additional Property owner shall Convey all Common Property in that portion or phase, with the exceptions of drainage, utility, greenway and landscape easements to the Association. All of the Property conveyed to the Association is conveyed free and clear of all liens.

Section 2. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, Conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board; provided, however, that Declarant's consent will not be necessary after December 31, 2035. In no event, shall such Supplemental Declaration revoke, modify the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added property. All Supplemental Declarations shall be recorded with the Wake County Registry.

Section 3. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a nonprofit corporation composed of owners of Additional Property, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any,

affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Members. Declarant, for so long as it shall be an Owner, and every person who is a record owner of a fee simple or undivided fee simple interest in any Dwelling Unit or Lot that is subject by the Declaration to assessments by the Association and who qualifies as an Owner, as defined in Article I, shall be a Member of the Association; provided, however, that any such person who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit or Lot which is subject to assessment by the Association. Ownership of a Dwelling Unit or Lot shall be the sole qualification for Membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Dwelling Unit or Lot in Fish Hawk Ranch. No Owner shall have more than one Membership per Lot.

Section 2. Member Classes and Voting Rights. The Association shall have two (2) classes of voting Members:

Class A. Class A Members shall be all Owners with the exception of Declarant until its Class B Membership has converted to Class A Membership. Class A Members shall be entitled to one (1) vote for each Dwelling Unit or Lot in which they hold the required ownership interest.

Class B. The Class B Member shall be Declarant, its successors or assigns, its successors and Assigns. The Class B Members shall be entitled to three (3) votes for each Dwelling Unit or Lot in which it holds the required ownership interest, provided that the Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs first:

(a) The total votes outstanding in Class A Membership equals the total votes outstanding in the Class B Membership; provided, that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, as provided hereunder, and before the time stated in subparagraph (b) below, additional lands owned by Declarant are annexed to the within the times and as provided for herein, or

(b) December 31, 2035.

Thereafter, the Declarant shall be entitled to one (1) vote per Dwelling Unit or Lot owned by

it.

Section 3. Voting Right Suspension. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and for any period during which any assessment of a Member remains unpaid according to the provisions of Article V, Section 9.

Section 4. Voting. The total vote of the Association shall consist of the sum of the votes of the Class A Members and the votes of Class B Members. The number of votes present at a meeting that will constitute a quorum shall be as set forth in the By-Laws, as amended from time to time. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the By-Laws, as the same may be amended from time to time.

When more than one person holds an interest in any Dwelling Unit or Lot, all such persons shall be Members; and the vote for such Dwelling Unit or Lot shall be exercised as they among themselves determine; however, in no event may more than one vote be cast with respect to any one Dwelling Unit or Lot owned by Class A Members and in no event shall fractional Votes be allowed. When one or more co-Owners signs a proxy or purports to vote for his or her co-Owners, such vote shall be counted unless one or more other co-Owners is present and objects to such a vote or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. Cumulative Voting is prohibited.

A person's membership in the Association shall terminate automatically whenever such person ceases to be an Owner, but such termination shall not release or relieve any such person from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such ownership, or impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

Section 5. Right of Declarant to Representation on Board of Directors of the Association. Notwithstanding anything contained herein to the contrary, until December 31, 2035, or until Declarant shall have conveyed seventy-five percent (75%) of the Lots, whichever occurs first. Declarant (or its expressed assignee of the right granted in this section) shall have the right to designate and select the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association. Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed. Any director designated and selected by Declarant need not be an Owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have pecuniary interest or other interest. Any management contract executed while Declarant selects the Board of Directors shall contain a provision allowing unilateral termination by the Association, without cause, following ninety (90) days written notice.

Section 6. Quorum. Except as otherwise provided in the Articles of Incorporation, or this Declaration, the presence at the meeting of Members or of proxies entitled to cast, ten percent (10%) of the total votes shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, a majority of the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. Liability Limitations. Neither the Declarant, nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any director, officer, member, manager, agent or employee of the Declarant, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not such other current or former Member was acting on behalf of the Association. Neither the Declarant nor the Association nor any of the directors, officers, members, managers, agents or employees of either, acting in those official capacities, shall be liable for any incidental or consequential damages for failure to inspect any Owner's portion of the Property or improvements thereon, or for failure to maintain the same (provided, however, as provided herein the Declarant shall be responsible for the maintenance of all portions of the property owned by Declarant and Lots owned by the Declarant, and except as otherwise specifically provided herein, the Declarant, directors on the Board and officers of the Association shall have all of the other obligations and liabilities of an Owner under this Declaration with respect to portions of the Property owned by such persons). Except for the liabilities resulting from being an Owner, the Association shall indemnify all Association directors and officers, and members of the Architectural Approval Committee, as required by the Articles and By-laws.

Neither the Board, the Association, any current or former Member of the Association, nor the Declarant shall be considered as a bailee of any personal property stored or placed on the Common Property (including vehicles parked on the Common Property, whether or not exclusive possession of the particular area is given to the Person who owns such personal property). Nor shall any of the foregoing people or entities (other than the Person who owns the personal property) be responsible for the security of such personal property or for any loss or damage thereto. The Association shall not be liable for any failure of or interruption to any service to be obtained by the Association or paid for as a Common Expense, for personal injury or property damage which is caused by the elements or by any Owner or any other Person or which results from electricity, water, snow or ice which may leak or flow from or over any portion of the Property or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type resulting from the foregoing. No diminution, offset or abatement of any assessment or other charge shall be claimed or allowed for inconvenience or discomfort arising from maintenance of the Common Property or from any action taken by the Association to comply with any applicable legal requirement. This Section is not intended, nor shall it be construed, to relieve any insurer of its contractual obligations under any policy benefiting the Association or any Owner.

ARTICLE V

COVENANTS FOR ASSESSMENT

Section 1. Creation of Lien and Obligation for Assessments. Declarant hereby covenants and agrees and each Owner of any Lot, by acceptance of a deed therefore whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- (a) Annual Assessments or charges;
- (b) Special Assessments for the purposes set forth in this Article, such assessments to be fixed, established, and collected from time to time as hereinafter provided;
- (c) Working Capital Assessment for the purposes of establishing a reserve of capital for future improvements or repairs or as otherwise determined by the Board. The Assessment is collected at time of the first conveyance of a Lot on which a Dwelling Unit has been constructed, and has a current determined value of at least two (2) months of the Annual Assessment.

The Annual Assessments, Special Assessments, and Working Capital Assessment together, with such interest thereon and costs of collection therefore as hereinafter provided, shall be a charge and continuing lien on the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection therefore as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. In the case of co-ownership of a Lot, all such co-owners shall be jointly and severally liable for the assessment.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for payment of Common Expenses and for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration, carrying out the duties of the Board, the purposes of the Association and promoting the recreation, health, safety and welfare of the residents of the Property and for the improvement, maintenance, and operation of the Common Property, including, but not limited to, the payment of taxes for Common Property owned in fee simple and insurance thereon and maintenance repair, replacement, and additions thereof, for the costs of labor, equipment, materials, and management supervision thereof and to repair the drainage easements as shown on the record plats of the Subdivision.

Section 3. Annual Budget. By majority vote of the directors, the Board of Directors shall recommend an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by these Declarations, and any and all Supplemental Declarations, will be met.

The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the regular Annual Assessment against the Lots at least 90 days in advance of each Annual Assessment period.

Within 30 days after adoption of the proposed budget, the Board of Directors shall provide to the Owners a summary of the proposed budget and a written notice of the meeting to consider the ratification of the proposed budget, which notice shall include a statement that the proposed budget may be ratified without a quorum. The written notice of the meeting of Members to consider ratification of the proposed budget shall be provided at least 10 days and not more than 60 days in advance of such meeting. Unless otherwise provided by Chapter 47 F of the North Carolina General Statutes, The Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget.

(a) If the proposed budget recommends increasing the Annual Assessment by less than 25% above the Annual Assessment in the last ratified budget the proposed budget shall be ratified, unless 80% of the total votes of the Association reject the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new proposed budget is ratified.

(b) The Board of Directors may not increase the previous year amount of the Annual Assessment by more than 25% in any given calendar year without the approval of at least 2/3 of each class of Members present in person or by proxy, at a duly-called meeting whereat a quorum is present. The budget is deemed ratified unless 80% of the total votes of the Association reject the proposed budget.

Section 4. Basic and Maximum Annual Assessments. For the calendar 2019, The Declarant shall set the amount of the annual assessment per Lot. On or before December 31 of each year thereafter during the term hereof, the Board shall set the amount of the Annual Assessment for the ensuing year for each Dwelling Unit or Lot, taking into consideration, among other things, the then-current Common Expenses and estimated increases in Common Expenses, the then-current development and/or maintenance costs, estimated increases in development and/or maintenance costs, and the future needs of the Association. The amount of the Annual Assessment for each Dwelling Unit or Lot as set by the Board shall be determined by dividing the amount of costs and expenses to be incurred by the Association for the year in question, as such amount is reasonably estimated by the Board (and which estimated amount may include a reasonable contingency fund), by the number of Dwelling Units or Lots in the Property, such that the regular Annual Assessment for each Dwelling Unit or Lot shall be the same. The Annual Assessment shall be due and payable as provided in Section 8 of this Article.

Section 5. Special Assessment. In addition to the Annual Assessment authorized by Section 3 hereof, the Board may levy in any assessment year or years a Special Assessment, as defined herein, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of an Association-owned improvement including the necessary fixtures and personal property related thereto, or for carrying out other purposes and/or duties and obligations of the Association as stated in its Articles of Incorporation

or as stated herein. Special Assessments shall be assessed pursuant to this Section 5 against the Dwelling Units and Owners thereof and the Lots and Owners thereof on a pro rata basis in the same manner as described in Section 3 above. No Special Assessment may be established without the approval of at least 1/3 of each class of Members present, in person or by proxy at a duly called meeting whereat a quorum is present.

Section 6. Working Capital Assessment. At the time of closing of the first sale of each Lot on which a Dwelling Unit has been constructed, a sum equal to at least two (2) months of the Annual Assessment for each Lot shall be collected from the purchaser and the purpose of said fund is to ensure that the Association will maintain a cash reserve to meet unforeseen expenses or provide for services deemed necessary or desirable. Amounts paid into the fund shall not be considered an advance payment of the Annual Assessment or any Special Assessment.

Section 7. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Dwelling Units and Lots within a particular class of membership except for exempt Dwelling Units and Lots provided in Section 12 hereof and except that, notwithstanding anything within this Declaration to the contrary, neither the Builder nor Declarant or any Class B member which owns a Lot or Lots shall be required to pay dues.

Section 8. Commencement Date of Annual Assessment. The first Annual Assessment provided for herein shall commence the month after the first Dwelling Unit is completed on the Property and such Annual Assessments shall continue on a calendar year basis thereafter from year to year.

Section 9. Due Date of Assessments. All Annual Assessments shall be due and payable on a monthly, quarterly, semi-annual or annual basis as determined by the Board of Directors on the dates specified by the Board of Directors. The due date of any Special Assessment under Section 5 hereof shall be fixed in the resolution authorizing such assessment.

Section 10. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against all Lots for each assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, within ten business days upon demand, and for a reasonable charge, at any time furnish to any Owner liable for said assessment, or to any person interested in Owner's title to a Lot, with the permission of Owner, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid; provided, however, that no Owner, or such person interested in Owner's title, shall be entitled to receive more than one (1) certificate for each payment. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 11 Collection of Assessments; Due Date; Penalties for Late Payment. Annual and special assessments may be collected on a monthly, quarterly, annual or other basis, as determined from time to time by the Board. The billing schedule shall be the same for all portions of the Property

in a particular assessment category; provided, however, the Board, in its sole discretion, may establish different schedules for billing of Annual and Special Assessments due from Owners of different assessment categories. The Board shall have the power at any time and from time to time, in its sole discretion and upon such terms as the Board deems appropriate, to allow discounts to Owners who pay Annual and/or Special Assessments earlier than the due date therefore, provided, however, all such discounts shall be made available and applied uniformly to all Owners.

Subject to any limitations contained in this Declaration, other governing documents, or any applicable legal requirement, the Board has the authority at any time and from time to time to establish the due dates, interest rate on unpaid amounts, and penalties for late payment of Annual and Special Assessments and other charges, including the authority to accelerate the unpaid balance of the Annual Assessment in instances where there is a default in payment of a portion of such Annual Assessment that is being billed monthly, quarterly or on any other basis. In the event of default in the timely payment of any assessment or other charge, the defaulting Owner shall be obligated to pay interest on the unpaid balance thereof from and after the due date at the lesser of: (i) eighteen percent (18%) per annum; or (ii) the highest lawful rate under applicable legal requirements or (iii) such other amount, if any, established by the Board, together with all costs and expenses of collection, including reasonable attorney fees.

The Board may at any time and from time to time authorize a management company or other billing agent, on behalf of the Association, to bill and collect all assessments and other charges payable under this Declaration. The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the Association, the Board and every Lot Owner. The Association may bring an action at law against the Owner personally and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of collection, including reasonable attorneys' fees and expenses, and interest as provided above. No Owner may waive or escape liability for the assessment provided for herein by non-use of the Common Property or abandonment of his Lot. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents or assigns, the right and power to bring all actions against such Owner or Member personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property under Article 2A of Chapter 45 of the North Carolina General Statutes and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association and shall be for the benefit of the Association and all other Owners.

Section 12. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with late fees and interest as provided in Section 11 hereof and the cost of collection including reasonable attorneys' fees, become a continuing lien and charge on the Lot owned by the defaulting Owner and improvements thereon covered by such assessment, as of the assessment due date, which shall bind such Lot and improvements then in the hands of the Owner, and the defaulting Owner's heirs, devisees, personal representatives,

Successors, and assigns. Except as hereinafter provided, the aforesaid lien shall be superior to all other liens and charges against such Lot and improvements thereon. To evidence the aforesaid assessment lien, which remains unpaid for a period of 30 days or longer the Board shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot and improvements thereon covered by such lien and a description of the Lot. Such notice shall be signed by an officer or authorized agent of the Association and shall be recorded in the Office of the Clerk of Superior Court of Wake County, North Carolina. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's Lot and improvements thereon by the Association in like manner as a mortgage or a deed of trust with power of sale on real property under Article 2A of Chapter 45 of the North Carolina General Statutes subsequent to the recording of a notice of assessment lien as provided above and/or the Association may institute suit against the Owner personally obligated to pay the assessments and/or foreclosure of the aforesaid lien judicially or may seek other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The provisions of this Article V shall be in addition to the provisions of applicable laws relating to liens established as herein provided.

Section 13. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust now or hereafter placed upon any Lot subject to assessment. Sale or transfer of any Lot shall not affect the assessment lien; however, sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien, but not the personal liability of the Owner affected by such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 14. Exempt Property. The following Persons and portions of the Property shall be exempted from the assessments, charges and liens created herein:

- (a) Portions of the Property conveyed to public utilities for the purpose of granting utility easements;
- (b) All portions of the Property exempt from taxation by the laws of the State of North Carolina upon the terms and to the extent of such legal exemptions; and
- (c) All Common Property as defined herein;
- (d) All portions of the Property, but only that portion, dedicated to, and accepted by, a local public municipality or authority.

Section 15. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or

modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. General. Anything contained in Article VII of this Declaration to the contrary notwithstanding, no Lot preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in landscaping (excluding minor changes such as, but not limited to, annual and perennial flowers), fences, hedges, walls and other structures, or construction of any swimming pools or other improvements (as defined in Section 7 below), shall be commenced, erected or maintained on any Lot until the Architectural Control Committee (herein called the "Architectural Control Committee" or the "Committee"), appointed as hereinafter provided, has approved the plans and specifications therefore and the location of such improvements. However the above describe architectural review procedure is not applicable to improvements constructed or installed by or on behalf of the Declarant.

Section 2. Composition. Until December 31, 2035, or until Declarant has sold 75% of the Lots, whichever first occurs, Declarant shall appoint the members of the Architectural Control Committee which will be composed of three (3) individuals, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Project. Thereafter, until December 31, 2035, or until Builder no longer owns any Lots, whichever first occurs, Builder shall appoint the members of the Architectural Control Committee under the same guidelines. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, or Builder, for so long as either has the authority to appoint the members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. Subsequent to December 31, 2035, the Board shall appoint the members of the Architectural Control Committee. At any time, Declarant or Builder may elect not to appoint the members of the Architectural Control Committee and may assign this right to the Board of Directors. For all construction commenced on or before December 31, 2035, and to continue until Declarant has sold 75% of the Lots, Declarant retains the right to approve all original construction plans even though other members may be appointed to the Architectural Control Committee. Thereafter, Builder shall have the right to approve all original construction plans until Builder no longer owns any Lots, even though other members may be appointed to the Architectural Control Committee. Members of the Architectural Control Committee are not required to be Members or Owners.

Section 3. Procedure. No improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefore and a site plan therefore 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 with the remainder of the Property and improvements thereon;

(c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement;

(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 as the same may relate to creating a harmonious residential development in the Property.

Final completed plans and specifications for all improvements proposed to be constructed on a Lot shall be submitted in duplicate to the Architectural Control Committee for its approval or disapproval. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Control Committee, one complete set of plans and specifications will be retained by the Architectural Control Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative if found not to be in compliance with these covenants, Conditions and restrictions or if found to be otherwise unacceptable to the Architectural Control Committee pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved" accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being unacceptable. Any modification or change to the Architectural Control Committee approved set of plans and specifications 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. All homeowners requesting Architectural Control Committee approval must comply with all municipal requirements, whether or not they are part of the architectural approval process under this Declaration.

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. Although the Architectural Control Committee shall not have unrestrained or complete discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement this Declaration and are incorporated herein by reference, provided, however, that such bulletin may be amended with only the affirmative vote

of the Board of Directors. Copies of all Architectural bulletins shall be on file for inspection in the principal office of the Association.

Section 4. Jurisdiction. The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any improvements on a Lot which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property of the Project.

Section 5. Enforcement. The Architectural Control Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article of this Declaration and/or to prevent any violation of the provisions contained in this Article of this Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of this Declaration. No failure to enforce or delay in enforcement of this Article shall be deemed a waiver of the right to enforce strict compliance with the terms of this Article.

Section 6. Definition of Improvement. The term "improvement" shall mean and include all buildings, storage sheds or areas, carports, garages, decks, patios, roofed structures, satellite dish antennas, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, pales, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, signs, exterior illumination, changes in any roof shingle, changes in any exterior color or shape and any new exterior construction or exterior improvement which may not be included in any of the foregoing. The definition of improvements does not include flower, shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of improvements does include both original improvements and all later changes to improvements.

Section 7. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within forty five (45) days after submittal thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Control Committee, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in the Declaration or by any rules, regulations, ordinances, or requirements of any governmental authority. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee shall either reject them as being inadequate or approve or disapprove part, conditionally or unconditionally, and reject the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 8. Limitation of Liability. Except for gross negligence, neither the Architectural Control Committee nor the members thereof nor Declarant shall be liable for claims, causes of action,

damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 9. Miscellaneous. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses.

Section 10. Inspection. The Architectural Control Committee shall have the right to enter the Lot of the applicant to determine that the improvements were made in conformity with the approved plans.

ARTICLE VII

USE OF LOTS AND COMMON PROPERTY

The Property (and each Lot situated therein) and the Common Property shall be occupied and/or used as follows:

Section 1. Residential Purposes Only. Each Lot shall be used exclusively for residential purposes only. No trade or business of any kind shall be conducted upon any Lot or any part thereof, except as may be approved by the Board of Directors on a case-by-case basis after petition by an Owner, provided, however, that any such approved business must be entirely conducted within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to neighbors or create, among other things, excessive noise, traffic, odors, or unpleasant appearances. No Lot and no improvement may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any improvements thereon (or any part of either thereof) must include a term of at least **twelve (12) months** and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or improvement. A copy of any lease shall be submitted to the Association for assurance of compliance with this Declaration, but all such leases are subject to the provisions of this Declaration whether or not the requirements of this Section are complied with by the leasing Owner.

Section 2. Obstructions, Etc. There shall be no obstruction of the Common Property, nor shall anything be kept or stored in the Common Property, or of the landscape easement areas shown on any recorded plats of the Property nor shall anything be altered, or constructed or planted in, or removed from the Common Property without either the prior written consent of the Board of Directors or, the Declarant until December 31, 2035. Declarant shall have the right to install and maintain signs in the Common Property until December 31, 2035.

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on his Lot or in the Common Property which will result in the cancellation of or increase of cost of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Property. Each Owner shall comply with these Declarations as well as all laws, regulations, ordinances (including, without limitation, applicable zoning

ordinances) and other governmental rules and restrictions in regard to such Owner's Lot(s).

Section 4. Signs. Unless otherwise approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except Unit identification signs and one professional sign advertising the Lot for sale or rent or advertising the building contractor constructing improvements on the Lot during the initial construction and sales period. However, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs advertising the Property, the Project or portions of either thereof. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

Section 5. Nuisances. Nothing shall be done in any part of the Property, nor shall any noxious or offensive activity be carried on, nor shall any outside lighting or loudspeakers or other sound-producing devices be used, which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

Section 6. Attachments & Conversions. No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas) shall be made to the roof or exterior walls of any residence on a Lot, unless such attachments shall have been first submitted to and approved in writing by the Architectural Control Committee, as defined in Article VI. No garage may be converted into living space but shall remain as required space for parking.

Section 7. Damage to the Common Property. Each Owner shall be liable to the Association and/or the Declarant for any damage to the Common Property and/or landscaping caused by the negligence or willful misconduct of the Owner or his guests, invitees, agents, or contractors.

Section 8. Rules of the Board. All Owners and occupants of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorney's fees incurred in enforcing such rules and regulations.

Section 9. Animals. No animals, livestock or poultry shall be raised, bred or kept in any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. All pet owners must contain, restrain, and control pets under applicable city and county animal control laws, and, in any event, all pets must be on a leash when not on the Lot of the pet owner.

Section 10. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers.

Section 11. Boats and Recreational Vehicles. Neither a motorboat, houseboat, personal

watercraft or other similar water-borne vehicle, nor any “camper”, recreational vehicle, or trailer, nor abandoned nor non operational motor vehicle may be maintained, stored or kept on any portion of the Property, except in areas specifically designated by the Architectural Control Committee.

Section 12. New Construction. Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting same into a Dwelling Unit. Declarant or Builder retains the right to Architectural Control approval for all new construction for all Lots within Fish Hawk Ranch commenced on or before December 31, 2035.

Section 13. Limitation of Truck Parking and Other Vehicles. Trucks of any Owner with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Property. No vehicle of any size which transports flammable or explosive cargo may be kept in the Property at any time by any Owner, Owner’s family member or tenant. No vehicles of any Owner, Owner’s family member or tenant that are not in a condition to be normally operated or which are unsightly in appearance may be stored or situated on any Lot, including in the driveway of any Lot, or parked on any street at any time. During the period of construction on each Lot, no Owner, Owner’s family member or tenant shall be allowed to park any construction vehicles on the Lot or in the streets for any period of time beyond the time that said vehicle is necessary for construction on the said Lot.

Section 14. No Temporary Structure. No temporary dwelling, shop, tent, trailer or mobile home of any kind or any improvement of a temporary character shall be permitted on any Lot except that Declarant, or a builder or a contractor as allowed by Declarant, may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of a residence. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements.

Section 15. Landscaping. Except for the building pad, driveways and sidewalks, swimming pools, patios and decks as approved by the Architectural Control Committee (if required as provided herein) on each Lot, the surface of each Lot shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times. The Association shall retain and maintain an easement to perform any and all landscaping maintenance deemed necessary by the Board or Association on any and all Lots. The general grading, slope and drainage plan of a Lot may not be altered without Architectural Control Committee approval and/or appropriate governmental agency approvals, if applicable. All firewood shall be neatly stacked in the rear or to the side of the Dwelling Unit and/or garage on any Lot. Landscaping and gardening materials and supplies, including but not limited to, topsoil, wood chips, sand, leaf; mold, compost, pine straw, wheat straw and manure, whether in bag, bale or bulk form, shall be spread, used or incorporated into the landscaping and/or garden as quickly as possible after delivery and in no event shall be permitted to remain in view in either bag, bale or bulk form without being spread, used, or incorporated into the landscaping and/or garden for longer than fifteen (15) days.

Section 16. Fences and Walls. No fence shall be erected that violates the Zoning Ordinances for this Subdivision. No fence or wall on Lots shall exceed six (6) feet in height unless otherwise specifically required by governmental authorities having jurisdiction. All fences shall be maintained in a structurally sound and attractive manner. The Association shall retain and maintain an easement to perform all fence maintenance. An Owner must obtain the approval of the Architectural Control Committee before erecting a fence on such Owner's Lot.

Section 17. Sight Line Limitations. No fence, berm, sign, parked vehicle, wall, hedge or shrub planting which obstructs sight lines at elevations between two and eight feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right of way lines. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement and to any sight triangles shown on any recording plat. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Section 18. Air Conditioning Equipment. Except as for the Declarant or builder during the construction phase, no air conditioning window unit shall be installed on the front of any Dwelling Unit. No air conditioning apparatus shall be attached to any front wall or window of a Dwelling Unit on a Lot.

Section 19. Clothes Lines. The outdoor drying of clothes and the erection of outdoor clothes lines or similar devices is prohibited within the Property.

Section 20. Burning. Except within fireplaces in the Dwelling Unit and outdoor cooking, no burning of anything shall be permitted within the subdivision.

Section 21. Utilities. All utilities and utility connections shall be located underground, whenever possible, including electrical, data, television and telephone cables and wires.

Section 22. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots.

Section 23. Maintenance of Lots By Association. If any Owner fails to maintain or cause to be maintained in good order and condition their Lot, Dwelling Unit or any other improvement upon the Lot, as required by this Declaration, and such failure continues for a period of thirty (30) days after such Owner has been given written notice by the Association specifying such failure to maintain, and no appeal to the Board is made, then the Association shall have the right to go on the Lot of such Owner to perform any necessary maintenance or repairs at the expense of the Owner. If the Association performs such maintenance or repairs, it shall be deemed to have contracted with the Owner for that work, shall be entitled to file and enforce a mechanic's lien against the interest of the Owner in its Lot for the cost of that work and to recover the cost of that work in an action at law against the Owner, all in accordance with the applicable laws of the

State of North Carolina.

Section 24. Minimum Square Footage. The minimum heated square footage of a dwelling may not be less than 1400 square feet. Any finished area within a garage shall not be credited to the minimum size.

Section 25. Garages and Concrete Driveways. All Dwellings shall have attached or detached garages and concrete driveways.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association, by and through its Board of Directors or its otherwise duly authorized agents, shall have the authority to obtain and shall obtain, if available at a reasonable price, insurance for all insurable improvements on the Common Property against loss or damage by fire or other hazards, including extended coverage of vandalism and malicious mischief. This insurance, if available, shall be in an amount sufficient to cover the full replacement cost or repair or reconstruction in the event of damage or destruction from any such hazard. The Association shall also obtain a comprehensive public liability policy in the minimum amount of \$500,000 covering the Common Property, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, contractors, or employees along with a Fidelity Bond for all officers and employees having control over the receipt and disbursement of Association funds and Worker's Compensation to the extent necessary to comply with applicable laws. Premiums for all such insurance contemplated hereunder shall be Common Expenses of the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction. Any proceeds remaining after such costs of repair or reconstruction to the Common Property shall be retained by and for the benefit of the Association.

(b) If it is determined by the Association members that the damage or destruction of Common Property for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association. A decision not to reconstruct or repair must be approved by those members entitled to cast at least eighty percent (80%) of the votes in the Association.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a Special Assessment, as provided for in Article V of this Declaration, to cover the deficiency.

ARTICLE IX

CONDEMNATION

In the event that all or any part of the Common Property shall be taken (or conveyed in lieu of or under threat of condemnation) the award made for such taking shall be payable to the Association as trustee for Owners, to be disbursed as follows:

(a) If the taking involves a portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property to the extent such plans allow in accordance with plans approved by the Board of Directors of the Association. If the condemnation award is insufficient to replace or relocate the improvements, the Board may levy a Special Assessment, as provided for in Article V of this Declaration, to cover the deficiency.

(b) If the taking does not involve any improvements on the Common Property or in the event that the plans will not allow to repair or restore such improvements, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors may determine.

ARTICLE X

EASEMENTS

Section 1. Underground Services.

(a) Underground electrical service only shall be available to all the Lots. The metering equipment shall be located on the exterior surface of the wall at a point to be designated by the utility company. The utility company furnishing the service shall have a two-foot priority easement along and centered on the underground electrical power service conductors installed from the utility company's easement to the designated point of service on the Dwelling.

(b) Easements for the underground utility service shall be kept clear of improvements such as buildings and patios, provided, however, other pavings such as walkways or driveways may cross such utility easements and neither Declarant nor any such utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to such improvements or shrubbery, trees, flowers, and other improvements of the Owner located on land covered by said easements.

(c) An easement is hereby established for the benefit of all applicable government agencies over all Common Property and over an area adjacent to any Street or roadway within this Property hereby or hereafter established for the setting, removal, and

reading of water meters.

Section 2. Easement for Governmental Agencies. An easement is hereby established over the Common Property 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, animal control, garbage collection and delivery of mail. An easement is hereby established for the benefit of the municipality providing services over the Common Property 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 stormwater control devices and measures, and the collection of garbage.

Section 3. Encroachments. All Lots and the Common Property shall be subject to an easement for the encroachments of initial improvements constructed on adjacent Lots or Common Property by Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. If this Declaration is breached or any encroachment occurs as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alterations, there is hereby created and shall be and remain a valid easement for such encroachment and the maintenance of the same.

Section 4. Association Easement. Every Lot and Dwelling structure thereon shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Dwelling structure and that endangers any improvement or portion of the Common Property and to repair the Drainage Easements if needed.

Section 5. Association Maintenance Easement. For the benefit of the Association, its successors and assigns, a blanket easement across all of the Property is hereby established for the purpose of performing maintenance which the Association deems appropriate for the Association to perform pursuant to the terms of this Declaration.

Section 6. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Property is reserved and established in favor of Declarant and all Owners for the purposes of Ingress, egress, regress, conduct of construction activity, maintenance of and compliance with zoning ordinances, storage of construction materials and necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling unit situated on a Lot. In each instance, the person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth, in harmony with surrounding areas and, if applicable, landscaped in a manner substantially similar to any previous

landscaping. However, in no instance, within the permanently protected undisturbed open space areas shall Declarant or any Owner cause placement of impervious surface, removal of vegetation, encroachment, construction, disturbance of land or erection of any structure except in accordance with a watercourse buffer permit first being issued by the appropriate municipality. Should that person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Common Property which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place

Section 7. Utility Easements. The Declarant reserves unto itself and the Association a perpetual, nonexclusive alienable, and releasable easement and right, on, over and under the Property to erect, maintain, repair and use poles, wires, cables, conduits, lines, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, potable water, sewer, water drainage, cablevision, or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required to service the Dwelling Units. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Property except as approved by the Declarant or, after the end of the Declarant control period, the Association. Should any utility furnishing a service covered by this general easement or Owner using a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the end of the Declarant control period, the Association will have the right and authority to grant such easement. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by any licensee of the Declarant. This reservation shall not create any obligation on the part of the Declarant or Association to provide or maintain any such utility or service. Whenever possible, utilities within the Property, whether located within the Common Property or not, shall be installed and maintained underground. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

Section 8. Easement and Right of Entry Repair. Maintenance Reconstruction. If any dwelling is located closer than five (5) feet from its lot line the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his townhouse. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner 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.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and shall be to the benefit of every Owner of a

Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded. At such time, the easements, covenants, conditions and restrictions herein will automatically be extended for period(s) often (10) additional years each unless and until be approved by those members entitled to cast at least eighty percent (80%) of the votes in the Association vote against such extension, which vote shall be evidenced by an appropriate instrument of record recorded on or before the expiration of the then-applicable period. Owners may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting.

Section 2. Amendment. Subject to the limitations herein contained, this Declaration or any Supplemental Declaration may be amended or modified at any time by a vote of sixty-six and two-thirds percent (66 2/3%) of the total eligible votes of the membership of the Association as defined in Article Whereof, with both classes of the membership voting together. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting. Notwithstanding anything contained hereinabove, it is understood and agreed that the consent of Declarant in writing to any amendment or modification hereof or of any Supplemental Declaration must first be obtained if such amendment or modification is to be effected prior to December 31, 2035. Declarant, without the consent or approval of any other Owner, shall have the right to amend these declarations to conform to the requirements of any law or governmental agency having jurisdiction over the Property. In addition, Declarant may make minor amendments or modifications hereof which do not involve a change which materially affects the rights, duties or obligations specified herein. Any amendment or modification effected pursuant to this Section 2 shall become effective when an instrument is filed for the record in the Register of Deeds Office, Wake County, North Carolina, with the signatures of the requisite number of Owners (and the signature of Declarant, if such amendment or modification is to be effected prior to December 31, 2035). The foregoing shall not limit the rights of Declarant stated elsewhere herein.

Section 3. Amendment Form. If any amendment to this Declaration is so approved, each such amendment shall be delivered to the Board of the 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 Owners of the required number of Lots. (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 that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS

**CONDITIONS AND RESTRICTIONS OF
FISH HAWK RANCH**

By authority of its Board of Directors, Fish Hawk Ranch Homeowners Association, Inc., hereby certifies that the foregoing instrument has been duly approved by the Owners of the Lots in Fish Hawk Ranch and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Fish Hawk Ranch.

This the _____ day of _____, 20__.

FISH HAWK RANCH
HOMEOWNERS ASSOCIATION, INC.
By: _____

(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, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend this Declaration has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons then owning or thereafter purchasing any Lots.

Notwithstanding anything to the contrary that may appear herein, Declarant unilaterally may at any time and from time to time amend or modify this Declaration, if such amendment or modification is necessary for any one or more of the following purposes to satisfy the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie Mae (Federal National Mortgage Administration), Office of Interstate Land Sales Registration of the Department of Housing and Urban Development (OILSR) or other governmental agency, Secondary Mortgage Market Agency or Mortgagee. Each such amendment shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein.

Section 4. Enforcement. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charges or lien and in no event shall any delay in such enforcement be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. The Association Board shall have the authority to implement fines to any person or persons for violations of controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens. The authority of the Association to implement fines shall commence after the completion of due process for any violation pursuant to N.C. Gen Stat. 47F-3-107.1. Declarant, so long as it is a Class B Member, the Association and each Owner shall each independently have the tight to enforce this Declaration.

Section 5. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases shall remain effective irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

Section 6. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It is the Owner's responsibility to notify the Association of any changes in Owner name and/or mailing address.

Section 7. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 8. Conflicts. In the event of any irreconcilable conflict between this Declaration and the ByLaws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of this Declaration shall control.

Section 9. Declarant Consent. No provision hereof requiring the consent of Declarant shall be effective during any period while Declarant does not own property subject to the provisions of this Declaration.

Section 10. Non-Disturbance of Tree and Vegetation Protection Zone. All trees shall be preserved within this area; provided, however, the tree preservation area may be disturbed for the installation of utilities and stormwater control devices and measures and for the removal of dead, dying, or diseased trees. Supplemental plantings shall be allowed within the tree preservation area. However, in no instance, within the permanently protected undisturbed open space areas shall Declarant or any Owner cause placement of impervious surface, removal of vegetation, encroachment, construction, disturbance of land or erection of any structure except in accordance with a watercourse buffer permit first being issued by the appropriate municipality.

Section 11. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47F-2-102(l) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed under Seal on the day and year first above written.

Cheyenne Developers, LLC
A North Carolina Limited Liability Company

By: *James W. Johnson, III* (Seal)
James W. Johnson, III, Manager

COUNTY OF Harnett

STATE OF NORTH CAROLINA

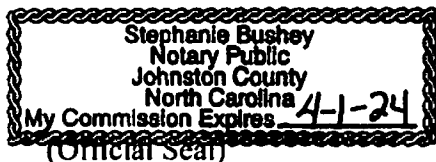
I, STEPHANIE BUSHEY, a Notary Public, certify that the following person(s) personally appeared before me this day, and I have seen satisfactory evidence of the principals' identity, by (choose one) ☐ a current state or federal identification with the principals' photograph in the form of a driver's license, or ☐ I have personal knowledge of the identity of the principals, or ☐ a credible witness has sworn to the identity of the principals, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

James W. Johnson, III, Manager of Cheyenne Developers, LLC

Date: 8/21/19

Stephanie Bushey
Signature of Notary Public

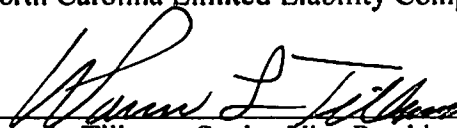
Notary Name: STEPHANIE BUSHEY
Printed or Typed Name



My commission expires: 4-1-2024

IN WITNESS WHEREOF, the undersigned, being the Builder herein, has caused this Declaration to be executed under Seal on the day and year first above written.

H&H Constructors of Fayetteville, LLC
A North Carolina Limited Liability Company

By:  (Seal)
Warren L. Tillman, Senior Vice President

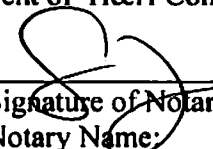
COUNTY OF CUMBERLAND

STATE OF NORTH CAROLINA

I, Amy Jarman, a Notary Public, certify that the following person(s) personally appeared before me this day, and I have seen satisfactory evidence of the principals' identity, by (choose one) ☐ a current state or federal identification with the principals' photograph in the form of a driver's license, or ☐ I have personal knowledge of the identity of the principals, or ☐ a credible witness has sworn to the identity of the principals, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Warren L. Tillman, Senior Vice President of H&H Constructors of Fayetteville, LLC

Date: August 28, 2019


Signature of Notary Public

Notary Name: Amy Jarman

Printed or Typed Name

My commission expires: 7/4/23

(Official Seal)

