WAKE COUNTY, NC 193
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PRESENTED & RECORDED ON
01/25/2016 16:33:40

BOOK:016274 PAGE:01565 - 01595

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR HEMPSTEAD AT BEAVER CREEK

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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS FOR HEMPSTEAD AT BEAVER CREEK

THIS DECLARATION is made on the date hereinafter set forth by **MREC DT Beaver Creek LLC**, a Delaware limited liability company (hereinafter "Declarant").

PREAMBLE:

WHEREAS, Declarant is the owner of approximately 24.31 acres of land located south of US 64 in the Town of Apex, White Oak Township, Wake County, North Carolina as shown in Exhibit A attached hereto and incorporated herein, all or portions of which Declarant intends to develop into a planned community of attached single-family townhomes known as Hempstead at Beaver Creek (hereinafter sometimes referred to as the "Subdivision"); and

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

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

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

ARTICLE I
DEFINITIONS

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.

Section 2. "Association" shall mean and refer to the **HEMPSTEAD AT BEAVER CREEK HOMEOWNERS ASSOCIATION, INC.** a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" and "Board" (the terms being used interchangeably) shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws, and is the "Executive Board" as defined in the Act.

Section 4. Builder. "Builder" shall mean and refer to one or more Persons in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 6. "Code" shall mean and refer to the Apex, North Carolina, Code of Ordinances, as amended from time to time.

Section 7 "Declarant" shall mean and refer to **MREC DT Beaver Creek LLC**, a Delaware limited liability company. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

Section 8 "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

(a) December 31, 2025;

(b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or

(c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 9 "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Hempstead at Beaver Creek", and all amendments thereto and supplements thereof.

Section 10. "Dwelling", "Dwelling Unit" and "Unit" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner. A Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 11. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Subdivision (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Common Area owned in fee by the Association, and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 12. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 14. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 15. "Common Area" or "Common Property" (such terms being used interchangeably) shall mean and refer to the real property, together with any improvements thereon, owned by the Declarant or by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including, without limitation, all private streets, curbs and sidewalks within the Subdivision, the area within any storm water easements and the facilities constructed therein which serve more than one Lot and are not maintained by any governmental authority, and water and sewer lines (and the easements associated therewith) which serve more than one Lot and are not located within a public utility easement or a public street right-of-way. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility.

Section 16. "Common Area Easement" shall mean and refer to Common Area as to which the Association has only an easement interest, and not a fee simple interest.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HEMPSTEAD AT BEAVER CREEK HOMEOWNERS ASSOCIATION, INC.

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property by Declarant. At any time prior to the applicable date under Section 3(a), additional land may be annexed by the Declarant without the consent of the Members and, therefore, become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and recording by Declarant of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road) and further provided that such annexation must be approved by the Town of Apex and, if required, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner other than Declarant, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves,

determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant and any Builder. Subject to the provisions of this subsection, Declarant and any Builder shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Assessment of Class B Lots is governed by the provisions of Article V of this Declaration. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members. *See* §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use the Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Common Area providing access or utilities to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Apex or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided that such exchange is approved by a vote of the Members at a meeting of Members, one of the purposes of which is to vote on the exchange, and, if required, by the Town of Apex.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner, Declarant will convey to the Association title to those portions of the Common Area located in that phase which are to be owned by the Association. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself, any Builder and each of their respective successors and assigns, an easement over, under, across and through the Common Area so long as any of them own any Lot within the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it or they deem necessary or advisable; provided that, following construction of improvements,

the Common Area shall be restored to its prior condition to the extent practicable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Properties, utility, drainage, conservation, greenway and other easements of record or shown on the recorded plats of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Town of Apex or other governmental entity, or a public or private utility company. The Association shall accept transfer of ownership of any and all Common Property.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of Declarant that the Common Area (whether owned in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation from Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area (including Common Area Easements) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein or in the

Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of 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 other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas 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. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots and the exterior of Units, as provided in Article VI hereof; (iv) payment of taxes and public assessments levied against Common Area owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other persons or firms for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2016, the Maximum Annual Assessment shall be $1,800.00 for each Class A Lot. The Maximum Annual Assessment

for Class B Lots shall be zero. Beginning on January 1, 2017, and on January 1 of each year thereafter, the Maximum Annual Assessment shall automatically increase by ten percent (10%) over the Maximum Annual Assessment for the previous year unless the increase is otherwise set by the Board of Directors at an amount less than 10%.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. The annual assessment for Class B Lots shall be zero, provided, however, that any Lot which contains a dwelling occupied by any person as a residence shall be assessed at the Class A rate. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors. Any monies paid at any time by the Declarant for common expenses or otherwise for or on behalf of the Association shall be credited against past or future assessments due from the Declarant, if any.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors 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). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) 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.

The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments (annual, special, and limited special assessments) for a specific Lot have been paid. If such certificate states that an assessment

has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for a Class B Lot shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 6. Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other annual assessments against the Lot.

Section 7. Effect of Nonpayment of Assessments; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in §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 §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 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. All assessments 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 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no Lot devoted to residential use shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. No Class B Lot shall be subject to a such an assessment when purchased by a Builder. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 11. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the Person providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. Any monies paid at any time or by the Declarant for or on behalf of the Association shall be credited against past or future assessments due from the Declarant. Provided that no Class B Lot shall be subject to a such an assessment when purchased by a Builder.

ARTICLE VI
MAINTENANCE OF LOTS AND UNITS

Section 1. Association's Responsibility. The Association shall repair and maintain the Common Area and any improvements, utilities and facilities located on the Common Area. In addition to maintenance of Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, sidewalks, driveways and parking areas located on each Lot (hereinafter the "Yard Improvements") and installed by the Declarant or the Association, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added Yard Improvements), provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fenced or enclosed privacy area; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity. However, the Association shall also be responsible for maintenance and repair of all retaining walls constructed by the Declarant or the Association within the Properties, whether on the Common Area or a Lot. In the event that the need for maintenance, repair and/or replacement is caused through the willful or negligent act of an Owner or such Owner's tenants, subtenants, family members, or guest or invitees of any of them, the cost of such maintenance, repair and/or replacement shall be the responsibility of the Owner.

The Association shall also maintain and repair the exterior of each Dwelling, including, without limitation, repair, replacement and care of roofs, gutters, downspouts, painting and cleaning of exterior walls, but specifically excluding glass surfaces, windows, screen doors and doors (including casings and sills). In the event that the need for maintenance, repair and/or replacement is caused through the willful or negligent act of an Owner or such Owner's tenants, subtenants, family members, or guest or invitees of any of them, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in the North Carolina Standard Fire and Extended Coverage Insurance Policies, the cost of such maintenance, repair and/or replacement shall be the responsibility of the Owner.

The Board of Directors of the Association or the Members, by the affirmative vote of a majority of the Members of each Class, shall have the right (but not the obligation) to accept certain items, areas or improvements on a Lot for maintenance by the Association, including, but not limited to, Yard Improvements installed by an Owner. Such acceptance shall be in writing and may be subject to such terms and conditions, including, but not limited to, a special assessment or increased annual assessment for that Lot (which, being consensual, need not be approved as provided in Article V hereof), as the Association might establish in such written acceptance.

The Declarant is responsible for construction of streets and roads within the Property. The Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of all private streets and private utilities constituting Common Areas and all improvements thereon. The Declarant shall be responsible for and maintain all public streets and

roads within the Property until such roads are accepted for maintenance by the applicable Governmental Authority or until such streets and roads are accepted for maintenance by the Association. Following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the Association shall maintain such streets and roads to the extent such activities are not performed by the applicable governmental entities. Maintenance for private streets shall be the responsibility of the Association along with the maintenance of any private easements.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces [with the exception of entry doors (including garage doors) and their appurtenant hardware and all exterior glass including windows and patio doors, sidewalks, walkways, driveways and all decks or patios, all of which shall be maintained, repaired and replaced by the Lot Owner] trees, landscaping, grass, fencing, (as hereinafter limited). Such maintenance as to the Lots shall also include the mowing and trimming of grass (including the grass in the rear yard of each Lot); provided, however, each Lot Owner is encouraged to water the grass, plants, trees and landscaping on or immediately adjacent to its Lot in areas that are not otherwise irrigated.

The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board. The Association shall cause the vapor barrier and mitigation systems on the Lots to be inspected on a yearly basis, provided, however, each Owner shall be responsible for making any necessary repairs to vapor barrier and/or mitigation systems installed on its Lot. If Owner does not make repairs within thirty (30) days of notification of the need for such repairs, the Association shall exercise its self-help rights.

Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Specifically, without limitation, the Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all glass surfaces, window screens, doors, screen doors or storm doors installed by Owner (any such installation being subject to Article IX hereof), heating and air conditioning equipment and for the maintenance of any fenced or enclosed privacy area. Each Owner shall be responsible for repair and maintenance of all utility lines, fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to the Owner's Lot which are not publicly maintained.

Each Owner shall be responsible for making any necessary repairs to vapor barrier and/or mitigation systems installed on its Lot, including, without limitation, periodic inspections (not fewer than twice per year), maintenance and repair of the fan that constitutes and integral component of the vapor barrier and/or mitigation systems installed on its Lot. If Owner does not make repairs within thirty (30) days of notification of the need for such repairs, the Association shall exercise its self-help rights under Enforcement.

If an Owner does not perform any other required maintenance of his Lot or Dwelling, the

Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Dwelling erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific items needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 4. Access at Reasonable Hours. As provided in Section 5 of Article VIII of this Declaration, the Association, through its duly authorized agents or employees, shall have the right, without notice to the Owner, to enter upon any Lot at reasonable hours on any day to perform any maintenance and repairs to be performed by the Association.

ARTICLE VII
RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year, except that the Association shall not be required to provide the financial statement for the preceding fiscal year if said fiscal year expired less than 75 days prior to the date of the request . (*See* §47-3-118 of the Act).

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

(d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing it mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association, unless said conveyance of real property is *de minimis* and for the sole purpose of correcting an error in title of a Lot. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Apex or another governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Provided, however, that in the event that any such holder of a first deed of trust fails to provide the approval required by this Section 3 within sixty (60) days after the Association has sent a written request for such approval, approval will not be required, and this Section will be deemed to have been fully complied with.

Section 4. Payment of Taxes and Insurance Premiums. The holders of deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

ARTICLE VIII
EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The

Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for itself, the Association, and their successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s).

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing reasonable access, ingress and egress to, from and over and the use of the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

ARTICLE IX
ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within forty-five (45) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed $150.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ and engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Community.

Declarant may, at any time, delegate, in part or in whole, the review and approval authority contained in this Article IX to the Board of Directors of the Association, which, in turn, may delegate such authority to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the end of the Declarant Control Period. Except as provided in the next paragraph, any use of the term "Declarant" in this Article IX shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

Notwithstanding any other provision of this Declaration, including, without limitation, the provisions of the immediately preceding paragraph, Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the Town or appropriate governmental entity for the Dwelling constructed on a Lot. Neither the Board of Directors nor any Architectural Committee of the Board shall have the right to overturn any decision of Declarant without the prior written consent of Declarant, unless the Declarant no longer exists as a legal entity, in which event the foregoing proscription shall not apply.

In the event that any structure is commenced or constructed in violation of the provisions of this Article, in addition to any other remedy available for such breach including, without limitation, monetary fines for such violation, either Declarant or the Association may seek and obtain injunctive or other equitable relief to prevent construction and/or removal of such unapproved structure. The

party prevailing in any action to enforce the provisions of this Article shall be entitled to recover from the non-prevailing party the costs of such action including, without limitation, court costs and attorneys' fees actually and reasonably incurred by the prevailing party.

Notwithstanding the foregoing, as to any Builder, Declarant may provide blanket approval of site plans, general housing styles and finishes which may then be constructed on any Lot without the need for additional written approvals of, or the submission of, specifications, exterior color and finish, landscape plan, site development or any other matter included within the definition of "Plans." Once granted, such blanket approval shall be irrevocable and binding on the Board and Architectural Committee as to any Lots owned by Builder or subject to any contract to purchase or option to purchase of Builder. Once blanket approval is granted, a Builder shall not be obligated to obtain any other approvals from the Declarant, Board or Committee.

ARTICLE X
USE RESTRICTIONS

Section 1. Use of Lots and Common Area. It is the intent of the Declarant that all Lots shall be used for residential purposes only. Except as permitted by the Code, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that (i) the Declarant, real estate brokers, Owners and their agents may show Lots for sale or lease and (ii) any Owner may lease a Lot to residential tenants for profit (such lease to provide that the terms of the lease shall be subject in all respects to this Declaration). Notwithstanding the foregoing, the Declarant and any Builder shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales and construction efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Section 2. Use of Accessory Structures. No shack, barn, or other building, other than a Dwelling, its garage and outbuildings incident to residential use, shall be erected on a Lot. No structure of a temporary nature may be used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant and any Builder may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board of Directors has the right to determine whether or not a particular animal is a nuisance and to require removal. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent

of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot or the Common Area.

Section 5. Parking. The Declarant shall provide and the Association shall maintain at least the minimum number of parking spaces required by the Town of Apex for the Subdivision. The Board of Directors of the Association shall have the right and authority (but shall not be obligated) to assign parking spaces to Owners on an equal, non-discriminatory basis. The Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sub-lessee of such Owner.

No Owner or a member of his family, lessee or sub-lessee or guest of an Owner shall: (i) park any vehicle on the street within or adjoining the Subdivision except in a designated paved parking space; (ii) park or keep on any Lot or street within or adjoining the Subdivision any abandoned, partly dismantled or inoperative vehicle or vehicle not having current registration and inspection stickers displayed; or (iii) park or keep on any Lot or any street within or adjoining the Subdivision any boat or boat trailer, utility or other trailer, recreational vehicle, motor home, camper, bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else other than a vehicle normally intended for use as a private passenger vehicle. For the purpose of the preceding sentence, the term "keep" shall mean the presence for either a period of more than ten (10) hours or overnight, whichever is less.

The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, and the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Properties.

The foregoing restrictions shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant or a Builder and their agents and contractors in the conduct of their business prior to the completion of sales.

Section 6. Antennae and Roof Structures. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); and (iii) is integrated with the Dwelling and surrounding landscape.

Section 7. Garbage; Unsightly Storage. All trash and rubbish shall be kept in such a manner as not to be visible from the street upon which the Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or any other unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 8. Fences. Any fence or wall installed within the Subdivision must meet all requirements of any applicable zoning ordinance and must be approved as provided in the Declaration. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

Section 9. Fines. The Board of Directors, in accordance with the Bylaws, shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a limited special assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 10. Rental of Units. No more than ten percent (10%) of Units may be occupied by non-Owner tenants at any one time. Any lease or sublease must be for at least twelve (12) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Hempstead at Beaver Creek, recorded in the Wake County Registry. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease.

ARTICLE XI
Pparty WALLS

Section 1. Rules of Law. All common party walls between individual Units shall conform to the requirements of the North Carolina State Building Code. The general rules of law regarding party walls, lateral support, and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Properties and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which existed prior to commencement of the work as is reasonably practicable. Except in an emergency situation, an Owner entering upon another Owner's Lot as provided herein shall give reasonable oral or written notice to the Owner of the Lot on which such entry is to be made.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements and of repairing any damages resulting from such Owner's failure to timely and adequately provided such protection.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution Is Due. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. If an adjoining Owner fails to give a certification within ten (10) days of actual receipt of such request, such failure shall be conclusively deemed a certification that no such contribution is due.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. During the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the Members or the Association, for the purpose of bringing this Declaration into conformity with the requirements of any governmental law or regulation or for correcting errors. This Declaration may also be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been recorded in the office of the Register of Deeds of Wake County.

Section 3. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by the Town of Apex. Subdivision or recombination of any Lot(s) may, as appropriate, increase or decrease the number of votes in the Association.

Section 4. Rules and Regulations. The Board of Directors shall have the authority to

adopt additional rules and regulations governing the use of the Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a limited special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 5. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house.

Section 6. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF HEMPSTEAD AT BEAVER CREEK HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the HEMPSTEAD AT BEAVER CREEK HOMEOWNERS ASSOCIATION, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least ____% of the Members as required by the Declaration and Bylaws of the Association.

_____

[President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender shall include all.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect and other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts. In the event of a conflict between this Declaration and the Article of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control. Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A), and the Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Code.

any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

Section 13. Security Measures. Neither the Declarant, the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Apex Police Department.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in its name by its duly authorized officer or Manager, as of the date set forth in the notary acknowledgment below.

DECLARANT:

MREC DT Beaver Creek LLC
a Delaware limited liability company

By: _____
Name: JAMES DUSZYNSKI
Title: MANAGER

State of Virginia - County of Fairfax

I certify that the following person(s) personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: JAMES DUSZYNSKI, MANAGER

Date: 21 Jan 2016

[Official Seal]

Vikki L. Doss
VIKKI L. DOSS Notary Public
(Print Name)
My Commission Expires: 9/30/18

VIKKI L DOSS
Notary Public
Commonwealth of Virginia
7596673
My Commission Expires Sep 30, 2018

EXHIBIT A

Lying and being in the Town of Apex, White Oak Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property identified as Tract 4, Beaver Creek Crossings, Phase III, as shown on a map thereof recorded in Book of Maps 2006, Page 1567, Wake County Registry, to which map reference is hereby made for a more particular description.

BOOK:016274 PAGE:01565 - 01595

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 Excessive Entities

_____ # of Time Stamps Needed

This Document

31 # of Pages LG