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Declaration

of

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

for

MACKENZIE RIDGE

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Prepared by and Return to:
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Submitted electronically by Hervey & Hervey, P.A. in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Wake County Register of Deeds.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MACKENZIE RIDGE
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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MACKENZIE RIDGE

This **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MACKENZIE RIDGE** (this "**Declaration**") is made as of the 7 day of July, 2022, by Pulte Home Company, LLC, a Michigan limited liability company ("**Pulte**") joined in by McKenzie Meadows Developers, LLC, a North Carolina limited liability company ("**Developer**").

W I T N E S E T H:

WHEREAS, Pulte and Developer are the owners of the real property described on Exhibit A; and

WHEREAS, Pulte and Developer desire to subject the real property described on Exhibit A, and possibly other property, to the provisions of this Declaration to create a residential community.

Accordingly, Pulte has created a North Carolina non-profit corporation known as the Mackenzie Ridge Homeowners Association, Inc., to exercise certain rights and obligations in this Declaration with respect to such real property. The owners of residential dwellings to be constructed upon such property shall be members of such association.

NOW THEREFORE, Pulte hereby declares, with the consent of the Developer, that the real property described on Exhibit A of this Declaration, including any improvements which may be (but are not required to be) constructed on that property, is subjected to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, contained in this Declaration. The provisions of this Declaration shall run with the title to the property now or hereafter subjected to this Declaration. This Declaration shall be binding on all Persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

ARTICLE I. DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

"**Act**" means the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S. 47F, with the particular section number following the G.S. 47F reference (for

example, G.S. 47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

"**Affiliate**" means: (i) any corporation at least fifty percent (50%) of the voting stock of which is owned or controlled by the Declarant, and any partnership, joint venture or limited liability company in which the Declarant has at least a fifty percent (50%) equity interest or an interest in at least fifty percent (50%) of the cash flow from such partnership, joint venture or company; or (ii) any Person owning or controlling at least a fifty percent (50%) equity interest in Declarant or an interest in at least fifty percent (50%) of the cash flow from Declarant.

"**Annexation Declaration**" means a document, by whatever name denominated, that is recorded for the purposes of annexing additional property to this Declaration and causing such property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

"Architectural Review Committee" means the architectural review committee for the Community established and empowered as provided in Article VI of this Declaration

"**Areas of Common Responsibility**" mean the Common Area, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts, or agreements.

"Articles" means the Articles of Incorporation of the Association.

"Assessment(s)" means a payment (or payments) which an Owner is obligated to pay to the Association as permitted or contemplated by this Declaration.

"**Association**" means Mackenzie Ridge Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

"Association Documents" means in the aggregate this Declaration, the Articles, the Bylaws, the rules and regulations published by the Association, and all of the instruments and documents referred to or incorporated therein, as they may be amended from time to time.

"**Board of Directors**" or "**Board**" means the board of directors of the Association, and is the "executive board" as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

"**Bylaws**" mean the Bylaws of the Association.

"**Common Area**" means real property, together with any improvements situated thereon, intended for the common exclusive use and benefit of Owners and Occupants of the Properties, however such real property is described on a plat or document recorded in the Registry of Deeds for the County in which the Community is located. Common Area may be owned or leased by the

Association or it may be owned by another Person with the Association having a right or easement therein.

"Common Expenses" means the expenditures made by and the financial liabilities of the Association, together with any allocations for reserves, including specifically, but without limitation, all of the following:

(1) All sums lawfully assessed by the Association against its Members;

(2) Expenses of the Common Area and administration, inspection and maintenance of the Common Area (including but not limited to, the Townhome Common Area);

(3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;

(4) Expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;

(5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;

(6) *Ad valorem* taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;

(7) Fees or charges for utilities used in connection with the Common Area;

(8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;

(9) Allocations to reserve funds;

(10) Fees for services engaged by the Association;

(11) Costs and expenses for which the Association is obligated under any easement agreement or other agreement serving or encumbering all or portions of the Community;

(12) Costs and expenses incurred by the Association to keep and maintain, repair and replace the landscaping for which the Association is responsible as provided in Section 1(b) of Article V;

(13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;

(14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses;

(15) Expenses incurred by the Association in maintaining, operating, inspecting, and repairing the Project Drainage System, which include, but are not limited to, (i) the expenses for the routine maintenance and repairs to the Project Drainage System (or any component thereof) required by the Town and set forth in any Storm Water Agreement or Storm Water Manual; and (ii) the expenses associated with any periodic major repairs or reconstruction of the Project Drainage System (or any component thereof) required by the Town in accordance with any applicable Storm Water Agreement or Storm Water Manual;

(16) Any other expenses deemed appropriate by the Board that are consistent with the plan of development for the Community or are necessary for the Association to perform its duties or meet its obligations in the Association Documents; and

(17) The Association shall maintain, repair and replace the Shared Walls and the Association's cost of same shall constitute Common Expenses. Any retaining wall installed by an Owner on such Owner's Lot shall not be deemed to be a Shared Wall regardless of the dimensions of such wall.

"**Community**" means Mackenzie Ridge, the residential community to be constructed upon the Properties.

"**Community Standard**" means the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination must be consistent with the Community Standard originally established by the Declarant.

"**Declarant**" means Pulte Home Company, LLC, ("**Pulte**") a Michigan limited liability company, as well as its successors and assigns pursuant to an express assignment or conveyance of any special Declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis. Any such assignment shall be recorded in the office of the Register of Deeds of the county in which the Community is located.

"Declarant Control Period" means the period commencing on the date this Declaration is recorded in the Public Records (as defined below) and ending on the earlier of (i) the date on which 100% of the lots developed or to be developed as part of the Community (including all present and future phases) pursuant to development plans maintained by the Declarant, as such plans may be revised and amended from time-to-time, have been conveyed to Persons other than Declarant; or (ii) the date on which Declarant records in the Public Records a document relinquishing its authority to appoint and remove directors and officers of the Association.

"**Declarant's Development Period**" means the period of time commencing on the date this Declaration is recorded in the Public Records, and continuing until the later of: (i) one (1)

year after Declarant shall cease to own any property within the Community; or (ii) for so long as Declarant shall have the unilateral right to subject additional property to this Declaration.

"**Declaration**" shall include this Declaration of Covenants, Conditions, Restrictions and Easements for Mackenzie Ridge, as the same may be supplemented or amended pursuant to any Annexation Declaration or any amendment to this Declaration in accordance with its terms.

"Developer" means McKenzie Meadows Developers, LLC, a North Carolina limited liability company, or any successor who acquires any portion of the Property from Developer for the purpose of development and/or sale.

"Dwelling" means an individual single-family attached or detached residential dwelling constructed upon and as part of a Lot.

"General Common Expenses" shall mean and refer to all of the Common Expenses other than the Townhome Common Expenses and the Yard Services Expenses.

"Governmental Authorities" means the federal government, the State of North Carolina, the County of Wake, the Town of Wendell (the **"Town"**), and any agency or instrumentality of them having jurisdiction over the Properties or any portion thereof.

"Institutional Mortgagee" means any lending institution holding an interest in a Lot pursuant to a first mortgage covering a Lot. Institutional Mortgagees shall include, but not be limited to (i) the successors and assigns of such lending institutions, (ii) any "secondary mortgage market institution" who typically purchase, insure or guaranty mortgages (such as the Federal National Mortgage Association, the Veterans Administration **("VA")**, the Federal Housing Administration **("FHA")**, the Department of Housing and Urban Development **("HUD")**, and similar entities), (iii) Declarant, if Declarant holds a mortgage on any portion of the Properties.

"**Lot**" shall mean and refer to any lot or any separately numbered portion of the Properties shown on any now or subsequently recorded subdivision plat of the Properties intended for use or used as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon and "Lots" shall refer to all or any referenced subset of such lots collectively, and may include one or more of the Lots. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an Affiliate, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Area. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

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

"**Mortgagee**" shall mean the holder of a Mortgage.

"**Occupant**" shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

"**Owner**" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation, and **"Owners"** shall refer to all or any referenced subset of such owners.

"**Person**" means a natural person, corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

"Project Drainage System" means the system of storm water drainage for the Community, which may consist of ponds, detention areas, surface swales or ditches, underground piping, catch basins, and other related facilities to achieve proper drainage for the Properties.

"**Properties**" means the real property and interests described on Exhibit A and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.

"Public Records" means the Register of Deeds Office of Wake County, North Carolina, or such other authorized County office in which deeds and other land records and documents are filed for public notice.

""**SF Yard Lots**" means those Lots on which a single-family detached Dwelling is constructed or permitted to be constructed for which the Association shall provide yard maintenance services per Article V, Section 1 (b).

"Shared Wall" or "**Shared Walls**" means one or more retaining walls originally installed by Declarant and/or the Association for the purpose of providing additional structural support for improvements within Mackenzie Ridge, which are located (i) entirely on Common Area, (ii) on two or more Lots, (iii) on Common Area and one or more Lots, or (iv) located entirely on one Lot and (a) has at least one exposed face (i.e., one above-ground surface) exceeding one-hundred and fifty (150) square feet in area, and (b) has an above-ground height of (X) at least four (4) feet for a continuous span of fifteen (15) feet or (Y) in excess of 10 feet at any point.

By way of example, any of the following would constitute a Shared Wall: (X) a wall on a single Lot having an above-ground height of four (4) feet for a length of thirty-eight (38) feet, or (Y) a wall on a single Lot that has a ten (10) foot long section with an above-ground height of four (4) feet, a twenty-five (25) foot long section with an above-ground height of three and one-half (3.5) feet, and a six (6) foot long section with an above-ground height of four (4) feet, or (Z) a wall on a single Lot that has an eighteen (18) foot long section with an above-ground height of ten (10) feet.

"Stormwater Agreement" means any maintenance agreement regarding the Project Drainage System that is entered into by Declarant and/or the Association and the Town, for the

purpose of setting forth certain rights benefitting the Town and certain obligations of Declarant and/or the Association with respect to the operation, maintenance, repair, and replacement of the Project Drainage System.

"Stormwater Manual" means any document required by the Town and referred to in a Stormwater Agreement which sets forth specifications and requirements for the installation, maintenance, operation, repair and replacement of the Project Drainage System or certain components thereof.

"Townhome Common Area" means real property, together with any improvements situated thereon, intended for the common exclusive use and benefit of Townhome Owners and Occupants of the Properties, however such real property is described on a plat or document recorded in the Registry of Deeds for the County in which the Community is located. Townhome Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein.

"Townhome Common Expenses" means the Common Expenses incurred by the Association for the exclusive benefit of the Townhome Lots as provided in the Association Documents.

"Townhome Dwelling" means a Dwelling that is attached to an adjacent Dwelling by a common wall located on the boundary between the abutting Lots.

"Townhome Lot" means a Lot upon which a Townhome Dwelling is constructed or is permitted to be constructed.

"Townhome Owner" means the Owner of a Townhome Lot.

"**Yard Service Expenses**" means those common expenses incurred by the Association for providing yard services to the Townhome Lots and the SF Yard Lots.

ARTICLE II.
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Subject To This Declaration. The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit A.

Section 2. Other Property. Only the real property described in Section 1 of this Article is made subject to this Declaration. However, Declarant may subject all or portions of the additional real property described in Article IX, Section 1 hereof by recording one or more Annexation Declarations.

ARTICLE III.
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Classes of Membership. The Association shall have two classes of voting membership:

Class A: The Class A Members shall be every Person who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, during any Period of Declarant Control. The foregoing is not intended to include Persons that hold an interest in a Lot merely as security for the performance of an obligation. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any Lot, all such Persons shall be Members, but such Members collectively shall not be entitled to cast more than one (1) vote with respect to such Lot.

Class B: Declarant shall be the Class B Member and Declarant shall be entitled to three (3) votes for each Lot that is owned by Declarant and/or any Affiliate. The Class B membership shall cease and be converted to Class A membership at such time as Declarant no longer has the right to appoint the members of the Board of the Association pursuant to the provisions of Section 2 of this Article.

Section 2. Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until the expiration of the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

Section 3. Directors Elected by the Members. Following the expiration of the period during which Declarant shall have the right to appoint and remove Directors as set forth in Section 2 above, the Directors of the Association shall be elected by the Owners in accordance with the terms of this Declaration and the Articles and Bylaws of the Association. The initial Board of Directors elected by the Members of the Association shall consist of three (3) members. The Directors selected by the Members of the Association shall be elected at the Annual Meeting of the Association as provided by the Bylaws of the Association, and at least a majority of the Directors shall be Members of the Association or employees, officers, directors, shareholders, partners or members of a corporate, partnership or company Member of the Association.

Section 4. Mandatory Assignment of Declarant Rights. At such time as Pulte has conveyed its final Lot within the Properties and no longer owns (or has the contractual right or obligation to purchase) any portion of the Properties, Pulte shall execute and record an assignment of Declarant rights from Pulte to McKenzie Meadows Developers, LLC which shall transfer and assign all of Pulte's rights under this Declaration as Declarant and Class B Member. McKenzie Meadows Developers, LLC shall accept and execute as assignee any such assignment of Declarant rights which is prepared by Pulte and tendered to McKenzie Meadows Developers, LLC for execution.

ARTICLE IV.
ASSESSMENTS

Section 1. Obligation for Assessments. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Association Documents; and (ii) maintain, operate and

preserve the Common Area for the welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Lot and the Owners, the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, which include, but are not limited to, "Base Assessments", "Special Assessments", "Individual Expense Assessments", "Townhome Assessments" (as to the Townhome Lots only) and "Yard Service Assessments" (as to the SF Yard Lots only) (as those terms are hereinafter defined). Each Owner by acceptance of a deed or other instrument of conveyance of a Lot from Declarant, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Common Expenses in accordance with the provisions of the Association Documents.

Section 2. Purpose of Assessments. The regular annual Assessment (referred to below as the "Base Assessment") is primarily for the purpose of funding the General Common Expenses of the Association, in accordance with the budget for the fiscal year to which it applies, although such Assessments may be used for payment of any General Common Expenses as determined by the Board, including, but not limited to, the payment of charges and fees due and owing under any Bulk Service Contract(s) entered pursuant to Article V Section 38. The regular annual Townhome Assessment (referred to below as the "Townhome Assessment") is primarily for the purpose of funding the Townhome Expenses of the Association in accordance with the budget for the fiscal year to which it applies, although such Assessments may be used for payment of any Townhome Expenses as determined by the Board. The regular annual Yard Services Assessment (referred to below as the "Yard Services Assessment") is primarily for the purpose of funding the Yard Services Expenses of the Association in accordance with the budget for the fiscal year to which it applies, although such Assessments may be used for payment of any Yard Services Expenses as determined by the Board.

Section 3. Amount of Assessments; Budgets. The Board of Directors shall adopt a proposed budget of Common Expenses for the Association at least annually. The proposed budget shall identify General Common Expenses, Townhome Expenses and Yard Services Expenses separately or, at the election of the Board, the Townhome Expenses may be set forth in a separate annual budget of Common Expenses which are allocated exclusively for the maintenance, repair, operation, inspection, and replacement of the Townhome Common Area and for any other services that the Association provides to the Townhome Lots.

Based on the proposed budget, the Board of Directors shall establish the amount of the regular annual Assessment to be levied against each Lot by dividing the budgeted amount of the General Common Expenses by the number of Lots subject to assessment hereunder, with the quotient thus arrived at being the "Base Assessment". The regular annual Townhome Assessment and Yard Service Assessment shall be similarly determined by dividing the Townhome Expenses (or the Yard Service Expenses) by the total number of applicable Lots subject to the assessment (i.e., the Townhome Lots for the Townhome Assessment; the SF Yard Lots for the Yard Service Assessment).

Notwithstanding the foregoing, during the Declarant Control Period, the Board shall have the right, but not the obligation to establish the amount of the various Assessments by dividing the budgeted amount of Common Expenses (i.e., General Common Expenses, Townhome Expenses or Yard Services Expenses, as applicable) by the total number of the applicable type of those Lots

that are or will be subject to the applicable Assessment shown on Declarant's current development plan approved by the Governmental Authorities for the Community.

Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a summary of the proposed budget to the Members and a deliver written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). That budget shall be deemed ratified unless at that meeting the Members entitled to cast at eighty percent (80%) of the votes of the entire membership vote to reject the budget. Provided, however, if the amount of the annual Base Assessment, Townhome Assessment or Yard Service Assessment reflected in the proposed budget exceeds 110 % of the applicable Assessment last ratified by the Members and in effect for the fiscal year of the Association immediately preceding the fiscal year that is the subject of the proposed budget, that budget may be rejected by a vote of the Members at the meeting entitled to cast at least a majority of the votes of the Association. If any proposed budget, is rejected by the Members in accordance with the provisions of this Section 3, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget, or portion thereof, proposed by the Board.

Until December 31 of the year of the conveyance of the first Lot to an Owner other than Declarant or an Affiliate:

(i) the annual amount of the Base Assessment charged against all Lots shall be Nine Hundred and no/100 Dollars ($900.00) per Lot, per year, (Seventy-Five and no/100 Dollars ($75.00) per month),

(ii) the annual amount of the Townhome Assessment charged against all Townhome Lots (in addition to the Base Assessment) shall be Seven Hundred Twenty and no/100 Dollars ($720.00) per Townhome Lot, per year (Sixty and no/100 Dollars ($60.00) per month), and

(iii) the annual amount of the Yard Services Assessment charged against all SF Yard Lots (in addition to the Base Assessment) shall be Seven Hundred Eighty and no/100 Dollars ($780.00) per SF Yard Lot, per year (Sixty-Five and no/100 Dollars ($65.00) per month).

The Assessments for each subsequent fiscal year for purposes of voting percentages to ratify the budget shall be 110% of the amount of the applicable Assessment, as the case may be, for the immediately preceding fiscal year.

Section 4. Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area. All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be a charge on the Owner's Lot as provided in G.S. 47F-3-116 of

the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S. 47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

Section 5. Supplementary Budgets. The ratification of a budget for a specified period of time shall not preclude the adoption of a modified budget by the Board at any time to address increases in Common Expenses or unforeseen or unexpected Common Expenses. Any modified budget that results in an increase of any Assessment must be ratified pursuant to the provisions Section 3 of this Article.

Section 6. Certificate of Payment. The Association shall, within ten (10) business days after receiving a written request, furnish a certificate signed by an officer of the Association setting forth whether the assessments, other charges, and fines on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association, the Board, and the Owner as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

Section 7. Special Assessments. "Special Assessments" include those Assessments which are levied for capital improvements which include the costs of constructing or acquiring improvements on or for the Common Area or the costs of repairing, reconstructing or replacing such improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Lots shall be paid by the Owners in addition to any other Assessments. Special Assessments shall be assessed in the same manner as the Base Assessment, except that Special Assessment levied for the purpose of funding the acquisition or construction of improvements to or for the Townhome Common Area, shall be uniformly assessed against the Townhome Lots that are subject to assessment at the time the Special Assessment is levied. Special Assessments shall be paid in such installments or in a lump sum as the Board of Directors shall, from time to time, determine. In any fiscal year of the Association after the expiration of Declarant's Development Period, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws (except that Special Assessments levied exclusively on the Townhome Lots as

provided above will require the affirmative assent of at least two-thirds (2/3) of the votes of each class of Members who are also Townhome Owners and are represented in person or by proxy at a meeting called and held in accordance with the Bylaws). In any fiscal year of the Association prior to the expiration of Declarant's Development Period, the levying of any Special Assessment which exceeds five percent (5%) of the budgeted General Common Expenses of the Association (or 5% of the budgeted Townhome Expenses of the Association) for that fiscal year, shall require the affirmative assent of at least two-thirds (2/3) of all votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws (or if applicable, the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members who are also Townhome Owners and represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the expiration of Declarant's Development Period in an amount equal to 5% or less of the budgeted General Common Expenses or budgeted Townhome Expenses (as the case may be) of the Association for a fiscal year may be levied by the Board of Directors without the approval or consent of the Owners or any other party.

Section 8. No Setoff or Deduction. No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

Section 9. Application of Payments. All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

Section 10. Date of Commencement of Assessments. As to each Lot, assessments shall start on the date of the conveyance of the Lot to a Person other than Declarant. The first annual Assessment levied on a Lot shall be adjusted according to the number of days then remaining in that fiscal year.

Section 11. Individual Assessment. Pursuant to this Section, the Board shall have the power to levy individual assessments for the following Association expenses:

(a) Expenses of the Association which benefit less than all of the Lots may be individually assessed equitably among all of the Lots which are benefited according to the benefit received;

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received; and

(c) Expenses incurred by Declarant or the Association as a result of an Owner's failure or refusal to comply with the Association Documents including, but not limited to, non-compliance of Dwellings and any other improvements or personal property located upon a Lot with the standards set forth in the Association Documents, may be individually

assessed against the subject Owner(s) and collected and enforced in the same manner as any other Assessments hereunder as provided herein.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future.

ARTICLE V.
USE, MAINTENANCE & CONVEYANCE OF COMMON AREA TO ASSOCIATION

Section 1. Association's Responsibility. The Association shall maintain in good repair all Areas of Common Responsibility, as follows:

(a) The Association shall maintain, repair, and replace all improvements situated on the Common Area, provided that the Association shall only be required to replace landscaping improvements if and when required to do so by a Governmental Authority. The Association shall also maintain, repair and replace, all entry features (including the expenses for water and electricity, if any, provided to all such entry features); operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community, all retaining walls and common privacy fencing installed by Declarant or the Association within the Community, all storm water facilities and easements serving the Community, all private trails, mail kiosks, open space areas and conservation areas. To the extent that any entry feature, mail kiosk, pedestrian trail, retaining wall, privacy fence, or portion thereof is located upon a Lot, Declarant has reserved an easement in favor of Declarant and the Association pursuant to Section 7 of Article X, and has restricted the use of the portions of any Lot upon which any portion of a retaining wall or privacy fence is located, as provided in the applicable Sections of Article VI.

(b) The Association shall provide yard maintenance services to the Townhome Lots and the SF Yard Lots as follows: cutting of grass and trimming of trees, shrubs, hedges and bushes, from time to time as necessary or appropriate as determined in the Board's sole discretion. The Association's obligations pursuant to this section shall not include the replacement of any dead or diseased tree, shrub, hedge, bush or other plantings. Owners of Lots receiving those services may replace any dead or diseased tree, shrub, hedge, bush or other plantings with the same or similar planting, but otherwise shall not alter such landscaping or landscaping equipment, and shall not interfere with the Association's yard maintenance activities. Should any landscaping be installed by an Owner or Occupant of a Lot receiving those services, the Association shall have no responsibility to maintain such landscaping or have any liability for damage to such landscaping which may occur in the course of performing any maintenance or repair required or permitted by the Association under this Declaration. In addition, the Association shall not be required to perform any such services with respect to any portion of a Lot that is part of a fenced or otherwise enclosed privacy area.

(c) The Association shall provide gutter cleaning and termite inspection and treatment services for the Dwellings on a periodic basis.

(d) The Association shall replace the roofs of the buildings in which the Dwellings are located, based on a 20-25 year replacement schedule.

(e) The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, within or serving the Community, including the Lots and improvements thereon, where the Board has determined that such maintenance would benefit the Owners.

(f) The Association shall have the right, but not the obligation, from time to time, as determined by the Board in its sole discretion, to make reasonable modifications to the scope of the services to be provided by the Association.

(g) The Association shall not be liable to any Owner, or any Owner's Occupant, guest, or family member for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of an alleged failure of the Association to take some action or perform some function required to be taken or discomfort arising from the making of repairs or improvements which are the responsibility of the Association. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association.

(h) In the event that the Association determines that the need for maintenance, repair, or replacement of property that is to be maintained, repaired or replaced by the Association in accordance with the terms of this Declaration is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance maintained by or on behalf of the Association, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and assess all costs thereof as an individual assessment against such Owner and such Owner's Lot; provided, however, during Declarant's Development Period, any such action by the Association shall require the Declarant's prior written consent. Such Owner may request a hearing by the Board of Directors, or an adjudicatory panel appointed by the Board, to determine responsibility for the damages if the monetary amounts involved are less than or equal to the jurisdictional amount established for small claims under North Carolina law. The hearing shall afford notice of the charge to the Owner, an opportunity for the Owner to be heard and to present evidence, and a notice of decision by the Board. The Board of Directors or its appointees may not assess liability in an amount in excess of the jurisdictional amount established for small claims under North Carolina law.

(i) The maintenance shall be performed consistent with the Community Standard.

Section 2. Owner's Responsibility. Except as provided in Article V, Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof. Each Lot shall be maintained in a manner consistent with the Community Standard and this Declaration. In the event that the Board

determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment levied against the Owner and a lien on such Owner's Lot in accordance with the provisions of Article IV hereof.

Section 3. Conveyance of Common Area and Personal Property by Declarant to Association. The Declarant or Developer may convey to the Association any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community, in which event such property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members. Declarant or Develper, as the case may be, shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Declarant in recording any plat of the Properties may identify thereon certain areas of land as "Open Space," "Common Area," "Common Property," "Common Open Space" or similar designation. Such designated properties, unless otherwise expressly provided, are expressly not dedicated to the public, but are intended to be conveyed by Declarant or Developer to the Association as Common Area. Declarant, however, reserves the right on behalf of the Declarant and Developer to reconfigure, in accordance with any applicable local governmental ordinances and regulations, all or any portion of such areas and all or any one or more of the Lots shown on any recorded subdivision plat at any time prior to the conveyance of such property by recording a revised subdivision plat of the property and thereby increase or decrease the area of any "Open Space," "Common Area," "Common Property," or similarly designated property and/or increase or decrease the number or size of the Lots shown thereon. Any "Open Space," "Common Area," "Common Property," or similarly designated property conveyed to the Association shall be conveyed subject to all easements and restrictions then of record, including all easements and restrictions herein reserved and established, and the recording of a plat showing such areas shall not limit the rights of Declarant to further restrict such property and to grant and convey easements on, over or upon such property, prior to its conveyance to the Association, or otherwise in accordance with the terms of this Declaration. Declarant may convey to the Association any personal property to be used by the Association in connection with Common Area or any services to be provided by the Association pursuant to this Declaration and the costs of maintaining such property shall be a Common Expense. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion.

All or any real or personal property assigned, transferred and/or conveyed by the Declarant (or that Declarant causes to be assigned, transferred and/or conveyed to the Association by a third party) shall be deemed accepted by the Association upon Declarant's or its designee's assignment, transfer or conveyance to the Association without consent or action by the Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion.

All property conveyed to the Association will be deemed conveyed in its then "AS-IS" condition, with all faults, and without warranty of any kind, express or implied, except to the extent Declarant or the transferor provides an express, written warranty in the deed or other document making such conveyance. To the fullest extent permitted by law, all warranties pertaining to Common Area, including but not limited to statutory and implied warranties (including but not limited to any warranty of habitability, merchantability, workmanlike construction or fitness for a particular purpose), are hereby disclaimed by Declarant and waived by the Association and each Owner.

Section 4. No Representations or Warranties Regarding Lakes, Creeks or Drainage Areas. Declarant has informed and hereby informs the Association that any lakes, creeks or drainage areas located within or adjacent to the Property are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with specific aesthetic qualities.

Section 5. No Representations or Warranties Regarding Natural Areas. Declarant has informed and hereby informs the Association that certain Common Area or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, water detention facilities and open spaces, may be intended to be unimproved open space to be left or maintained in a natural or semi-natural condition and are not necessarily intended to be a recreational feature or an amenity with specific aesthetic qualities. Neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Common Area intended for the purposes described in this Section 5.

ARTICLE VI.
USE RESTRICTIONS AND RULES

Section 1. General. This Article sets out certain use restrictions that must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration.

Section 2. Residential Use. Except as otherwise herein provided with respect to (i) the use of portions of the Properties as sales offices, construction offices and/or model homes and (ii) the maintenance of offices or home businesses, all Lots shall be used for residential purposes

exclusively, and no portion of the Properties shall be used except for residential purposes and uses ancillary thereto, including recreational, park and street purposes. Notwithstanding the foregoing restrictions, the Declarant, during Declarant's Development Period, shall have the right to operate and maintain one or more sales offices, construction offices and model homes within the Community. In addition, notwithstanding the foregoing restrictions, an Owner may maintain an office or home business on such Owner's Lot or in any dwelling or other improvement located on the Lot only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing on the Lot, or by Owner's tenant residing on the Lot; (ii) there are no displays or signs indicating that the Lot or improvement is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage (as determined from time to time in the sole discretion of the Board) by clients, customers or other Persons; (iv) no equipment or other items related to the office or business are stored, parked or otherwise kept on such Owner's Lot outside of the dwelling or other enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from all applicable local governmental authorities, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all applicable federal, state and local laws and ordinances; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing on the Lot or the Owner's tenant residing on the Lot; and (viii) the Owner has obtained prior written approval from the Board and thereafter registers annually with the Association as long as the operation of the home business continues. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all applicable federal, state and local laws and ordinances and the rules and regulations, if any, adopted by the Board.

Section 3. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant or the Developer, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. Except for improvements installed by the Declarant and the Developer, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.

(a) The Board may employ architects, engineers, or other Persons as it deems necessary to enable the Architectural Review Committee to perform its review.

(b) The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

(c) Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.

(d) Until the expiration of Declarant's Development Period, Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration of Declarant's Development Period or the earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

(e) If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction commenced in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

(f) Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 4. Signs. No sign of any kind shall be displayed to the public view on any portion of the Properties except for signs which are approved by Declarant, during Declarant's

Development Period, and thereafter, by the Board, and any of the following: (i) signs advertising a Dwelling for sale or rent by an Owner other than Declarant, provided that only one (1) such sign may be displayed with respect to any given Dwelling that is for sale or rent, that the sign is not larger than six (6) square feet, and that any such sign advertising a Dwelling for sale or rent is displayed inside the window of the Dwelling, (ii) signs advertising any portion of the Properties for sale or rent by Declarant; (iii) signs erected by or on behalf of Declarant, during Declarant's Development Period, and thereafter, by or on behalf of the Association identifying the subdivision name of the Properties or of a phase, section or subdivision within the Community, or the number or street address of a Lot or Dwelling, or directing Persons as to the location of certain portions of the Properties; (iv) signs erected by or on behalf of Declarant, during Declarant's Development Period, and thereafter, by or on behalf of the Association identifying any portion of the Common Area; and (v) signs required by any applicable governmental authority or a utility provider. All signs maintained on any portion of the Properties must comply with all applicable federal, state and local laws and ordinances.

Section 5. Parking and Vehicular Restrictions.

(a) Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, passenger trucks and other vehicles manufactured and used as private passenger vehicles, may be parked within the Community overnight without the prior written consent of the Board, unless kept within an enclosed garage. In particular and without limitation, without the prior written consent of the Board, no vehicle containing commercial lettering, signs or equipment, and no truck (other than private passenger trucks), recreational vehicle, camper, trailer, aircraft, motorcycle, or vehicle other than a private passenger vehicle as specified above, may be parked or stored outside of a Dwelling overnight. No overnight parking is permitted on any streets, lawns, or areas other than driveways, garages without the consent of the Board. Provided, however, automobiles owned by governmental law enforcement agencies are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the Community. All vehicles parked within the Community must be in good condition and repair, and no vehicle which does not contain a current license plate or which cannot operate on its own power shall be parked within the Community outside of an enclosed garage for more than 24 hours, and no major repair of any vehicle shall be made on the Properties. All-terrain vehicles, and the like are not permitted to be operated within the Community or parked overnight outside of an enclosed garage, except with the prior written consent of the Board which may be withdrawn at any time. Any motorcycle or other permitted motorized vehicle must be licensed for street use and equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the Community.

(b) The Board shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the

cost of which towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered.

Section 6. Garages. To the extent that any Dwelling contains a garage, no garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Architectural Review Committee. All garage doors shall remain closed when vehicles or Persons are not entering or leaving the garage. The foregoing shall not include any garages used or formerly used by Declarant as an office or other area in connection with the sale of Dwellings, which are Declarant Improvements and not subject to the restrictions in this Article VI.

Section 7. Leasing. Except as otherwise herein provided, Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's Lot in accordance with the provisions of Article IV.

Section 8. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied and assessed against the Owner and secured with a lien against such Owner's Lot in accordance with the provisions of Article IV.

Section 9. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets, may be kept by the Owner(s) or Occupants of Lots, so long as such pets are kept in compliance with requirement of law applicable to such animal and any rules and regulations promulgated in accordance with the authority herein conferred on Declarant or the Association. No pets shall be kept, bred or maintained for any commercial purpose. All pet animals must be secured by a leash or lead and under the control of a responsible person and obedient to that person's command at any time they are permitted outside a residence on the Lot or Common Area. Each Owner shall be absolutely liable to each and all remaining Owners, their families, guests, and invitees and to the Association, for any and all damage to person or property caused by any such pet brought upon or kept on the Properties by such Owner or by such Owner's family, guests, or invitees. The Board of Directors, with the approval of Declarant during Declarant's Development Period, shall have the power to adopt, publish, amend and enforce rules and regulations governing the keeping of pets on the Properties and to establish penalties for the infraction thereof, to the extent such rules and regulations do not conflict with this provision. Such rules and regulations may place reasonable limits on the number and/or size of pets that may be kept by the Owner(s) and Occupants of each Lot.

Section 10. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's or Occupant's property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the Architectural Review Committee, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

Section 11. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 12. Antennas. No satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained within the Community, except that Declarant and the Association shall have the right, without the obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and except that (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices")) shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot (generally being the rear of the Lot) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community Standard and any design guidelines. Owners shall remove any inoperable or damaged Permitted Device or any Permitted Device not in use due to the Owner's discontinuation of the applicable telecommunications service within 30 days after such device is damaged, becomes inoperable, or the applicable telecommunications service is discontinued.

Section 13. Tree Removal. No trees shall be removed without the prior written consent of the Architectural Review Committee.

Section 14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or re-channel the drainage flows after location and installation of

drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

Section 15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, and other similar items shall be stored completely enclosed within the garage that is a part of the residence located on the Lot or as long as such items are screened so as to be concealed from view of neighboring streets and property, located in the rear or side yard of the Lot. All Owners who keep a trash or recycling container in the rear of a Lot will not have access rights over any other Lots for the purpose of moving such container to the front of the Lot for collection. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except that Declarant may maintain a "burn pit" during development and construction of the Community.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right on behalf of the Declarant and Developer, to replat any Lot or Lots owned by Declarant or Developer, as the case may be. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's and Developer's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and common areas in the Community are laid out.

Section 18. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

Section 19. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Association shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

Section 20. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction, and lines installed by or at the request of Declarant.

Section 21. Air Conditioning Units. No window air conditioning units may be installed.

Section 22. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for approved lighting as originally installed on a Lot.

Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee. Notwithstanding anything herein to the contrary, however, the display of the American Flag shall not be prohibited, but shall be subject to the reasonable regulation of the Association as to the time, place, manner, location and size of any such display, including, without limitation, the requirement that any display of the American Flag be in compliance with Federal Laws relating to the same.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

Section 25. Gardens and Play Equipment. No vegetable garden or play equipment shall be erected on any Lot without the prior written consent of the Architectural Review Committee, and any such items must be located between the rear dwelling line and the rear lot line. Permanently mounted basketball goals are prohibited. When not in use any temporary basketball goal shall be stored fully enclosed in a garage or otherwise fully screened from the view of adjacent Lots or any street within the Community, utilizing screening that has been erected in accordance with the provisions of this Declaration requiring Architectural Review Committee review and approval.

Section 26. Mailboxes. In accordance with the new USPS rule, all U.S. mail for the Community will be delivered only to mail kiosks which are installed within the Common Area and/or on the corners of certain Lots or within the sidewalk area of a street right-of-way pursuant to easements shown on the recorded plat(s) of the Properties and described in Section 7 of Article X. No curbside mailboxes may be installed on any Lots.

Section 27. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the Dwelling, must be approved by the Architectural Review Committee.

Section 28. Clothesline. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 29. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

Section 30. Entry Features. Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant or the Developer on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

Section 31. Storage Sheds, Garages and Other Improvements. Construction, installation, or placement of a storage shed, tree house, play house, detached garage, or a building

separate from the main dwelling on the Lot is not permitted on any Lot. No space within any garage may be converted to living space, but will remain as required parking.

Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls, or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, shall be permitted on any Lot without the prior written consent of the Architecture Review Committee or its designee.

Section 32. Sewer Systems. As long as reasonably adequate sanitary sewer service is supplied to a Lot by applicable governmental authorities, no private sewage system shall be permitted on that Lot.

Section 33. Wetlands. Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland under applicable laws of the Governmental Authorities shall conform to the requirements of applicable wetland rules adopted by the United States or the State of North Carolina and in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill except as allowed under applicable federal, state and local laws and ordinances, so the Owner of any such portion of the Properties should not assume that a future application for fill or alteration of a wetland will be approved. The Owner of any portion of the Properties subject to any such future application shall report the name of the development (in this case, Woodbury), together with the name of the particular phase or section within the Properties, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules adopted by the United States, the State of North Carolina, Wake County, or the Town of Apex, and this covenant may be enforced by the United States, the State of North Carolina, Wake County, or the Town of Apex. The provisions of this Section shall run with the Properties and be binding on all Owners of any part or all of the Properties and all Persons claiming under them.

Section 34. Swimming Pools. No swimming pools, spas, or the like, shall be permitted in the Community, except that small, inflatable wading pools shall be permitted, as long as any wading pool is put away at night inside a Dwelling or garage.

Section 35. Rules and Regulations. The Association shall have the exclusive right to establish the rules and regulations pursuant to which Owners and Occupants of the Lots may be entitled to use the Common Area and/or to establish other restrictions concerning the governance of the Community. Pursuant to such rule making authority, the Association may promulgate rules and regulations concerning pets and pet ownership as expressed in Section 9 of this Article and parking and traffic flow as expressed in Section 5 of this Article. In addition, provided that at least a majority of the Directors that are also Owners of a Lot also approve, the Association may promulgate rules and regulations that apply exclusively to the Lots.

Section 36. Retaining Walls. If any portion of a retaining wall is located within the boundaries of a Lot, the Owner of such Lot is prohibited from installing any improvements or performing any land disturbing activities on the Lot which may damage, weaken, or compromise the structural integrity of the retaining wall, or would obstruct access to such retaining wall, without the prior written consent of the Committee, and the Committee may require that any such Owner seeking to make any such improvements provide an affirmative recommendation of the proposed improvements from a licensed professional engineer selected by the Committee. Such prohibited activities include, but are not limited to, excavation, digging, and storage of heavy construction materials or supplies.

Section 37. Certain Rights of Declarant. The provisions, restrictions, terms and conditions of this Article VI shall not apply to the activities or operations of Declarant or Developer or to any improvements constructed or to be constructed by Declarant or Developer.

Section 38. Bulk Services and Bulk Service Contract(s). The Declarant or the Association may contract with third persons or entities for the provision of bulk services to the Project for the benefit of the Owners, including, without limitation, trash collection, telephone, internet, and broadcast television services, as the Declarant or the Board of Directors of the Association, acting in its or their sole discretion, deem reasonable and appropriate from time to time ("**Bulk Service Contract(s)**"). Payments due and owing under any Bulk Service Contracts shall be paid using Assessments levied and collected as provided in Article V hereof and no Owner shall be permitted to exempt him/herself from any such Assessment by non-use of or refusal to accept any services which are contracted for in any Bulk Service Contract.

Bulk Service Contracts for the Project may be entered into in the name of the Declarant or in the name of the Association. Bulk Service Contracts entered into in the name of the Declarant may be assigned (in whole or in part) by the Declarant to the Association at any time, and such assignment or partial assignment shall not require the consent or approval of any other person or entity, including, without limitation, the Association's Board of Directors, any officer of the Association and/or any Owner.

Each Owner acknowledges that interruptions in services provided pursuant to Bulk Service Contracts will occur from time to time. Declarant and the Association shall not be liable for, and shall not be obligated to a provide any Owner or other person with any compensation, or refund, rebate, or offset of any applicable fee(s) or Assessment, as a result of any interruption in services, regardless of whether or not such interruption is caused by reasons which are within the Association's or the service provider's control.

Notwithstanding anything else to the contrary, Declarant is expressly authorized to contract for, to receive and to retain direct compensation from the provider of any service(s) provided pursuant to any Bulk Service Contract. Declarant's right to compensation hereunder shall be perpetual and no provision in any Bulk Service Contract or other agreement which provides for such compensation to Declarant shall be cancelled, abridged or modified in any way in that absence of Declarant's prior written consent thereto.

ARTICLE VII.
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance on Common Area. The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements owned by the Association whether or not located on the Common Area. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts. Such insurance may, in the discretion of the Board, include coverage for personal property owned by the Association.

Section 2. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Area covering the Association and its members and until Declarant's ownership of any portion of the Properties ceases, naming Declarant as an additional named insured for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars ($1,000,000.00). If available, the Board is authorized to obtain directors' and officers' liability insurance coverage.

Section 3. Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Section 4. Premiums. Premiums for all insurance shall be Common Expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Section 5. Miscellaneous. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners,

Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(3) That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(4) That no policy may be canceled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) That no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

(f) Worker's Compensation Insurance; Fidelity Bonds. In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

Section 6. Damage and Destruction -- Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Owners otherwise agree; provided, however, during Declarant's Development Period, Declarant must also agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 7. Insurance on the Townhome Dwellings.

(a) Each Townhome Owner shall maintain a property damage and casualty insurance or "hazard" insurance policy, with full replacement coverage, to protect against casualty damage to their Townhome Dwelling. Such property damage and casualty insurance policies shall contain an endorsement affording thirty (30) days prior notice to the Association by certified mail in the event of cancellation, non-renewal, modification or

reduction in coverage. Such policies shall also be in such form and comply with such requirements that may be established by the Board from time to time to address changes or trends in the insurance industry, changes in the number, size and type of Townhome Dwellings or any other matter that affects or is affected by the property damage and casualty insurance coverage maintained on the Townhome Dwellings.

(b) Each Townhome Owner shall provide a copy of such Owner's current homeowners property damage and casualty insurance policy, all replacements and renewals thereof, to the Association. If a Townhome Owner fails or refuses to provide the Association with a copy of such insurance policy (or renewal or other reasonable evidence of the availability of current property damage and casualty insurance coverage on the applicable Townhome Dwelling) within thirty (30) days following the Association's written notice to provide such insurance policy or evidence, the Association shall have the right to obtain and purchase such insurance as required by this section on behalf of such Townhome Owner. In such event, the costs incurred by the Association procuring such insurance, shall be assessed against the applicable Townhome Owner.

(c) The Association shall have the right (but not the obligation), at its sole option, to procure or maintain a "blanket" property damage and casualty or "hazard" insurance policy on all of the Townhome Dwellings (or a portion or portions of all of the Townhome Dwellings) for the purpose of providing additional protection against casualty damage to multiple Townhome Dwellings, which blanket insurance (if any) shall be secondary to the insurance maintained by the Owners on the Townhome Dwellings.

(d) The provisions of this Section 7 shall not apply to any Townhome Dwellings owned by Declarant, which Declarant shall insure under Declarant's corporate insurance policy (or policies).

Section 8. Damage and Destruction to Improvements Located on a Lot. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Any such reconstruction shall be subject to all of the requirements of this Declaration concerning architectural review and control. No Owner of a Lot may elect not to rebuild following a casualty without the prior written consent of Declarant during the Declarant Control Period, or the Board following the expiration of the Declarant Control Period, which consent may be withheld or denied in the sole and absolute discretion of Declarant (or the Board, as applicable).

ARTICLE VIII.
CONDEMNATION

In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least eighty percent (80%) of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent

lands are available therefor. The provisions of this Declaration applicable to Common Area improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE IX.
ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Unilateral Annexation By Declarant.

(a) The Declarant shall have the unilateral right, privilege, and option from time to time until ten (10) years after the recording of this Declaration to subject to the provisions of this Declaration any property which is adjacent to any portion of the Properties. For the purpose of determining whether property is "adjacent," the rights of way of public or private roads or utilities, as well as rivers and streams, and the like shall be deemed not to separate otherwise adjacent property. Annexation may be accomplished by filing for record, in the county in which the property to be annexed is located, an Annexation Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Annexation Declaration unless otherwise provided therein. Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property, as long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of the Declarant (during Declarant's Development Period), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration describing the property to be annexed and filed for recording in the land records of the county in which the Community is located. An Annexation Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Annexation Declaration, unless a later effective date is provided therein.

ARTICLE X.
EASEMENTS

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(1) The right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Area, to limit the number of guests of Owners and tenants who may use the Common Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, and such Owner's family, tenants, guests, and invitees;

(2) The right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

(3) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area; provided that, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Area shall be subject to approval by the Owners entitled to cast at least eighty percent (80%) of the votes of the Association and by the Declarant during Declarant's Development Period. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate

any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community;

(4) The right of the Association to dedicate or grant licenses, permits, or easements over, under, and through the Common Area to governmental entities for public purposes and to other Persons for purposes reasonably necessary or useful for the proper maintenance of the Community;

(5) The right of the Association, acting through the Board without Member, Mortgagee or agency approvals, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area which are not inconsistent with and do not unreasonably interfere with the intended use of the Common Area and otherwise for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall be effective unless it is approved by Declarant during Declarant's Development Period and unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded in the Registry of Deeds for the County in which the Community is located;

(6) The right of the Association to dedicate or transfer any real property interest in all or any portion of the Common Area; provided, however, such dedication or transfer shall not be effective unless an instrument agreeing to such dedication or transfer has been approved in writing by the Owners entitled to cast at least eighty percent (80%) of the votes of the Association, by Declarant during Declarant's Development Period, and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(7) The right of the Association, acting through the Board, to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area, and specifically including the right to establish rules and regulations concerning pets and pet ownership and parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Community, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Board; and

(8) The easements, conditions and restrictions herein reserved and established for the benefit of the Declarant, the Association and others.

(b) Delegation. Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Area and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

Section 3. Easements for Access, Utilities and Other Purposes. There is hereby reserved and established in favor of the Declarant, the Developer and the Association blanket non-exclusive easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving all or any portion of the Community or any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof (whether or not such additional property is added to the Community), and for such other purposes that are not inconsistent with and do not unreasonably interfere with the intended use of such property. This easement shall include, without limitation, access, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage, irrigation, and any other service or system which the Declarant, the Developer or the Association might decide to have installed to service the Community or any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof (whether or not such additional property is added to the Community). It shall be expressly permissible for the Declarant, the Developer and the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such access, utility or service. Should any party furnishing or receiving any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement. Notwithstanding the foregoing, the Declarant shall have the right to grant or consent to the granting by the Association of any such easement on, over, or upon the Common Area that is consistent with the plan of development for the Community and the Association shall be obligated to sign any plats, deeds, or other instruments or forms necessary to accomplish any of the actions that Declarant is permitted to take pursuant to this Section 3.

Section 4. Easement for Drainage. Declarant hereby (i) reserves for itself and for Developer, during Declarant's Development Period and for a period of ten (10) years thereafter, and (ii) establishes in favor of the Association, a perpetual easement across the Community for the purpose of altering drainage and water flow across the Community. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at such Person's sole expense. Notwithstanding the foregoing, Declarant or the Association (as the case may be) shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities for the Community.

Section 5. Easement for Entry. In addition to the other rights reserved and established in favor of Declarant and the Association, the Declarant and the Association each shall

have the right (but not the obligation) to enter upon any property or Lot within the Community for emergency, security, and safety reasons and to inspect any construction or proposed construction activity on such Lot. This right may be exercised by the Declarant, the Association their respective designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 6. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required or permitted by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 7. Easement for Sign, Entry and Streetscape Features, and Mail Kiosks. There is hereby reserved to the Declarant and, established in favor of the Association, an easement for ingress, egress, installation, construction, landscaping, inspection, and maintenance of sign, entry and streetscape features and landscaping, and mail kiosks, over and upon each Lot over which such an easement is denoted on any recorded subdivision plats for the Community. The easement and right herein reserved and established shall include the right to (i) erect and maintain sign, entry and streetscape features, mail kiosks, (ii) cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such features, (iii) grade the land under and around such features.

Section 8. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, during Declarant's Development Period, Declarant reserves an easement across such portions of the Community as Declarant may reasonably deem necessary for any or all of the purposes hereinafter set forth. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

(a) The right of access, ingress, and egress for vehicular and pedestrian traffic, and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;

(b) The right to tie into any portion of the Community with driveways, parking areas, and walkways;

(c) The right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;

(d) The right (but not the obligation) to construct additional improvements, including any recreational facilities, on Common Area;

(e) The right to carry on sales and promotional activities in the Community;

(f) The right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area;

(g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and

(h) Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices, and may also use Common Area and any improvements located thereon, including any recreational facilities, as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

Section 9. Irrigation Easements. There is hereby reserved to the Declarant and established in favor of the Association a blanket easement to pump water from ponds, lakes, and other bodies of water located within the Community for irrigation purposes, subject to any applicable governmental restrictions.

Section 10. Fence Easement. Declarant hereby reserves and establishes an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

Section 11. Easements in Favor of Additional Property. Declarant hereby reserves and establishes such easements on, across and over the Common Area as shall be reasonably necessary for (i) the exercise by Declarant or any Affiliate of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof, and (ii) the development by Declarant or any Affiliate, their respective successors and assigns, of any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof should Declarant elect not to annex all or any portion of such additional property, including without limitation easements for ingress, egress and regress over private roads and

streets now or hereafter erected on the Properties and easements for drainage and for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing drainage, water, light, power, telephone, sewage and sanitary service to the such additional property, which easements shall run with and benefit the additional property. This Section shall not be amended without the express written consent of Declarant, during Declarant's Development Period, and thereafter only with the consent of Persons benefited by such easement.

Section 12. Dwelling Maintenance Easements. If any Dwelling is located closer than five (5) feet from its Lot line or if any utility lines or facilities serving a Dwelling, are located in whole or in part on an adjoining Lot, the Owner of said Dwelling shall have a perpetual access easement over the adjoining Lot to (i) repair, maintain, perform, paint, or reconstruct his or her Dwelling, and (ii) to repair, maintain, replace, and inspect any utility lines or facilities serving his or her Lot. Within said easement area no fence or vegetation shall be located. The easement rights noted in (ii) may also be exercised the applicable utility company who owns or maintains the utility facilities located on the adjoining Lot.

Section 13. Blanket Easement. An easement is hereby reserved in favor Declarant and the Association over the Lots and Common Area for the installation, operation, inspection, and maintenance of landscaping, a common cable television system, a common sprinkler system, entrance sign or features, or any other item for the common enjoyment and benefit of the Owners or for the enhancement of the Community. No Owner shall damage, destroy, alter or otherwise disrupt any of such items so installed. Each Owner shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any of such items which are damaged or destroyed by the acts of such Owner, his family, his guests or invitees.

Section 14. Declarant's Easement to Inspect Lots and Dwellings. A perpetual easement is hereby reserved in favor of Declarant over and upon the Properties for the purpose of allowing Declarant's inspection of the structural portions of the Dwellings and the grade and contour of the Lots. Declarant's easement to perform such inspections shall be perpetual to the extent permitted by applicable law.

Section 15. Retaining Wall/Privacy Fence Easement. Declarant hereby reserves for the benefit of Declarant and the Association, an easement over and upon those portions of the Properties on which any part of a retaining wall or privacy fence constructed by Declarant is located. The purpose of this easement is to allow Declarant and the Association to inspect, maintain, repair, reconstruct, and replace the retaining walls and privacy fences installed by Declarant upon various portions of the Properties. This easement includes the right of Declarant and the Association to enter upon any Lot on which any portion of a retaining wall or privacy fence is located, including the right to remove any improvements, materials or other obstructions which impede access to the retaining wall or common privacy fence or which violate the restriction in Section 36 of Article VI. Declarant reserves the right to file one or more amendments to this Declaration for the purpose of delineating portions of the easement subject to this Section 15 of Article X on a map or plan to locate the specific as-built location of all or a portion of any retaining wall or common privacy fence. Such amendment shall not require the joinder or consent of the Association or any Owner or other party, regardless of the ownership of the specific portions of the Properties on which such wall and/or fence are located. No amendment of this Section shall be effective without the consent of Declarant.

ARTICLE XI.
GENERAL PROVISIONS

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. To determine fines and sanctions against Owners, a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board. The Owner shall be given notice of the charge, an opportunity to be heard and to present evidence, and a notice of decision by the Board. If a fine is imposed it may not exceed one hundred ($100.00) for the violation and for each day after the notice of decision that the violation continues. Such fines shall be assessments secured by a lien. If a sanction is imposed it may continue without further hearing until the violation is cured. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles stored or parked in violation of this Declaration or the Bylaws may be towed after reasonable notice. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law. If North Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of two-thirds (2/3) of the Lots and the Declarant (during Declarant's Development Period) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided that, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, this Declaration may be amended:

(a) During Declarant's Development Period, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of Lots to which at least sixty-seven percent (67%) of the votes of the Association are allocated; and

(b) Following the expiration of Declarant's Development Period, upon the affirmative vote or written consent, or any combination thereof, of the Owners of Lots to which at least seventy-five percent (75%) of the votes of the Association are allocated.

Notwithstanding anything herein to the contrary, no amendment altering or impairing any right reserved in favor of or conferred on Declarant pursuant to the terms of this Declaration, and no amendment purporting to impose any additional obligation on Declarant, shall be effective without the written consent of Declarant and any successor Declarant to which such right(s) have been assigned.

Section 5. Partition. The Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification of the Association Officers and Directors. To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer of director, may be entitled. This indemnification shall also include attorneys' fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 11. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the

work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

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

Section 12. Financial Review. A review of the books and records of the Association shall be made annually in the manner as the Board may decide; however, after having received the Board's financial statements, the Owners entitled to cast at least a majority of the votes of the Association, may require that the accounts of the Association be audited by a certified public accountant, the cost of which shall be a Common Expense of the Association. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

Section 13. Notice of Sale, Lease, or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

Section 14. Agreements. Subject to the prior approval of Declarant (during Declarant's Development Period), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 15. Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 16. Indemnification for Association Operations. The Association shall indemnify, defend and hold harmless the Declarant and its partners, members, directors, officers, employees and agents and Declarant's successors and assigns from and against all claims, causes of action, damages, costs and expenses, including, without limitation, attorneys' fees and costs, in connection with any threatened, initiated or filed claim, suit, arbitration or other proceeding (including the settlement of any claim, suit, arbitration or other proceeding) asserted against any of the foregoing Declarant parties or to which any of them may become a party arising out of or related to the management or operation of the Association, including without limitation, the enforcement of the Association Documents, the collection of Assessments, and the operation, maintenance and repair (or failure to operate, maintain or repair) the Common Area.

Section 17. Joinder and Consent of Developer. Developer hereby joins in the execution of this Declaration for the purpose of consenting to the terms, provisions, rights, easements, covenants and obligations set forth herein to the extent those term, provisions, rights, easement, covenants, and obligations apply to and bind the portion of the Properties owned by Developer (as such may exist from time to time).

ARTICLE XII.
TOWNHOME PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is shared by the residences located on Townhome Lots and placed on the common boundary line of the Townhome Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

Section 2. Repair and Maintenance. The cost of reasonable maintenance of a party wall shall be shared by the Owners of the Lots on which the residences that share the party wall are located in proportion to such use. Provided, however, each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner of a Lot on which a residence which shares such party wall is located may restore or repair it, and the Owners of the other Lot on which the residence that shares the restored or repaired party wall is located shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Exposure to the Elements. Notwithstanding any other provision of this Section, an Owner of a Lot on which a residence that shares a party wall is located who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

Section 5. Assignment of Right of Contribution. The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

Section 6. Estoppel Certificate. An Owner who desires to sell a Lot, or the prospective purchaser of such Lot, may request the Owners of the other Lot which shares that party

wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a Lot which shares a party wall with the Lot of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that Lot and with respect to third parties.

Section 7. Easement for Repair and Maintenance. Each Owner of a Lot on which is located a residence that shares a party wall and such Owner's contractors and subcontractors shall have an easement and right of entry upon the Lot on which is located the other residence that shares the party wall to the extent reasonably necessary to repair, restore, maintain or reconstruct the party wall. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall repair any damage caused as a result thereof.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE XIII.
VARIANCES

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

ARTICLE XIV.
LITIGATION

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. This Article shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

ARTICLE XV.
CAPITALIZATION OF ASSOCIATION

Upon acquisition of record title to a Lot by the first Owner other than Declarant, a contribution in an amount equal to One Thousand and no/100 Dollars ($1,000.00) ("**Working**

Capital Contribution") shall be made by or on behalf of the purchaser to the Association. The Working Capital Contribution shall be in addition to, not in lieu of, any annual or special assessments. The Working Capital Contribution shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Working Capital Contribution referred to in this paragraph is payable only one time, and will not be charged to subsequent purchasers of a Lot once paid.

Each Working Capital Contribution deposit, at the discretion of the Declarant, shall be deposited for use to support the operating budget of the Association or deposited in a capital reserve fund ("**Capital Reserve**"). The Capital Reserve shall be paid as set out herein. At the time that the Declarant no longer has the right to appoint directors pursuant to Article III, Section 2 of this Declaration, the Association and the Declarant shall enter into an agreement transferring full control of the Association to the Lot Owners and transferring responsibility for all Common Elements to the Association, which agreement also releases Declarant from any further responsibility or obligations to the Association ("**Transfer and Release Agreement**"). Upon execution of the Transfer and Release Agreement, Declarant shall release the Capital Reserve fund to the Association. Should the Association request the Declarant make repairs or other improvements any time prior to the execution of the Transfer and Release Agreement, then Declarant is authorized to use amounts from the Capital Reserve to accomplish such repairs or improvements. Should the Association and the Declarant be unable to enter into a mutually acceptable Transfer and Release Agreement, within one hundred and eighty days from the date that Declarant no longer has the right to appoint directors pursuant to Article II, Section 2 of this Declaration, then the Capital Reserve shall be paid by the Association to Declarant as a repayment for Declarant's advances to supplement deficits in the Association operating budget prior to the date of transfer.

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal this the 7 day of July, 2022.

DECLARANT:

PULTE HOME COMPANY, LLC, a Michigan limited liability company

By: _____
David Carrier
Division President

STATE OF NORTH CAROLINA §
COUNTY OF WAKE §

I, Benjamin H. Hervey, Notary Public, certify that David Carrier personally came before me this day and acknowledged that he is Division President of **PULTE HOME COMPANY, LLC**, a Michigan limited liability company, and that he as Division President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official seal, this the 7th day of July, 2022.

Signature of Notary Public
Printed Name: Benjamin H Hervey

Date of Expiration of Commission:
10-14-2023.

[NOTARY PUBLIC STAMP OR SEAL]

BENJAMIN H. HERVEY
NOTARY PUBLIC
WAKE COUNTY, NORTH CAROLINA
My Commission Expires 10-14-2023

JOINDER AND CONSENT OF DEVELOPER

McKenzie Meadows Developers, LLC, a North Carolina limited liability company, hereby joins in the execution of this Declaration for the purposes described in Section 16 of Article XI of this Declaration.

MCKENZIE MEADOWS DEVELPERS, LLC, a North Carolina limited liability company

By: _____

Name: Andrew Ross

Title: manager

Date: 7/6/2022

STATE OF North Carolina §

COUNTY OF Wake §

I, the undersigned, a Notary Public for the County and State aforesaid, certify that Andrew Ross personally appeared before me this day and, being duly sworn, says and deposes, that he/she is the manager of McKenzie Meadows Developers, LLC, a North Carolina limited liability company, and that he/she executed the foregoing instrument for and on behalf of such company.

WITNESS my hand and official seal, this the 6 day of July, 2022.

LAURA G. WARD NOTARY PUBLIC WAKE COUNTY, NC

_____

Notary Public

My Commission Expires: 6/17/2026

CONSENT AND SUBORDINATION OF
FARMERS & MERCHANTS BANK a/k/a F&M BANK

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the undersigned, **FARMERS & MERCHANTS BANK a/k/a F&M BANK** ("Bank") does hereby consent and agree to execution and recordation of the forgoing **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MACKENZIE RIDGE** ("Declaration") to which this Consent and Subordination is attached and agrees that from and after the recordation of the Declaration, the Properties shall be subject to all of the terms and provisions of the Declaration and to the jurisdiction of the Association (as defined in the Declaration), its bylaws, rules, and regulations. Bank further agrees to subordinate all liens, encumbrances, security interests and deeds of trust, including, without limitation, the deed of trust recorded in **Book 018767 at Page 01381**, as modified in **Book 019001 at Page 01735** of the Wake County public registry ("Liens") with respect to the Properties, or any portion thereof, to the Declaration and any amendments thereto. Bank agrees that neither the Declaration nor any amendments thereto shall be affected by the Bank's exercise or enforcement of its rights or remedies under the terms of the Liens but shall remain an encumbrance upon and enforceable against the Properties and the owners of real property within the Properties.

FARMERS & MERCHANTS BANK a/k/a F&M BANK

By: _____
Signature

Timothy M. Proper
Printed Name

Its: Sr. Vice President

STATE OF North Carolina
COUNTY OF Rowan

I, Shelia Jean Joslin, a notary public for the county and state aforesaid, do hereby certify that Timothy M. Proper, either personally known to me or proven by satisfactory evidence, came before me this day and acknowledged that s/he is the SVP of **FARMERS & MERCHANTS BANK a/k/a F&M BANK**, a NC banking institution, and that s/he, as SVP, being authorized to do so, voluntarily executed the foregoing on behalf of the Bank for the purposes therein stated.

WITNESS my hand and official stamp or seal this the 7 day of July, 2022.

Shelia Jean Joslin
Notary Public
Name: Shelia Jean Joslin

02/02/2027
My Commission Expires:

[Notary Stamp/Seal]

SHELIA JEAN JOSLIN
NOTARY PUBLIC
ROWAN COUNTY, NC

EXHIBIT A

Legal Description of Property Subject to Declaration

Being all of the real property lying and being in the City of Wendell, Marks Creek Township, Wake County, North Carolina, being more particularly described as follows:

Phase 1A:

That certain tract of land designated as "Phase 1A" containing a combined total of approximately 27.083 acres, as shown on that certain plat entitled "Recombination and Subdivision Map, McKenzie Meadows Phase 1A" prepared by Robinson & Plante, P.C. Land Surveying, dated October 15, 2021, and recorded in Book of Maps 2022, Pages 1158-1159 of the Wake County Register of Deeds Office.

The above-described plat is hereby referenced for a more particular description of the Property.