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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE ESTATES OF WESTHIGH

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE ESTATES OF WESTHIGH

This **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE ESTATES OF WESTHIGH** is made as of the 7th day of August, 2014, by ELD-Westigh, LLC, a Louisiana limited liability company ("ELD").

W I T N E S S E T H:

WHEREAS, ELD is the owner of the real property described on Exhibit A; and

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

NOW THEREFORE, ELD hereby declares 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" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

"**Affiliate**" shall mean: (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 or entity 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**" shall have the mean and refer to a document, by whatever name denominated, that is recorded for the purposes of annexing additional property to the Properties pursuant to the provisions of Article IX of this Declaration and causing such additional property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

"**Association**" shall mean The Estates of Westhigh Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

"**Board**" shall mean and refer to the executive board or board of directors of the Association, and may also be referred to as the "Executive Board" or the "Board of Directors."

"**Bylaws**" shall refer to the Bylaws of the Association.

"**Common Elements**" or **"Common Area"** shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot.

"Common Expenses" shall mean all expenditures made by or financial liabilities of the of the Association, together with any allocations to reserves.

"**Community**" and/or "**Properties**" shall mean 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 Article IX of this Declaration.

"**Declarant**" shall mean and refer to ELD-Westigh, LLC, a Louisiana limited liability company, as well as its successors and assigns pursuant to an express assignment or conveyance of any of the Special Declarant Rights 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's Development Period**" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Registry of Deeds for the County in which the Community is located, 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 The Estates of Westhigh, as the same may be supplemented or amended pursuant to any Annexation Declaration or any amendment to this Declaration in accordance with its terms.

"Drainage" shall mean the removal of surface water or ground water from land by drains, grading or other means, and includes control of runoff to minimize erosion and

sedimentation during and after construction or development and likewise includes undertaking those measures necessary for water supply preservation for prevention or alleviation of flooding.

"**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 a single-family dwelling and shall include any improvements constructed thereon and "Lots" shall refer to all such lots collectively. 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 Elements. 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.

"Master Plan" means the drawings which represent Declarant's conceptual plan for the future development of the Community and any property that Declarant has the right to annex to the Community, maintained by Declarant and made available for inspection by prospective purchasers, as such plan from time-to-time may be revised, altered and amended in Declarant's sole discretion. Since the concept of the future development of the undeveloped portions of the Community retained by Declarant is subject to continuing revision and change at the discretion of Declarant, Declarant shall not be bound by any development plan, use or restriction of use shown on any Master Plan, and Declarant may at any time change or revise the Master Plan. The depiction of proposed improvements or facilities on the Master Plan shall not constitute an implied representation by Declarant that such improvements or facilities will be built. In addition, no implied reciprocal covenants shall arise with respect to any property retained by Declarant for future development restricting the use of such property.

"**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 occupancy or right of occupancy is based on ownership, lease, license or easement.

"**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.

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

"**Reviewing Authority**" shall mean and refer to the Declarant, during Declarant's Development Period, and thereafter the Association, by action of its Board, or by action of a committee of the Association appointed by the Board to which such authority has been delegated by the Board.

"Special Declarant Rights" refers to all of the rights reserved for the benefit of the Declarant, including, but not limited to rights (i) to complete improvements indicated on plats and plans of the Properties; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the Community, and models; (iv) to use the easements herein and otherwise established in favor of Declarant, including easements through the Common Elements for the purpose of making improvements within the Community or within real estate which may be added to the Community; or, (v) to appoint or remove any officers or Executive Board members of the Association in accordance with the provisions of this Declaration. No Special Declarant Right may be modified, amended or terminated without the written consent and approval of Declarant and any successor Declarant to which such right(s) have been assigned.

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 that Declarant is entitled to appoint the Board members of the Association pursuant to the provisions of Section 2 below of this Article. The foregoing is not

intended to include Persons that hold an interest in a Lot merely as security for the performance of an obligation. When more than one Person holds an interest in any Lot, all such Persons shall be Members. Class A Members shall be entitled to one (1) vote for each Lot owned.

Class B: Declarant shall be the Class B Member and Declarant shall be entitled to nine (9) 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. Board Members Appointed by Declarant. 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 such time as the first of the following events shall occur: (a) ten (10) years from the date the Declaration was recorded; (b) the date on which 90% of the lots developed or to be developed as part of the Community (including all present and future phases) pursuant to the Master Plan, have been conveyed to Persons other than Declarant; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Following the expiration of such period of time, all members of the Board shall be elected by the Owners (including Declarant) in accordance with the provisions of the Articles and Bylaws of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove Board members and officers of the Association. The Board members selected by the Declarant need not be Owners or residents in the Community. As used herein, "Total Projected Lots" shall mean and refer to all of the Lots, together with any additional lots shown on the Master Plan.

Section 3. Powers of Association. Subject to the provisions of this Declaration and the Articles of Incorporation, the Association may exercise all powers provided by NCGS §47F-3-102 of the Act.

ARTICLE IV.
ASSESSMENTS

Section 1. Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) special assessments; (4) fines for violations of the provisions of this Declaration or the Articles, Bylaws, rules and regulations or architectural guidelines of the Association or assessments levied against Owners for misuse and damage to the Common Elements by the Owners or their family members, tenants, agents, contractors and guests; (5) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (6) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs,

service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (7) all other assessments and charges imposed or allowed to be imposed by this Declaration.

Section 2. Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the fiscal year to which it applies and in accordance with the budget for that fiscal year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board.

Section 3. Annual Assessments; Budgets. The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of Common Expenses. Until December 31 of the year of the conveyance of the first Lot to an Owner other than Declarant or an Affiliate, the "Projected Maximum Annual Assessment Amount" shall be Five Hundred Forty and No/Dollars ($540.00) per Lot. Unless a higher Projected Maximum Annual Assessment Amount is approved by the vote of a majority vote of the Members, voting in person or by proxy at a meeting of the Members duly called and noticed for such purpose, the Projected Maximum Annual Assessment Amount for each subsequent fiscal year is 115% of the amount of the Projected Maximum Annual Assessment Amount for the immediately preceding fiscal year. The Executive Board of the Association shall not fix annual assessments in excess of the then current Projected Maximum Annual Assessment Amount unless the budget providing for such assessments is ratified by the Members in accordance with the following procedure.

At least ninety (90) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. The Executive Board shall determine the amount of annual assessments to be levied against each Lot by dividing the annual Common Expense liability of the Association as reflected in the budget by the total number of Lots subject to assessment hereunder. Annual assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis. Within thirty (30) days after the adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give 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). If the budget provides for an annual assessment per Lot not in excess of the Projected Maximum Annual Assessment Amount in effect for that fiscal year of the Association, such budget shall be deemed ratified unless Members entitled to cast at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the budget provides for an annual assessment per Lot in excess of the Projected Maximum Annual Assessment Amount in effect for that fiscal year of the Association, such budget shall be deemed ratified unless at that meeting Members entitled to cast at least a majority of the votes of the entire membership vote to reject the budget. If any

proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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 Elements or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Elements. 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 N.C. Gen. Stat. § 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 N.C. Gen. Stat. § 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 such budget must be ratified pursuant to the provisions Section 3 of this Article.

Section 6. Certificate of Payment. The Association shall, within three (3) 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 (not to exceed $35.00) for providing this certificate.

Section 7. Special Assessments. In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved by the Members entitled to cast at least two-thirds (2/3) of the votes of the Association at a meeting of the Members of the Association duly called for the

purpose, among others, of voting on the special assessment. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Special assessments must be fixed at a uniform rate for all Lots.

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 shall be adjusted according to the number of days then remaining in that fiscal year.

Section 11. Individual Assessments. Pursuant to this Section, the Board shall have the power to levy individual assessments for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility):

(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; and

(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.

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

Section 12. Reserve Funds. The Executive Board of the Association, in establishing the annual budget for operation, management and maintenance of the Community, may designate therein an amount to be reserved for the periodic maintenance, repair and replacement of any part of the Community for which the Association is responsible. The Executive Board of the Association may, but expressly is not required to, budget for reserves that will cover all projected costs of the repair and replacement of all portions of the Community for which the Association is responsible and may rely on the funding of part or all of such costs at the time they are incurred

through the then current budget. In addition, reserve funds may, in the reasonable discretion of the Executive Board, be used to meet the current obligations of the Association.

Section 13. Working Capital Assessments. Upon acquisition of record title to a Lot by the first Owner other than Declarant, a contribution in an amount equal two hundred dollars ($200.00) ("Working Capital Assessment") shall be made by or on behalf of the purchaser to the Association. The Working Capital Assessment shall be in addition to, not in lieu of, any annual or special assessments. The Working Capital Assessment 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 Assessment referred to in this paragraph is payable only one time, and will not be charged to subsequent purchasers of a Lot once paid. Working Capital Assessment funds may, in the reasonable discretion of the Executive Board, be used to meet the current obligations of the Association.

ARTICLE V.
MAINTENANCE & CONVEYANCE OF COMMON ELEMENTS TO ASSOCIATION

Section 1. Association's Responsibility. The Association shall maintain the Common Elements.

Section 2. Owner's Responsibility. Each Owner shall be liable and responsible for maintenance, repair and replacement, as the case may be, of such Owner's Lot and the dwelling constructed thereon in a good and sightly condition consistent with the other Lots and dwellings within the Properties, including, without limitation, as follows: maintenance, repair and replacement of all driveways and walkways located on the Lot, the roof, gutters, downspouts, structural elements, exterior building surfaces (including all doors, garage doors and windows, glass surfaces, screens and storm doors), porches, patios, decks, hardscape features, air conditioning and heating equipment and all other equipment required to provide water, light, power, telephone, sewage and sanitary service to the Lot which are not publicly maintained and serve only that Lot whether located on the Lot or the Common Elements. In addition, the Owner of each Lot shall be responsible for the maintenance of all plantings located on such Lot as follows: mulch, replace seasonal landscaping, replace dead or diseased trees or shrubs and prune all trees or shrubs. In the event that the Owner neglects or fails to maintain his or her Lot and/or the exterior of his or her dwelling, the Association may provide such exterior maintenance and all cost incurred by the Association in providing such maintenance shall be assessed exclusively against such Lot and the assessment shall be the personal obligation of such Lot Owner and a lien against such Lot as provided in Article IV of this Declaration; provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Associations intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or dwelling in a good and sightly condition consistent with other Lots and

dwellings within the Properties shall be made by the Executive Board of the Association, in its sole discretion.

Section 3. Conveyance of Common Elements and Personal Property by Declarant to Association. The Declarant may convey to the Association any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Elements to be maintained by the Association for the benefit of all or a part of its members. Declarant 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 Elements," "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 to the Association as Common Elements. Declarant, however, reserves the right 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 Elements," "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 Elements," "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. In addition, the Declarant may convey to the Association any personal property to be used by the Association in connection with Common Elements or any services to be provided by the Association pursuant to this Declaration. Such conveyance shall be accepted by the Association and the costs of maintaining such property shall be a Common Expense.

Section 4. Additional Improvements to the Common Elements. During Declarant's Development Period, Declarant, in its sole discretion, may (but shall not be obligated to) make additional improvements to Common Elements. In addition, the Association, with the consent of Declarant during Declarant's Development Period may (but shall not be obligated to) make additional improvements to the Common Elements. All such improvements shall be accepted by the Association as part of the Common Elements and maintained in accordance with the terms of this Declaration. The cost of such maintenance shall be a Common Expense of the Association.

ARTICLE VI.
ARCHITECTUAL REVIEW; USE RESTRICTIONS

Section 1. Architectural Review. No improvements, alteration, repair, change in paint color, excavation, change in grade, planting, landscaping, exterior decoration, or interior decoration visible from the exterior (including, without limitation, yard ornaments, figurines, statues, bird baths, houses and feeders, flags, decals, window treatments and similar items) or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner other than Declarant shall be commenced, erected or maintained upon any Lot and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Reviewing Authority. Temporary seasonal exterior decorations and seasonal plantings shall not require the prior approval of the Reviewing Authority, but if any such decorations or plantings are determined, in the sole discretion of the Reviewing Authority, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Reviewing Authority may require that such decorations or plantings, as the case may be, promptly and permanently be removed. In the event that an Owner neglects or fails to remove any such decorations or plantings at the request of the Reviewing Authority, the Association may provide such removal. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times for such purpose and the cost of such removal shall be assessed exclusively against such Lot and the assessment shall be the personal obligation of such Lot Owner and a lien against such Lot as provided in Article IV of this Declaration. Notwithstanding the foregoing, nothing herein contained shall prevent or interfere with the right of Declarant to improve and develop the Properties, including the Lots, as Declarant chooses, so long as said development follows the general plan of development of the Properties now or hereafter approved by the Town of Cary. Accordingly, Declarant need not seek or obtain the approval of the Reviewing Authority for improvements erected on the Properties by or at the direction of Declarant.

(a) Any Person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Reviewing Authority which shall evaluate such plans and specification in light of the purposes of this Article.

(b) Upon approval by the Reviewing Authority of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specification, as approved, shall be deposited for permanent record with the Reviewing Authority and a copy of such plans and specification bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specification shall not be deemed a waiver of the Reviewing Authority's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are

subsequently submitted for use in connection with any other Lot. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any conditions attached to any such approval. As a condition to the granting of approval of any request made under this Article, the Association may require that the Owner(s) requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner(s) shall evidence consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Owner(s), and any subsequent Owner(s) of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, are deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth herein, and subject to the lien rights described herein.

(c) No Reviewing Authority shall be responsible or liable in any way for any defects in any plans or specifications approved by them, nor for any structural defects in any work done according to such plans and specifications. Further, no Reviewing Authority shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the exercise of any other power or right provided for 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 single-family residential purposes exclusively, and no portion of the Properties shall be used except for single-family 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 Reviewing Authority; (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. Permitted Structures. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than a detached single family dwelling, an garage and an accessory building, provided such accessory building does not in the opinion of the Reviewing Authority overcrowd the Lot. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Reviewing Authority approves in writing a variance permitting a detached garage.

Section 4. Square Footage Requirements. The primary dwelling erected on any Lot shall contain a minimum enclosed dwelling area of 2,200 square feet. In addition thereto, prior to the occupancy of the Lot an enclosed garage for at least two cars shall be completed on the Lot. The term "enclosed dwelling area" as used in this Section shall mean the total enclosed floor area within a dwelling subject to heating and cooling; provided however, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. Variances of these square footage requirements in an amount of not more than 15% may be granted by the Reviewing Authority.

Section 5. Minimum Setbacks. No dwelling, garage or accessory building, erected on a Lot shall be constructed nearer than twenty feet (20') to the front Lot line, ten feet (10') to any side Lot line, and twenty (20') feet to the rear Lot line of any such Lot. These minimum setback restrictions shall prevail over any lesser governmental setback standard. Variances of these setback requirements by not more than 15% may be granted by the Reviewing Authority, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property.

Section 6. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her 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 Reviewing Authority, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

Section 7. 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 Lot 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 Lot that is for sale or rent and that the sign complies with all zoning ordinances of the Town of Cary; (ii) signs advertising Declarant during the construction and/or sales period; and 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, any portion of the Common Elements, or the number or street address of a Lot or Dwelling, or directing Persons as to the location of certain portions of the Properties; and (iv) 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 8. Vehicles. The term "vehicles," as used herein, shall include, without limitation, motorhomes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

The following provisions shall govern the use, parking and storage of Vehicles within the Community:

(a) Vehicles owned, leased or operated by an Owner or an occupant or his or her tenant, guest, family member or other invitee shall be parked only in the garage or driveway serving the Lot, or in such other paved areas as have been designated by the Executive Board for parking vehicles. A maximum of two (2) vehicles may be parked outside the garage on any paved area, if any, of a Lot. On-street parking in the Community shall be as determined by the Executive Board in accordance with this Declaration and shall be subject to such conditions as may be imposed by, the Executive Board.

(b) Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be prohibited on the Properties, unless completely enclosed in a garage and not visible from adjacent Lots or Common Elements property. Stored vehicles which are either obviously inoperable or do not have current

operating licenses, license plates or permits, shall not be permitted on the Properties except within enclosed garages. Vehicles that become inoperable while on the Properties must be removed from the Properties or stored completely enclosed in a garage within seventy-two (72) hours of becoming inoperable. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Elements. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Bylaws or Rules and Regulations adopted by the Board.

(c) Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

(d) No motorized vehicles shall be permitted on pathways or unpaved Common Elements except for public safety vehicles and vehicles authorized by the Board.

(e) No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below the capacity existing at the time of completion of construction of the initial improvements on the Lot.

Section 9. Leasing. Except as otherwise herein provided, Lots may be leased for residential purposes. Owners shall require that all tenants and occupants be obligated to comply with the restrictions and covenants contained in this Declaration, and the Articles, Bylaws and rules and regulations of the Association and in the event of noncompliance, the Board, in addition to any other remedies available to it, may, after notice to all Owners and tenants of the Lot and an opportunity for them to be heard, 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. No studio above the garage located on any Lot may be leased separate from the dwelling located on that Lot unless rent for such studio is a portion of the compensation paid to an employee of the household.

Section 10. 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 Elements. The Executive Board, 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 11. 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 Elements, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with any design guidelines established by the Reviewing Authority.

Section 12. 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 located in the rear of the Lot and screened so as to be concealed from view of neighboring streets and property.

Section 13. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Reviewing Authority. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant'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 Elements in the Community are laid out.

Section 14. 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 15. 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.

ARTICLE VII.
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance on Common Elements. The Executive Board or the duly authorized agent of the Association shall have the authority to and shall obtain a policy of property insurance on the Common Elements, in an amount equal to not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property insurance. Such insurance policy must protect against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and, if reasonably available, shall include an agreed amount endorsement or its equivalent and an inflation guard endorsement. 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 in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of the or in connection with the use, ownership or maintenance of the Common Elements. The general commercial 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. Worker's Compensation; Fidelity Coverage. 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. If available, the Board is authorized to obtain directors' and officers' liability insurance coverage and, if the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or Executive Board members of the Association can and do directly receive or disburse the monies of the Association), fidelity coverage against dishonest acts by the Association's officers, Executive Board members, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management Person to manage the Association and to receive and disburse the monies of the Association, then such professional management Person shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of this paragraph. Any such fidelity coverage shall name the Association as an obligee; shall be written in an amount equal to at least three (3) months of assessments plus reserves on hand; shall contain waivers of any defense based on the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Association.

Section 4. Premiums. Premiums for such 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 Executive Board 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 Executive Board; 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) Each Lot Owner shall be an insured person under the casualty insurance policies obtained pursuant to Section 2, above, to the extent of the Lot Owner's insurable interest.

(e) The Association's Executive Board 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 Executive Board, 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 Board member, 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.

Section 6. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots or the dwelling or other improvements now or hereafter constructed thereon.

Section 7. 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 pursuant to Section 7.1 above, 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 Properties 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.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association pursuant to Section 7.1 above 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 may elect to delay part or all of the repair or restoration until the Association has obtained the additional necessary funds, whether by special assessment or otherwise.

(d) 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 Properties 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 8. Damage and Destruction -- Insured by Owners. 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. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

ARTICLE VIII.
CONDEMNATION

In the event of a taking by eminent domain of any portion of the Common Elements 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 Elements to the extent lands are available therefor. The provisions of this Declaration applicable to Common Elements 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 Properties 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.
MORTGAGEE PROVISIONS

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

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the legal description of the encumbered Lot, therefore becoming an "eligible holder"), will be entitled to timely written notice of :

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

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided that, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and

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

Section 2. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 3. Applicability of Article. Nothing contained in this Article shall be construed to reduce or enlarge the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

ARTICLE XI.
EASEMENTS

Section 1. 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 Elements 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 Elements, to limit the number of guests of Owners and tenants who may use the Common Elements, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his 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 any recreational facilities available for use by the Community 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, after notice and an opportunity to be heard;

(3) The right of the Association to borrow money for the purpose of improving the Common Elements, 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 Elements; 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 Elements shall be subject to approval by the Persons 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, 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 Elements which are not inconsistent with and do not unreasonably interfere with the intended use of the Common Elements 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;

(5) The right of the Association to dedicate or transfer any real property interest in all or any portion of the Common Elements; provided, however, such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved in writing by the Persons entitled to cast at least eighty percent (80%) of the votes of the Association and 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 Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

(6) The right of the Association, acting through the Board, to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements, and specifically including the right to establish rules and regulations concerning 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

(7) 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 Elements 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 2. Easements for Access, Utilities and Other Purposes. There is hereby reserved and established in favor of the Declarant 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 and Drainage facilities 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, Drainage, storm Drainage and any other service or system which the Declarant 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 Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacement and maintenance of such wires, conduits, pipes, cables, and other equipment related to the providing of any such access, utility or service on, over or upon The Properties (including The Lots). 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.

Section 3. Easement for Drainage. Declarant hereby reserves for itself, during Declarant's Development Period, and 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, or any other stormwater control measures, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this 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 his or her sole expense.

Section 4. 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. 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 5. Easement for Maintenance. Declarant hereby expressly reserves and establishes 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 6. 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, including construction traffic over, under, on, or in any portion of the Common Elements and any other portions of the Community reasonably intended for vehicular or pedestrian traffic;

(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 on Common Elements;

(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 Elements;

(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 Elements and any improvements located thereon 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 7. Easements in favor of Additional Property. Declarant hereby reserves and establishes such easements on, across and over the Common Elements 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 Elements 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 all Persons benefited by any such easement.

Section 8. Easement for Sign, Entry and Streetscape Features. There is hereby reserved to the Declarant and established in favor of the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of sign, entry and streetscape features and landscaping over and upon any Lot over which such an easement is denoted on any recorded subdivision plat for the Community. Such easements and rights herein reserved and established shall include the right erect and maintain sign, entry and streetscape features and to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such features and the right to grade the land under and around such features.

ARTICLE XII.
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 Executive Board, 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 Executive Board 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(s) of the Lot charged with the lien or violation.

Section 2. 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 3. Amendment. Except to the extent any larger vote is expressly required by the North Carolina Planned Community Act or this Declaration, this Declaration may be amended:

(a) During Declarant's Development Period, with the consent of the Declarant and 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 the above, no amendment altering or impairing any of the Special Declarant Rights, 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. In addition to, and notwithstanding the

foregoing, during Declarant's Development Period, Declarant may unilaterally amend this Declaration as may from time to time be required in order that this Declaration comply with any requirements of (a) the special use permit obtained in connection with the development of the Properties, as the same now or hereafter may be amended or modified, or (b) the Department of Housing and Urban Development, the Department of Veterans Affairs, or other similar mortgage corporation or financial institution with the intent of providing financing for the acquisition of Lots by individuals other than Declarant.

Section 4. Partition. The Common Elements 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 5. 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 6. 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 7. 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 8. 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 9. Indemnification. To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every officer and Board member of the Association against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or Board member in connection with any action, suit, or other proceeding to which such officer or Board member may be a party by reason of being or having been an officer or Board member. The officers and Board members shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Board members 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 Board members may also be members of the Association), and the Association shall indemnify and forever hold each

such officer and Board member 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 Board member, or former officer of Board member, 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 10. 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 Persons entitled to cast at least a majority of the votes of the Association, may require that the accounts of the Association be audited as a common expense by a certified public accountant. 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 11. Notice of Sale or Acquisition. 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 12. Traffic Regulations. Declarant, during the Declarant's Development Period and thereafter, the Association, shall have the right and power and option to establish and enforce rules and regulations governing the operation of vehicles and conveyances, motor powered or otherwise, on the streets within the Community. Such rule and regulation making power and option shall include, but is in no way limited to, the establishment and enforcement of speed limits, stop signs, yield signs, no parking zones, traffic control signals, safety zones and other traffic control and safety devices, rules and regulations together with reasonable remedies, including fines for violations of such rules or regulations and the removal of offending vehicles from the Community. A copy of all Traffic Regulations established hereunder and any amendments hereto shall be made available to all Members at the office of the Association. The right and power and option herein provided may be assigned by Declarant during Declarant's Development Period to any appropriate governmental body or authority and shall automatically be assigned to the Association at the expiration of the Declarant's Development Period.

Section 13. Notice. All owners are required to keep a current email address, mailing address and/or facsimile number on record with the Association. All notices and written consents required under this Declaration shall be in writing and shall be deemed properly served when sent to the email address and/or facsimile number on record, regardless of whether the notice is actually received. Notice is also proper when posted by certified United States mail, postage prepaid, return receipt requested, addressed to the party to whom directed at the notice address on record with the Association. Any properly addressed notice given herein by certified or registered mail shall be deemed delivered when the return receipt therefore is signed, or refusal to accept the mailing by the addressee is noted thereon by the postal authorities. Notices shall be deemed served upon posting. Any notice given herein by personal delivery shall be deemed delivered when received. Any notice given herein by facsimile or email shall be deemed

delivered when transmission confirmation receipt is received. All Owners hereby consent to receive notice by any of the methods described herein and shall have no authority to require notice to be sent by their preferred method.

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal this the 19th day of AUGUST, 2014.

DECLARANT:

ELD-WESTIGH, LLC, a Louisiana limited liability company

By: _____

RIC J. ROJAS, DULY AUTHORIZED REPRESENTATIVE

STATE OF NORTH CAROLINA

COUNTY OF Wake

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

Ric Rojas, as Manager of **ELD-WESTIGH, LLC**, a Louisiana limited liability company.

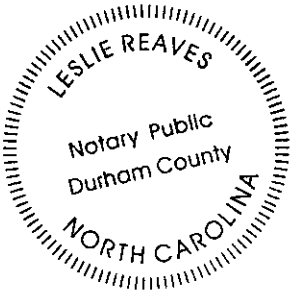
DATE: August 19, 2014

Leslie Reaves
Signature of Notary Public

Printed Name: Leslie Reaves

My Commission expires: October 5, 2018

[NOTARY PUBLIC STAMP OR SEAL]



943870

EXHIBIT A

Property Subject to this Declaration:

All of the property shown on the map entitled, "The Estates of Westhigh Phase 2" as recorded in Book of Maps 2014, Pages 655-656, Wake County Registry; and

All of the property shown on the map entitled, "The Estates of Westhigh Phase 3" as recorded in Book of Maps 2014, Pages 976-977, Wake County Registry.

BOOK:015784 PAGE:00999 - 01035

WAKE
COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

____# of Time Stamps Needed

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