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CAROLINA OVERLOOK BY DEL WEBB HOME OWNERS ASSOCIATION, INC.

Declaration of Covenants, Conditions and Restrictions
for Carolina Overlook by Del Web

62 Pages (including cover)

Submitted electronically by "Sellers Ayers Dortch & Lyons, PA"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Johnston County Register of Deeds.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CAROLINA OVERLOOK BY DEL WEBB

CAROLINA OVERLOOK BY DEL WEBB IS AN AGE RESTRICTED COMMUNITY INTENDED TO PROVIDE HOUSING FOR OLDER PERSONS

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS AND THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the 7th day of February, 2023 by **Pulte Home Company, LLC** ("Declarant"), a Michigan limited liability company authorized to do business in North Carolina. All capitalized terms shall have the meaning set forth in **Article I** or elsewhere in this Declaration.

BACKGROUND STATEMENT

The Declarant is the owner of the Property (defined in Article I) which is located in Johnston County, North Carolina. Declarant desires to develop a residential community of Dwellings (including both attached Twin Villas and detached Houses) on Lots on the Property along with Roadways and Common Elements for the benefit of the Owners of Lots. This development shall be known as **Carolina Overlook by Del Webb** ("Project"). Declarant further desires to provide for the maintenance of the Common Elements and of the Roadways and therefore desires to subject the Property and this Project to the covenants, restrictions, easements, charges, and liens described in this Declaration. **The Project is age restricted and is intended to provide housing for older persons.**

Declarant further deems it desirable to create a nonprofit, incorporated association which will be delegated the duties and assigned the powers needed to efficiently preserve, protect and enhance the values of the Lots, the Dwellings (as defined herein) and amenities in the Project, to insure the residents' enjoyment of the specific rights, privileges and easements in the Common Elements, and to provide for the maintenance and upkeep of the Common Elements, and the lawn and landscaping surrounding the Dwellings located on the Lots, all as hereinafter set forth. In order to accomplish all of the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that (subject to certain rights of amendment as hereinafter described) the Property shall be held, transferred, sold, conveyed, occupied and used subject to the North Carolina Planned Community Act (N.C.G.S. Chapter 47F) and to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on, and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and the heirs, successors and assigns of all of the foregoing parties.

AGE RESTRICTION
CAROLINA OVERLOOK BY DEL WEBB IS AN AGE RESTRICTED COMMUNITY INTENDED TO PROVIDE HOUSING FOR OLDER PERSONS

For purposes of this Declaration and Age Restriction:

1. The term "Age-Qualified Occupant" shall mean any individual who (a) is 50 years of age or older who occupies a Lot that is owned by an Owner who was the original purchaser of the Lot from the Declarant, or (b) is 55 years of age or older who occupies a Lot.

2. The terms "occupy", "occupies," "occupancy," or "occupying" shall mean staying overnight on a Lot for at least ninety days (90) days in any consecutive (12) month period.

3. The term "Qualified Resident" shall mean any of the following persons occupying a Lot:

   a. Any Age-Qualified Occupant; and

   b. Any person 19 years of age or older who occupies or has previously occupied a Lot with an Age-Qualified Occupant.

Carolina Overlook by Del Webb is intended to provide housing primarily for persons 55 years of age or older. The Property shall be operated as an age restricted community in compliance with all applicable state and federal laws. The Association shall provide, or contract for the provision of those facilities and services designed to meet the physical and social needs of older persons if and as may be required under such laws. No person under 19 years of age shall stay overnight in any Lot for more than ninety (90) days in any consecutive twelve (12) month period. Subject to the right of the Declarant to sell Lots to Owners for occupancy by an individual or individuals between the ages of 50 and 54, each Lot, if occupied, shall be occupied by at least one (1) individual 55 years of age or older; provided, however, that once a Lot is occupied by an Age-Qualified Occupant, other Qualified Residents of that Lot may continue to occupy the Lot, regardless of the termination of the Age-Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Lots within the Property shall be occupied by at least one (1) individual 55 years of age or older.

The Board shall establish policies and procedures from time to time as necessary to monitor and maintain its status as an age restricted community under state or federal law. Upon request by the Association and within ten (10) days after any change in the individuals occupying any Lot, the Lot Owner shall comply with all age certification requirements established by the Association and, at a minimum, shall provide written confirmation and documentation to the Association regarding the ages of each occupant of the Lot. The provisions of this Section may be enforced by the Association administratively as provided in N.C.G.S 47F-3-107.1 and/or by an action in law or in equity, including, without limitation, an injunction requiring specific performance hereunder.

Each Owner shall be responsible for ensuring compliance with the requirements and restrictions of this Declaration and Age Restriction, and the Association rules adopted hereunder, by

itself and by its tenants and any other occupants of his or her Lot(s). **Each Owner, by acceptance of title to a Lot, agrees to indemnify, defend, and hold Declarant, any affiliate of Declarant, and the Association harmless from any and all claims, losses, damages, and causes of action which may arise from failure of such Owner to uphold the obligation set forth in the foregoing sentence.** Such defense costs shall include, but not be limited to, attorney fees and costs.

Each Owner acknowledges that the Association and/or the Declarant (until the expiration of the Declarant Control Period) reserve the right to conduct a written or electronic survey every year to verify the ages of the occupants of a Dwelling, all in accordance with the Housing for Older Persons Act. Each Owner agrees to cooperate with the Association and/or Declarant to verify the names and ages of all occupants and Owners of the Lots and provide such other information, documentation and verification as may be requested by the Association and/or Declarant.

Notwithstanding the above restrictions, Declarant reserves the right to sell Lots to Owners for occupancy by an individual or individuals between the ages of 50 and 54, inclusive; provided, such sales shall not affect compliance with all applicable state and federal laws under which the Property may be developed and operated as an age-restricted community.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

"Act" shall mean the North Carolina Planned Community Act, codified in Chapter 47F of the North Carolina General Statutes.

"Additional Land" shall mean and refer to any land that is located within one (1) mile of the perimeter of the Property, as the Property is expanded from time to time as provided in **Article II**. **The recordation of this Declaration does not subject any of the Additional Land to this Declaration. Portions of the Additional Land may only be subjected to this Declaration by the recordation of a Supplemental Declaration in accordance with Article II.**

"Association" shall mean and refer to the **CAROLINA OVERLOOK BY DEL WEBB HOME OWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation, organized pursuant to N.C.G.S. § 47F-3-101 and § 55A-2-02, and its successors and assigns.

"Board" or "Board of Directors" shall mean and refer to the executive board of the Association.

"Bylaws" shall mean the bylaws adopted by the Association pursuant to the North Carolina Non-Profit Corporation Act, as they may be amended from time to time.

"Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Dwelling on the Property.

"Common Elements" shall mean and refer to all real and personal property leased or owned by the Association and any easements granted to or reserved for the benefit of the Association for the common use and enjoyment of the Owners as defined in N.C.G.S. § 47F-1-103(4). Common Elements

shall include any private Roadways and any Private Alleys that appear on the Plat, if any. Areas designated on the Plat as "OS," "Common Area," "Common Open Space," "COS," "Common Space" and/or other similar designations are part of the Common Elements. Common Elements shall also include Public Use Areas that are conveyed to the Association as permitted under **Article III, Section 3.2.** In addition, Declarant reserves the right, from time to time and at any time, to designate portions of the Property being held by the Declarant as Common Elements for the benefit of the Association in a written instrument recorded in the County public registry. Upon the recordation of such designation, the portion of the Property identified therein will be considered Common Elements for the purposes of this Declaration.

"Community Wide Standard" or "CWS" shall mean and refer to the standard of conduct, condition, repair, upkeep, maintenance, or other activity which is made applicable to all Lots and is binding on all Owners as provided in **Article VIII**. The Community Wide Standard may be set, amended, or expanded by the Association's Board of Directors from time to time without the consent or approval of the Members as the Board of Directors, in its sole and absolute discretion, deems appropriate. During the Declarant Control Period, the Declarant must approve and consent to the Community Wide Standard and any amendments thereto or expansions thereof.

"County" shall mean and refer to Johnston County, North Carolina.

"Declarant" shall mean and refer to **Pulte Home Company, LLC**, a Michigan limited liability company. It shall also include any person or entity who takes title to any portion of the Property and who is designated to be the Declarant in a recorded instrument as provided in N.C.G.S. § 47F-3-104. "Declarant" shall also include any person or entity who takes title to all or a portion of the Property by virtue of the foreclosure of the deed of trust given by the Declarant or any successor Declarant and which encumbers the Property.

"Declarant Affiliate" shall mean and refer to any owner, shareholder, predecessor, successor, subsidiary, officer, member, manager, director, employee, agent, or representative of Declarant.

"Declarant Control Period" shall mean and refer to the period defined in **Article IV, Section 4.4.**

"Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended, supplemented, or extended from time to time.

"Development Rights" shall mean and refer to the rights that are hereby reserved for the benefit of the Declarant to (a) add real estate to the Project as permitted under **Article II**; (b) the right of the Declarant to create, revise and/or define and delineate the boundaries or configuration of any portion of the Property (including, without limitation, the Lots, Common Elements or Limited Common Elements within the Project); (c) the right of the Declarant to subdivide or combine Lots or convert Lots into Common Elements; (d) the right of the Declarant to alter any site plan or master plan for the Project; and (e) the right of the Declarant to withdraw any portion of the Property from the Project and the planned community at any time, all of which rights may be exercised by the Declarant at any time within thirty (30) years after the recordation of this Declaration as the Declarant, in its sole discretion deems reasonable, appropriate or warranted, and without the consent or approval of the Association, or any other Owner or Mortgagee.

"Dwelling" shall mean and refer to the attached Twin Villa or detached House constructed upon a Lot.

"House" shall mean and refer to the detached residential Dwelling constructed upon a Ranch Lot, which improvement is owned by the Owner of the Lot on which it is constructed and is subject to the terms and provisions of the Project Documents.

"Lot" shall mean and refer to any numbered plot of land appearing on any Plat of the Property which is the site for construction of a Dwelling and includes the land and any and all improvements and fixtures thereon.

"Member" shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee, or other legal entity that is a member of the Association as provided in **Article IV, Section 4.1**.

"Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Lot.

"Mortgagee" shall mean and refer to an Institutional Lender holding a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Lot. Upon request, each Owner shall provide the name and address of the then current holder of any Mortgage encumbering Owner's Lot.

"Neighborhood" shall mean and refer to a group of Lots designated in this Declaration or a separately recorded Supplemental Declaration as a separate Neighborhood for purposes of receiving benefits or services from the Association which are different from (whether more or less extensive) those which are otherwise provided to Lots hereunder. The Lots contained within a Neighborhood may be subject to Neighborhood Assessments, as provided herein and elsewhere in the Project Documents, which are levied to defray the cost of any different benefit(s) and/or service(s) which are provided by the Association.

"Neighborhood Assessments" shall mean and refer to any assessments levied against Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Common Expenses. Neighborhood Assessments include "Neighborhood Annual Assessments" and "Neighborhood Special Assessments."

"Neighborhood Common Expenses" shall mean and refer to the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include, without limitation, a reasonable reserve for repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in any Supplemental Declaration(s) applicable to such Neighborhood(s).

"Occupant" shall mean and refer to any person occupying all or any portion of a Lot or any portion of the Property for any period of time.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot (as defined herein) which is a part of the Property but excluding Declarant and those parties who have such interest merely as security for the performance of an obligation.

"Plat" shall mean and refer to the one or more subdivision maps of the Property recorded in the County public registry from time to time, and any revisions thereof, as well as other subdivision plats of Additional Land subjected to this Declaration from time to time by Supplemental Declaration, and any revisions thereof.

"Private Alley" shall mean and refer to any private alley which is shown on the Plat. Private Alleys, if any, are part of the Common Elements.

"Project Documents" shall mean and refer to the governing documents for the Project, including, without limitation, this Declaration, the Articles of Incorporation of the Association, the Bylaws, the rules and regulations governing the use of the Property, the Community Wide Standard, the Architectural Guidelines and Landscape Guidelines, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

"Property" shall mean and refer to the land described in **Exhibit A** and such other land as may be subjected to this Declaration as provided in **Article II** below.

"Public Use Areas" shall mean and refer to any land appearing on the Plat that is reserved for, designated for, or dedicated to public use, including, without limitation, road and street rights-of-way, public greenway tracts and public park tracts, whether or not that land is submitted or subjected to this Declaration.

"Ranch Lot" shall mean and refer to any Lot upon which a detached House is constructed.

"Ranch Neighborhood" shall mean and refer to the Neighborhood consisting of the Ranch Lots designated as such in any amendment to this Declaration or in any Supplemental Declaration(s) recorded pursuant to **Section 2.2** below.

"Rear Yard" shall mean and refer to the area within each Lot bounded by the plane established by the rear façade of the Dwelling and the rear and side property lines established on the Plat.

"Roadways" shall mean and refer to the roads, streets, and cul-de-sacs in the Project as shown on the Plat and shall be public or private as designated on the Plat. Private Roadways, if any, shall be maintained by the Association. Public Roadways shall be maintained by the Association until a governmental entity or agency elects, in its discretion, to assume responsibility for Roadway maintenance.

"Special Declarant Rights" shall mean rights reserved for the benefit of the Declarant, including, but not limited to, all rights and powers reserved or granted to the Declarant in this Declaration, all rights referenced in North Carolina General Statutes Chapter 47F-1-103(28) (the "North Carolina Planned Community Act") and the right to complete improvements on the Property, which rights may be exercised by the Declarant at any time as the Declarant, in its sole discretion deems reasonable, appropriate or warranted. Special Declarant Rights may be transferred by any Declarant as provided in N.C.G.S. § 47F-3-104.

"Twin Villa" shall mean and refer to the attached residential Dwelling constructed upon a Twin Villa Lot, which improvement is owned by the Owner of the Lot on which it is constructed and is subject to the terms and provisions of the Project Documents.

"Twin Villa Lot" shall mean and refer to any Lot upon which a Twin Villa is constructed.

"Twin Villa Neighborhood" shall mean and refer to the Neighborhood consisting of the Twin Villa Lots designated as such in any amendment to this Declaration or in any Supplemental Declaration(s) recorded pursuant to **Section 2.2** below.

ARTICLE II
EXPANSION OF PROJECT

Section 2.1 Additions by Declarant. Declarant reserves an option, until the thirtieth (30th) anniversary of the date of recording of this Declaration, to subject portions of the Additional Land to this Declaration in accordance with provisions of this **Article II**. Declarant may exercise this right within the thirty (30) year period specified above, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner provided in **Section 2.2** below; provided that, Additional Land that is not owned by the Declarant at the time of it is annexed may be subjected to this Declaration only with the consent and approval all of the owners of that Additional Land.

Section 2.2 Supplemental Declaration. To exercise the right to subject portions of the Additional Land to this Declaration, Declarant shall execute and record a supplement to this Declaration ("Supplemental Declaration"). Any Supplemental Declaration that annexes Additional Land that is not owned by the Declarant shall also be executed by all the owners of that Additional Land. For purposes of this Article, "Supplemental Declaration" shall mean and refer to an instrument recorded in the public registry that annexes land into the Project as provided in **Section 2.1** above and subjects that land to the covenants, terms, provisions contained in this Declaration, and which may impose additional or different restrictions and obligations (including assessments) on that land. Declarant may, in Declarant's sole discretion, expressly provide that all or any portion of the property which is subject to any Supplemental Declaration is part of an existing or new Neighborhood, as defined herein. Any Supplemental Declaration executed and recorded by Declarant shall contain an exhibit legally describing the tract or parcel to be added to the Property and subjected to the Declaration.

ARTICLE III
COMMON ELEMENTS

Section 3.1 Owners' Easements of Enjoyment. Every Owner shall have a perpetual right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this **Section 3.1**. The foregoing rights shall include, without limitation, a non-exclusive easement over all Roadways for the purpose of vehicular and pedestrian access, ingress, and egress to each Lot. All rights and easements created by this **Section 3.1** shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests, invitees, and agents, and are granted subject to the provisions of this Declaration including, without limitation, the following conditions, and reservations:

(a) The right of the Association, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred as permitted under the Act;

(b) The right of the Association to take any steps that are reasonably necessary to protect the Common Elements against foreclosure;

(c) The rights of the Association, as provided in the Project Documents and the Act, including without limitation, to impose fines and to suspend voting rights, services provided or privileges enjoyed by any Member for any period during which any assessment remains unpaid, or as a result of any infraction or violation of the Project Documents;

(d) The right of the Association, in accordance with the provisions of N.C.G.S. § 47F-3-112, to dedicate or transfer all or any part of the Common Elements; provided, however, that any dedication or transfer during the Declarant Control Period shall require the written consent of the Declarant;

(e) The easements described in **Article X;**

(f) The right of the Association to establish reasonable rules and regulations for the use of the Property by Members or their tenants, family members, guests, invitees, and agents, as provided in **Article XI**; and

(g) Any and all other provisions of this Declaration and the Project Documents.

(h) The right of the Declarant to exercise Special Declarant Rights and Development Rights.

The rights and privileges of family, tenants and contract purchaser and guests to use the Common Elements are subject to the following additional conditions and reservations:

(a) Family. The rights and easement of enjoyment granted to every Owner in **Section 3.1** of this Article may be exercised by members of the Owner's family who occupy the Dwelling of the Owner within the Property as their principal residence.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in **Section 3.1** of this Article may be delegated from the Owner to tenants or contract purchasers who occupy a Dwelling within the Property as their principal residence; provided, however, in the event of any such delegation by lease, contract or otherwise, the Owner shall not assert any right or exercise any easement of enjoyment delegated as allowed herein unless and until that delegation terminates.

(c) Guests. The Common Elements may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Association as may be established by the Board from time to time, including, without limitation, rules limiting the number of guests.

NOTWITHSTANDING AND WITHOUT LIMITING THE FORGOING, EVERY OWNER SHALL BE RESPONSIBLE AND LEGALLY LIABLE TO THE ASSOCIATION AND TO EVERY OTHER OWNER FOR THE ACTS AND OMISSIONS OF ANY PERSON OR ENTITY WHO IS PRESENT ON THE PROPERTY AT THE REQUEST OF, WITH THE PERMISSION OF OR WITH THE KNOWLEDGE OR CONSENT OF THE OWNER OR OWNER'S TENANT.

Section 3.2 Transfers of Property to the Association as Common Elements.

(a) The Declarant may at any time assign, transfer or convey to the Association, or cause to be assigned, transferred and/or conveyed to the Association, interests in real or personal property within or for the benefit of the Property, the general public, local governmental entities, or districts or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association or that the Declarant causes to be assigned, transferred and/or conveyed to the Association shall be deemed accepted by the Association upon its assignment, transfer or conveyance without consent or action by the Association, and shall be considered Common Elements without regard to whether such real or personal property is designated by the Declarant as Common Elements. If requested, by the Declarant, the Association will execute a written instrument, in any form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written acceptance by the Association shall in no event be a precondition to acceptance by the Association.

(b) The assignment, transfer, and/or conveyance of real or personal property to the Association shall be by non-warranty deed or bill of sale; shall be subject to the rights, restrictions, and easements set forth in this Declaration, including the easements referenced in **Article X**, as well as other public and private access, utility and drainage easements, easements, and rights-of-way of record; may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property; and may include such other provisions, including restrictions on use, deemed reasonable and appropriate by the Declarant or the transferor, in the Declarant's or the transferor's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

(c) During the Declarant Control Period, the Declarant may require the Association and the Board to reconvey any portion of the Common Elements previously conveyed to the Association to the Declarant or Declarant's designee at any time and for any purpose, including, without limitation, in connection with Declarant's exercise of Development Rights or Special Declarant Rights or in connection with changes made by the Declarant pursuant to **Section 12.3** herein or to allow for changes, modifications and adjustments to the development plan for the Project.

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

Section 3.3 Maintenance. Common Elements shall be maintained by the Association as more particularly detailed in **Section 8.1**. Maintenance of the Common Elements shall include maintenance, repair, and reconstruction, when necessary, of all improvements located thereon.

Common Elements that are conveyed to the Association in an unimproved and natural state may be maintained in the same state after it is conveyed to the Association.

Private Roadways shall be maintained by the Association. Public Roadways, if any, shall be maintained by the Association until a governmental entity or agency elects, in its discretion, to assume responsibility for Roadway maintenance. Maintenance of the Roadways shall conform, at a minimum, to the standard of maintenance (if one is ascertainable) which would be required by the governmental entity or agency having authority over the Roadway.

The Association shall not be responsible for the maintenance of any Dwelling, Lot or any portion of any Lot or the improvements within the boundaries thereof except as specifically provided in **Section 8.1**. The Owners of such Lots shall be solely responsible for same.

Section 3.4 Reserve Fund(s). Except as expressly provided herein to the contrary, the Association may (but shall not be obligated to) establish and maintain reserve fund(s) for the periodic maintenance, repair and replacement of all or a portion of the Common Elements and/or Roadways to fund unanticipated expenses of the Association and/or to acquire equipment or services as may from time to time be deemed reasonable, necessary, or desirable by the Board of Directors. Such reserve fund(s) shall be collected and maintained out of the assessments, as hereinafter provided in **Article V**. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

Provided, however, that no later than July 1, 2025, the Board shall obtain a "Reserve Study" to establish or verify that the 2026 budget for the Association includes appropriate reserves. The budget for reserves shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall, in the exercise of its business judgment, establish a plan to fund reserves at a level projected to achieve at least 50% of funding recommended during the Declarant Control Period by the end of the Declarant Control Period.

Section 3.5 Request for Governmental Maintenance of Public Roadways. The Declarant and after the termination of the Declarant Control Period, the Association may (but shall not be obligated to) request that the public Roadways be accepted for maintenance by a governmental entity or agency and should maintenance responsibilities not be accepted by any governmental entity or agency, the Association shall be solely responsible for the maintenance of the public Roadways as well as any private Roadways. **THE DECLARANT MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING THE ACCEPTABILITY OF THE PUBLIC ROADWAYS OR ANY IMPROVEMENTS OR FACILITIES THEREON OR ADJACENT THERETO TO ANY GOVERNMENTAL ENTITY OR AGENCY.** In the event the public Roadways are accepted for maintenance by any governmental entity or agency, the Association shall no longer have any obligation for their maintenance, repair or replacement and any public Roadway reserves may be used for general Association expenses or reserves. In the event the public Roadways are not accepted for maintenance by any governmental entity or agency within ninety (90) days after the date on which the public Roadways are submitted by the Declarant for acceptance, the Declarant may transfer and convey the public Roadways to the Association at any time thereafter.

ARTICLE IV
THE ASSOCIATION

Section 4.1 Automatic Membership. The Declarant and all Owners shall automatically be Members of the Association and shall enjoy the privileges and be bound by the obligations contained in the Project Documents. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

Section 4.2 Voting and Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots and may not be separated from ownership of any Lot which is subject to assessment. Members shall be entitled to vote only on the issues, questions, actions, and matters which this Declaration, the Bylaws, or North Carolina law require be decided by a vote of the Members. There shall be two (2) classes of Members with respect to voting rights:

Class A Members. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to cast one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. However, the vote for such Lot shall be cast as the Owners thereof among themselves determine, but only one vote may be cast, and that vote shall not be split.

Class B Member. The Declarant shall be the Class B Member and shall be entitled to cast one (1) vote for each Lot owned by Declarant **and** four (4) votes for each Lot owned by a Class A Member at the time any vote is cast. The Class B Membership shall cease, and the Declarant shall become a Class A Member on the happening of any of the following events, whichever occurs first:

(a) When the Declarant executes and records a written instrument in the County public registry terminating the Class B Membership; or

(b) When the Declarant no longer owns any portion of the Property or the Additional Land; or

(c) The expiration of thirty (30) years from the date of this Declaration is recorded.

Section 4.3 Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be suspended, automatically and without requirement of notice or hearing, during any period that the Lot or the Owner thereof is delinquent in the payment of assessments or is in violation of the Project Documents.

Section 4.4 Control by Declarant. Notwithstanding any other language or provision to the contrary herein or in the bylaws of the Association, Declarant hereby retains the right to appoint and remove any or all members of the Board of Directors of the Association, any officer or officers of the Association and any managing agent for the Association during the Declarant Control Period. **The Declarant Control Period shall commence on the date this Declaration is recorded and shall**

continue until (i) the date which is twelve (12) months after the date on which Declarant no longer owns or holds an option or contractual right to acquire any portion of the Property or the Additional Land, or (ii) the date the Declarant executes and records a written instrument in the County public registry terminating the Declarant Control Period, whichever occurs first. Upon the expiration or termination of the Declarant Control Period, a special meeting of the Association shall be called to elect a new Board of Directors which shall undertake the responsibilities of running the Association. Once the new Board is elected, Declarant shall deliver to the Board or the Association's managing agent, any books, accounts, and records of the Association in the Declarant's possession as well as any agreements or contracts in the Declarant's possession executed by or on behalf of the Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors, officers and managing agents of the Association as provided in this section.

Notwithstanding the foregoing, the Declarant may, but shall have no obligation to, permit the Members of the Association to elect some or all of the members of the Board of Directors as provided in the Bylaws during the Declarant Control Period ("Early Board Transition"). **Any Early Board Transition allowed by the Declarant shall not affect the Declarant Control Period, shall not change, reduce, or eliminate any of the rights and powers reserved or granted to the Declarant in this Declaration or otherwise by law and shall be subject to any restrictions or limitations specified by the Declarant with respect to the Early Board Transition.** Following any Early Board Transition, Declarant shall retain the right to remove and appoint all or any members of the Board of Directors as well as any of the officers of the Association and its managing agent and the right to veto or modify any actions taken by the Board of Directors or the officers during the Declarant Control Period.

Section 4.5 Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements as required by N.C.G.S. § 47F-3-118(a) and the North Carolina Non-Profit Corporation Act.

Section 4.6 Management and Other Agreements. The Association may be professionally managed and may enter into such agreements for the management, operation, and administration of the Project, with the individual, firm, or entity that the Association deems appropriate and in the best interest of the Project from time to time. Should the Association enter into a management agreement for the Property as permitted herein, the manager (hereinafter referred to as "Independent Manager") shall obtain and at all times maintain Fidelity Insurance as provided in **Section 7.1(c)** of this Declaration.

Section 4.7 Liability Limitations. Neither Declarant, nor any Member, nor the Board, nor any officers, directors, agents, or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements, or portions thereof or for failure to repair or maintain the same. Neither the Declarant, the Association nor any other person, firm or association making repairs or providing maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements, or portions thereof. The Association shall, to the extent

permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action resulting from the performance by the Board of its duties and obligations, excepting for any loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be otherwise indemnified.

Section 4.8 Equal Treatment. During the Declarant Control Period, the Association shall not, without the prior written consent of the Declarant, take any action or adopt any policy, rule, or procedure that:

(a) Limits, hinders, or impedes the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Property;

(b) Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Elements in marketing or promotional materials;

(c) Limits or prevents purchasers of residential housing constructed by the Declarant or its successors, assigns and/or affiliates in the Project from becoming members of the Association or from enjoying full use of the Common Elements, subject to the provisions of this Declaration and the Bylaws;

(d) Impacts the ability of Declarant or its successors, assigns and/or affiliates, to carry out to completion its development plans and construction activities;

(e) Affects or limits easements established for the benefit of the Declarant or affects or limits the establishment by the Declarant of easements necessary to complete the Project;

(f) Impacts the ability of the Declarant or its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner; or

(g) Interferes with any of the rights of the Declarant set forth in this Declaration.

Section 4.9. Association Acceptance of Responsibility for Contracts, Permits, Leases, Infrastructure, Improvements and Facilities; Declarant Power of Attorney. The Association and the Board shall accept (a) assignment of any contracts and/or leases entered into by the Declarant with respect to the Property, (b) responsibility for the operation, repair, maintenance and replacement of infrastructure, improvements and/or facilities constructed and/or installed on the Property, including, without limitation, stormwater management facilities and infrastructure, and (c) the transfer of any permits issued with respect to any such infrastructure, improvements or facilities when and to the extent the transfer of any permit is requested, required or permitted by the Declarant or by any local, state or federal office, agency, department or authority. Infrastructure, improvements, and facilities shall include, without limitation, BMPs, retaining walls, amenities, structures, pools, walls, monuments, trails, streets and roads, landscaping, utilities, and drainage/storm water control systems. The officers of the Association shall immediately execute any documents which are requested or required by the Declarant or by any government authority or agency or which are necessary to facilitate and memorialize (a) the assignment of contracts and leases entered into by the Declarant with respect to the Property to the Association, (b) the Association's acceptance of repair, maintenance and

replacement responsibilities and/or (c) the transfer of permits to the Association as provided for herein. **THE ASSOCIATION SHALL BE RESPONSIBLE FOR ANY COSTS, EXPENSES OR DAMAGES INCURRED OR SUSTAINED BY THE DECLARANT AS A RESULT OF ANY DELAY OR FAILURE BY THE ASSOCIATION OR ITS OFFICERS TO DO SO, INCLUDING, WITHOUT LIMITATION, ANY ATTORNEYS' FEES INCURRED BY THE DECLARANT AS A RESULT OF ANY DELAY OR FAILURE.**

Without limiting the rights of the Declarant or the obligations of the Association under this section, the **DECLARANT SHALL HAVE THE POWER AND AUTHORITY TO EXECUTE ANY SUCH DOCUMENTS IN THE NAME OF THE ASSOCIATION AND AS ITS AGENT AND ATTORNEY-IN-FACT SHOULD THE ASSOCIATION OR ITS OFFICERS AND DIRECTORS FAIL OR REFUSE TO DO SO.** The Declarant may also request and require that the officers and directors of the Association (including those appointed by the Declarant during the Declarant Control Period) execute, deliver and/or record powers-of-attorney or other written authorizations confirming the authority of the Declarant to act as the agent and attorney-in-fact of the Association as provided herein. The rights, powers and authority granted to the Declarant under this section may be exercised by the Declarant at any time and shall not be limited to the Declarant Control Period.

Section 4.10 No Representations or Warranties Regarding Lakes, Creeks or Drainage Areas. Declarant has informed and hereby informs the Association that any lakes, creeks, or drainage areas located within or adjacent to the Property (the "Drainage Areas") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with specific aesthetic qualities**. Declarant makes no representations or warranties regarding the drainage areas and hereby disclaims any and all representations and warranties regarding the drainage areas, including, without limitation, any implied warranties, and any warranty of fitness for a particular purpose. The Association and each Owner accepts the drainage areas in their "as-is" condition.**

Section 4.11 No Representations or Warranties Regarding Natural Areas. Declarant has informed and hereby informs the Association that certain Common Elements or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, water detention facilities and open spaces, may be intended to be unimproved open space to be left or maintained in a natural or semi-natural condition ("Natural Areas") and are not necessarily intended to be a recreational feature or an amenity with specific aesthetic qualities. Neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Natural Area. **Declarant makes no representations or warranties regarding the Natural Areas and hereby disclaims any and all representations and warranties regarding the Natural Areas, including, without limitation, any implied warranties, and any warranty of fitness for a particular purpose. The Association and each Owner accept the Natural Areas in their "as-is" condition**.

Section 4.12. Indemnification of Declarant and Declarant Affiliates for Association Operations. The Association shall indemnify, defend and hold harmless the Declarant and all Declarant Affiliates from and against all claims, causes of action, damages, costs and expenses, including, without limitation, attorneys' fees and costs, in connection with any threatened, initiated or filed claim, suit, arbitration or other proceeding (including the settlement of any claim, suit, arbitration or other proceeding) asserted against Declarant or any Declarant Affiliate or to which any of them may become a party arising out of or related to the management or

operation of the Association, including without limitation, the enforcement of the Project Documents, the collection of assessments, and the operation, maintenance and repair (or failure to operate, maintain or repair) of the Common Elements.

ARTICLE V
OPERATION OF THE PROPERTY AND ASSESSMENTS

Section 5.1 Adoption of Budget; Creation of Lien and Personal Obligation for Assessments. The Board shall, from time to time and at least annually, prepare and adopt a proposed budget for the Project, determine the amount of expenditures payable by the Owners to meet the proposed budget ("Common Expenses") and allocate and assess Common Expenses among the Owners as provided in this **Article V**. The Common Expenses shall include such amounts as the Board deems necessary for the operation and maintenance of the Property and shall include, without limitation, amounts for purposes set forth in **Section 5.2**, amounts for permitted reserves and such amounts as may be necessary to make up any deficit for outstanding Common Expenses for any previous year. **During the Declarant Control Period, each budget and budget amendment shall be approved by the Declarant before presentation for ratification as provided herein.**

No proposed budget shall be effective until ratified as provided in N.C.G.S. § 47F-3-103(c). **During the Declarant Control Period, the budget shall be ratified unless at the meeting called and held for its ratification, the Declarant and one hundred percent (100%) of all of the Lot Owners in the Association reject the budget**. After the termination of the Declarant Control Period, the budget shall be ratified unless rejected by a majority of the Lot Owners as provided in N.C.G.S. § 47F-3-103(c).

As permitted by N.C.G.S. § 47F-3-114, any surplus funds remaining after payment of or provision for Common Expenses shall be retained by the Association and held as reserves for the payment of future Common Expenses as the Board of Directors, in its sole discretion, deems appropriate.

Each Owner of any Lot or portion of the Property (but not Declarant), by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges of the Association, (2) Supplemental Annual Assessments, (3) Special Assessments, and (4) Special Individual Assessments, and (5) as to the Lots within any Neighborhood (if any), (5)(a) Neighborhood Annual Assessments and (5)(b) Neighborhood Special Assessments (collectively, "Assessments"), such Assessments to be established and collected as hereinafter provided. Each Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them. **DECLARANT SHALL BE EXEMPT FROM ALL ASSESSMENTS RELATING TO ANY PORTION OF THE PROPERTY OWNED BY DECLARANT.**

Section 5.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other

residents of the Property to the fullest extent authority or responsibility is granted to the Association hereunder including, and without limiting the generality of the foregoing, for: (i) the leasing, improvement, maintenance and operation of the Common Elements including, without limitation, that specified in **Section 3.3** and **Section 8.1**; (ii) maintenance on the Lots surrounding the Dwellings (including, but not limited to the cost of repairs, replacements, additions, labor, equipment, materials, management, and supervision) but only to the extent provided in **Article VIII** below; (iii) provision of services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, including but not limited to maintenance and landscaping; (iv) payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Documents; (v) payment in connection with the street lights (if any) or other utilities serving the Property; (vi) payment of management fees to a property manager in accordance with **Section 4.6**; (vii) the employment of attorneys, architects, accountants and other professionals to represent or assist the Association deemed necessary or appropriate by the Board; (viii) the cost of utilities and fuel used in operating facilities in the Common Elements; (ix) the maintenance and upkeep of all Roadways in the Property until they are accepted by a governmental entity or agency, if ever; (x) the payment of costs incurred to provide private garbage and solid waste collection service to each Lot (if not provided by a governmental entity); (xi) the payment of costs incurred to obtain water and sewage disposal for the Common Elements and Dwellings, if needed and not charged directly to the Owners by a public or private utility; (xii) the payment of charges and fees due and owing under any Bulk Service Contract(s) entered pursuant to **Section 6.4**; (xiii) for reserves as permitted in **Section 3.4**; and (xiv) to carry out all other purposes and duties of the Association and/or the Board as provided in the Project Documents.

Section 5.3 Payment of Annual Assessments; Due Dates and Maximums. Each Owner of a Lot shall pay to the Association Annual Assessments as hereinafter set forth.

(a) Annual Assessments provided for herein shall commence as to any Lot as of the date of the conveyance by Declarant to an Owner of such Lot. The Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. The Annual Assessment amount for each and every year shall be an amount set by the Board of Directors, in accordance with the terms of this **Article V**. Annual Assessments shall be due and payable either in full and in advance or in installments as determined by the Board. The Board shall fix the amount of the Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount and due date of each installment of such Annual Assessment to each Owner at least thirty (30) days prior to the due date for payment of the assessment or the first installment thereof; provided, however, the failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of the obligation to pay Annual Assessments.

The Annual Assessment shall be charged equally to all Lots which are subject to assessment, and shall be used to defray the cost of Common Expenses other than Neighborhood Common Expenses, if any, which shall be paid for using Neighborhood Assessments, as more particularly provided herein or elsewhere in the Project Documents. Lots within the Twin Villa Neighborhood and Ranch Neighborhood shall be subject to Neighborhood Assessments for the payment of Neighborhood Common Expenses which are unique to each such Neighborhood, including, without limitation, the cost of lawn and landscaping maintenance services provided pursuant to **Article VIII**. Except as specifically provided herein (or in any Supplemental Declaration) to the contrary, the Neighborhood Assessments levied against Lots within a particular Neighborhood shall be charged equally to all Lots within such Neighborhood.

The Declarant shall not be obligated to pay Annual Assessments in any year except with Declarant's prior written approval. Notwithstanding the foregoing, for calendar years beginning during the Declarant Control Period, Declarant may (but shall not be required to) fund all, some, or none of the Annual Expense Shortfall (defined below) with direct payments to the Association, loans to the Association or any combination of direct payments and loans that the Declarant, in its sole discretion, deems appropriate. Declarant may enforce, collect, and recover any loans made to the Association by filing a civil action against the Association during or at any time within five (5) years after the Declarant Control Period ends. For purposes of this Section, "Annual Expense Shortfall" shall mean the amount by which the annual expenses of the Association (excluding any reserves) exceed the total amount of the Annual Assessments paid by Owners other than the Declarant.

(b) For calendar years beginning during the Declarant Control Period, the Annual Assessment amount for each year shall be the amount set by the Board of Directors, in its sole discretion. **Annual Assessments shall not be subject to any maximum, nor shall they require the consent or approval of any Owner or Member other than the Declarant.**

(c) For calendar years beginning upon or after the termination of the Declarant Control Period, Maximum Annual Assessment and Annual Assessment amounts shall be set as follows:

(i) The Maximum Annual Assessment for the first calendar year beginning on or after the termination of the Declarant Control Period shall be equal to the amount of the actual Annual Assessment set and established by the Board as provided in Subsection (a) above for the preceding year plus ten percent (10%). In each subsequent calendar year, the Maximum Annual Assessment may be increased by the Board (without any vote of or approval from the Members) by an amount equal to the previous year's Maximum Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI published by the United States Government indicating changes in the cost of living shall be used.

(ii) The Maximum Annual Assessment applicable to each Lot may be increased above the amount set forth in Subparagraph (i) of this **Section 5.3(c)** by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant during the Declarant Control Period.

(iii) The Board may fix the Annual Assessment applicable to each Lot in any amount which does not exceed the Maximum Annual Assessment established as provided in and modified pursuant to Subparagraphs (i) and (ii) of this **Section 5.3(c)**. If the Board levies an Annual Assessment which is less than the Maximum Annual Assessment for any calendar year and later determines during that calendar year that any of the responsibilities, duties or functions of the Association cannot be funded by such lesser assessment, the Board may levy a Supplemental Annual Assessment, provided that the sum of the Annual and Supplemental Annual Assessments for any year do not exceed the applicable Maximum Annual Assessment for such year unless approved as specified in Subparagraph (c).

(d) With respect to any Lot conveyed by Declarant, the purchaser of such Lot shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(e) During the Declarant Control Period, and notwithstanding anything else to the contrary, all Annual Assessments levied and any changes to the Maximum Annual Assessment must be approved by the Declarant.

Section 5.4 Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy a special assessment ("Special Assessment") for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Elements improvements which are not originally constructed by Declarant or (ii) the reconstruction, repair or replacement of the Common Elements, including any improvements located thereon or improvements on Lots which the Association is expressly required to repair and maintain under **Section 8.1**, if any, provided that:

(a) **DECLARANT SHALL NOT BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS ON LOTS OWNED BY DECLARANT.**

(b) During the Declarant Control Period, and notwithstanding anything else to the contrary, Special Assessments need only be approved by the Declarant.

(c) After the termination of the Declarant Control Period, all Special Assessments must be approved by Members holding at least sixty-seven percent (67%) of the votes appurtenant to the Lots which are then subject to this Declaration.

Section 5.5 Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board shall have the power to levy a special assessment applicable to any particular Owner(s) ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Elements, including any improvements located thereon, which is occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear, (ii) for payment of costs incurred by the Association to bring any Lot into compliance with the Project Documents, including, without limitation, the Community Wide Standard provided for in **Section 8.2**; or (iii) for payment of fines, penalties or other charges imposed against any particular Owner related to such Owner's failure to comply with the terms and provisions of this Declaration or the Project Documents. The due date and payment terms (if any) for any Special Individual Assessment levied shall be fixed by the Board. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due. **DECLARANT SHALL NOT BE OBLIGATED TO PAY ANY SPECIAL INDIVIDUAL ASSESSMENT.**

Section 5.6 Allocation of Assessments and Common Expense Responsibilities. Except as provided herein, Annual Assessments, Supplemental Annual Assessments and Special Assessments levied by the Association shall be assessed equally to and against all Lots, excepting and excluding

Lots owned by the Declarant. Notwithstanding the forgoing and as permitted under N.C.G.S. § 47F-3-115(c), the Board of Directors, in its discretion, may assess any Common Expense or portion thereof benefiting fewer than all of the Lots to and against the Lot or Lots benefitted. Special Individual Assessments shall be assessed to and against the Lot(s) owned by the Owner(s) against whom they are levied.

Section 5.7 Effect of Nonpayment of Assessments: Remedies of the Association. If any Assessment, or installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option and without further notice, declare the entire unpaid Assessment immediately due and payable. Unpaid Assessments shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, the Association may impose a charge for late payment of any Assessment up to but not exceeding $45.00 per month, which late charge may be imposed once in any month during which any Assessment, interest, late charge, or other previous charge (or any portion thereof) remains unpaid. The Association shall also be entitled to recover fees and penalties for returned checks as permitted in N.C.G.S. §6-21.3 and N.C.G.S. §25-3-506 and any administrative/collection service fees charged to the Association by its management company or any third party agent providing collection services. Interest, late charges, administrative/collection service fees, returned check fees as well as reasonable attorney fees and costs shall be added to and collectible with and in the same manner as Assessments. Assessments levied and late charges, administrative/collection service fees, interest, returned check fees, attorney's fees and costs allowed herein shall be the personal obligation of each Owner and a continuing lien upon the Owner's Lot. The Association's lien shall be superior to all other liens and encumbrances on the Owner's Lot, except for (a) liens for ad valorem taxes, (b) liens for all sums unpaid on a Mortgage, or (c) liens for all sums on any deed of trust to Declarant duly recorded in the County public registry and all amounts advanced pursuant to such deed of trust and secured thereby in accordance with the terms of such instrument.

The Association may enforce Assessment obligations as permitted by law, including, without limitation, by filing and foreclosing a claim of lien in accordance with the procedures set forth in N.C.G.S. § 47F-3-116, and/or by bringing an action at law against the Owner personally obligated to pay the assessment. Each Owner, by his acceptance of a deed to a Lot, expressly grants to and vests in the Association and its agents the right and power to file a claim of lien and to bring such action or foreclosure. Foreclosure may be accomplished in an action brought in the name of the Association in the same manner that a foreclosure of a mortgage or deed of trust would be brought under Chapter 45 of the North Carolina General Statutes, or as otherwise expressly provided by law, and each Owner grants to the Association the right to foreclose any such charge or lien under power of sale. The Association, acting on behalf of the Owners, shall have the power to bid on any Lot and to acquire, hold, lease, mortgage and/or convey the same. **NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON ELEMENTS, BY REJECTION OF ASSOCIATION SERVICES, OR BY ABANDONMENT OF HIS LOT.**

During any period in which an Owner is in default in the payment of any installment of an Assessment levied by the Association, the voting rights of the Owner in the Association, the Owner's right to the use of the Common Elements and/or any other services, privileges or facilities which are provided by the Association (except the right of access to the Owner's Lot) are automatically suspended without the necessity of any notice, hearing or other formal process until such Assessment and all related fees and charges are paid in full. During any period in which an Owner is in default in

the payment of any installment of an Assessment levied by the Association, the Board may also notify the owner and holder of any Mortgage of a delinquency relating to the Lot encumbered by that Mortgage.

Section 5.8 Exempt Property. The following parts of the Property shall be exempt from assessment by the Association: (a) the Roadways; (b) portions of the Property owned by the Declarant or the Association; and (c) any part of the Property dedicated to and accepted by any public or governmental authority (the recording of this Declaration shall in no way be deemed a dedication of, or an offer to dedicate, any part of the Property to any such authority).

Section 5.9 Voluntary Conveyance; Estoppels. Except as provided in **Section 5.8**, the lien for Assessments of the Association created in this **Article V** shall not be affected by any conveyance of a Lot and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in **Section 5.7**. Any grantee in a voluntary conveyance of any Lot shall be entitled to a statement from the Board pursuant to N.C.G.S. § 47F-3-118(b), setting forth the amount of the unpaid assessments due the Association with respect to the Lot and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in that statement.

Section 5.10 Capital Contribution Payable by Original Transferee. In addition to assessments and other charges payable as provided in this Declaration, the buyer/original transferee to whom the Declarant transfers any Lot shall pay a capital contribution directly to the Association (and not to any third-party) at the time of closing in an amount which shall be set by the Declarant, in its sole discretion, and may be changed by the Declarant from time to time. The initial capital contribution amount at the time this Declaration is recorded shall be $2,000.00 per Lot, which amount shall be subject to change at any time in Declarant's sole discretion. Notwithstanding the forgoing, all transfers from the Declarant to a successor declarant are exempted and excluded, and no successor declarant shall be considered an original transferee or required to pay any capital contribution to the Association.

Section 5.11 Fee Based Services and Access Authorized. The Association may, in its discretion, charge user fees for services or access to portions of the Common Elements as permitted under N.C.G.S. § 47F-3-102(10) and may establish terms and conditions for payment of those user fees. User fees charged shall be in addition to Assessments levied and payable under this Article.

Section 5.12 Payments by Owners. In the event a payment is tendered that is less than the total due and owing by the Owner to the Association, the partial payments shall be applied to oldest charges owed first whether those charges are assessments, fines, interest, late charges or other fees or charges authorized by law or in the declaration and regardless of any request or designation made by the Owner at the time the payment is made. At any time an Owner fails to pay all amounts due and owing on or before the date payment is due, the Association may, in its discretion, reject and return payments that are insufficient to pay the balance due in full and/or may require that payments thereafter be made in certified funds or other form.

ARTICLE VI
UTILITIES

Section 6.1 Water System. Every Lot shall be connected to a public utility water system. **Private wells may not be drilled or installed on any Lot for any purpose**.

Section 6.2 Sewage Disposal System. Every Lot shall be connected to a public utility sewage disposal system.

Section 6.3 Street Lighting. Declarant may install or contract with any public utility and/or private street lighting provider to install and operate street lighting within the Project ("Street Lights"). All costs incurred in connection with the installation, operation, maintenance, and replacement of Street Lights shall be paid as part of the Common Expenses of the Association. Declarant may enter into contracts, agreements and/or leases for the acquisition, installation, maintenance and/or operation of the Street Lights in its name or in the name of the Association, as the Declarant, in its sole discretion, deems appropriate. Declarant may require the Association to pay any upfront or initial costs or expenses incurred or, in its sole discretion may advance payment of some or all of those costs in exchange for a promissory note obligating the Association to repay amounts advanced by the Declarant upon such terms as the Declarant, in its sole discretion, deems reasonable. Contracts, agreements and/or leases executed by and between the Declarant and any public utility, person, or entity to provide, install, operate, serve, maintain, or replace Street Lights may be assigned by the Declarant to the Association at any time without the consent or approval of the Association or its Board of Directors. At the time any contracts, agreements and/or leases are assigned by the Declarant to the Association, the Declarant may require the Association to reimburse Declarant for any costs or expenses incurred in connection with the Street Lights by the Declarant prior to the assignment.

Section 6.4 Bulk Services and Bulk Service Contract(s). The Declarant or the Association may contract with third persons or entities for the provision of bulk services to the Project (or any portion thereof, including, without limitation, any Neighborhood) for the benefit of the Owners, including, without limitation, trash collection, telephone, internet, and broadcast television services, as the Declarant or the Board of Directors of the Association, acting in its or their sole discretion, deem reasonable and appropriate from time to time ("Bulk Service Contract(s)"). Payments due and owing under any Bulk Service Contracts shall be paid using Assessments levied and collected as provided in Article V hereof and no Owner shall be permitted to exempt him/herself from any such Assessment by non-use of or refusal to accept any services which are contracted for in any Bulk Service Contract.

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

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

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

ARTICLE VII
INSURANCE AND RECONSTRUCTION

Section 7.1 Association Insurance. Except as may be specifically provided to the contrary with respect to a particular Neighborhood, the Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) Property and Casualty Insurance. The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all buildings and improvements located on the Common Elements in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the land, excavations, paving, foundations, footings, and other items normally excluded from property policies. Said insurance may provide for coinsurance by the Association of not greater than twenty (20%) percent and/or may include a commercially reasonable general deductible not to exceed $10,000.00 and other percentage loss and/or fixed dollar deductibles as the Board of Directors, acting in its sole discretion, deems reasonable and appropriate from time to time; provided, however, that minimum coverage required by N.C.G.S. § 47F-3-113 must be maintained at all times. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements, including, without limitation, fixtures, personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement.

All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association. The Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The Association shall use and apply insurance proceeds received to repair or restore the damaged property as provided in **Section 7.7**.

If reasonably available, each policy obtained pursuant to this subsection shall:

(1) show the Association as the named insured;

(2) contain clauses providing for waiver of subrogation against the Association, any officer, director, agent, or employee of the Association as well as the Owners, their family members and members of their households and their employees, agents tenants and invitees;

(3) contain a provision that the coverage will not be prejudiced by the act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control; and

(4) contain a provision that coverage cannot be canceled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association (i) without prior demand in writing that the Association cure the defect, and (ii) the allowance of a reasonable time thereafter within which the defect may be cured.

(5) provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and all mortgagees to whom certificates, or memoranda of insurance have been issued;

(6) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance except to the extent the loss or damage is subject to the allowed deductible; and

(7) contain an inflation guard endorsement, an agreed amount endorsement and a construction code endorsement.

(b) Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the Independent Manager, if any, and each Owner with respect to liability arising out of the operation, use, ownership, maintenance, or repair of the Common Elements. Any such policy shall name the Declarant as additional insured for so long as Declarant owns any portion of the Property which is subject to this Declaration. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all additional insureds. The Board shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any Independent Manager shall also acquire and maintain fidelity insurance as required herein and under **Section 4.6**. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Board, but in no event less than one-half (1/2) the total Annual Assessments levied during the previous year plus the total of all reserve funds, if any.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as the Board shall determine from time to time to be desirable, including, without limitation, directors and officers liability insurance.

(e) Insurance Unavailable. In the event the insurance described in Subsections (a) through (c) is not reasonably available, the Association promptly shall cause notice of that fact to be hand-

delivered or sent by United States first class mail to all Owners. For purposes of this subsection, insurance will be deemed "not reasonably available" if the cost of that insurance is prohibitive in light of the Association's budget and available resources. In the event the Association determines any such insurance to be "not reasonably available," it shall take reasonable steps to obtain insurance for the benefit of the Association and the Owners which is as closely equivalent to the insurance coverage required in Subsections (a) through (c) that is reasonably available.

Section 7.2 Premiums and Deductibles. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of any deductible applicable to coverage provided under Sections 1 (b), (c) or (d), shall be paid by the Association as a Common Expense, provided, however, that deductibles and/or expenses paid or incurred by the Association as a result of the negligent or intentional act or omission of any Owner, or that of his agents, guests, invitees or family members, shall be charged to and paid by the Owner as a Special Individual Assessment pursuant to **Section 5.5**. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

Section 7.3 General Standards. All insurance policies maintained by the Association under this **Article VII** shall be written with a company or companies licensed to do business in the State of North Carolina. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, the Association's authorized representative who has the authority to negotiate losses under any policy providing such insurance may be named as an insured. Upon written request, the Association shall deliver certificates or memoranda of insurance to the Owners and their Mortgagees attesting the fact that such policies of insurance are in force and effect. The Association also shall furnish to all Owners and Mortgagees, upon written request, evidence that premiums for the required insurance have been paid on an annual basis.

Section 7.4 Insurance Proceeds. Subject to any requirements or limitations imposed by N.C.G.S. § 47F-3-113, the Association shall use the net proceeds of property and casualty insurance to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance as provided in **Section 7.7**. Any balance from the proceeds of property and casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment or Special Individual Assessment, as appropriate under the circumstances, to cover the deficiency.

Section 7.5 Owner's Insurance. Except as may be specifically provided to the contrary with respect to the Owners of Lots within a particular Neighborhood, each Owner shall obtain and at all times continuously maintain the following insurance coverages:

(1) Property and casualty insurance covering his/her Lot and Dwelling (whether a detached House or attached Twin Villa) in an amount not less than one hundred percent (100%) of the replacement cost of all improvements on the Lot (including, without limitation, the Dwelling itself) at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the land, excavations, paving, foundations, footings, and other items normally excluded from property policies. All polices of property and casualty insurance which are

required under this subsection (1) shall provide that the Association is an additional insured with respect to the policy. Any costs which are incurred by the Association because of or in connection with any Owner's failure to purchase and maintain the property and casualty insurance required hereunder shall be charged to the Owner and against the Owner's Lot as a Special Individual Assessment pursuant to **Section 5.5.** The Lot Owner shall be solely responsible for the cost of any insurance deductible(s) which apply to the policies of property and casualty insurance required hereunder.

(2) Public liability insurance coverage in an amount of at least $100,000.00 for bodily injury, including death of persons, and for property damage, arising out of a single occurrence.

(3) Additional or increased special form coverages/endorsements (e.g., loss assessment, sewer/drain backup, etc.) in such amounts as required, specified and/or changed by the Board of Directors acting in its sole discretion from time to time.

(4) Such other insurance as the Owner may deem desirable and appropriate, including, without limitation, appropriate insurance covering all of Owner's personal property.

Each Owner shall promptly pay all premiums charged in connection with insurance coverage required by this section. In addition, each Owner shall provide the Association with evidence that all required insurance coverage has been obtained and remains in force upon request. The Association shall have no obligation or responsibility to insure or verify that each Owner obtains or maintains insurance coverage as required herein and shall not be liable for any losses resulting from any Owner's failure or refusal to do so.

Section 7.6 FNMA, FHA, or VA Insurance Requirements. Notwithstanding any other provision contained in this Article or this Declaration, the Association is authorized to obtain and maintain insurance sufficient to satisfy the insurance requirements of the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") and the Veteran's Administration ("VA") applicable to the Project, as those requirements and standards may be modified or changed from time to time.

Section 7.7. Responsibility for Reconstruction or Repair of Casualty Damage. Notwithstanding any other provisions contained in this Declaration to the contrary, the Association and the Owners shall be responsible for the repair and replacement of portions of the Property damaged by casualties as follows:

(a) If any portion of the Property is damaged by perils that ARE covered by the property insurance maintained by the Association in accordance with **Section 7.1(a)**, then:

(1) The Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property. Except as provided herein, the cost of repair and replacement in excess of insurance proceeds available is a Common Expense. In the event of any deficiency, one or more Special Assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of any such Special Assessments shall be deposited with the Association. In addition, or alternatively, the Association may borrow

funds to pay for such costs with the consent and approval of two-thirds (2/3) of the Members of the Association present, in person or by proxy, at a meeting duly called for such purpose at which a quorum is present.

(b) If any portion of the Property is damaged by perils that ARE NOT covered by the property insurance maintained by the Association in accordance with **Section 7.1(a)**, then:

(1) The repair or reconstruction of any damaged improvements within the Common Elements shall be accomplished promptly by the Association and the extent of such repairs shall be a Common Expense of the Association. In such event, one or more Special Assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of any such Special Assessments shall be deposited with the Association. In addition, or alternatively, the Association may borrow funds to pay for such costs with the consent and approval of two-thirds (2/3) of the Members of the Association present, in person or by proxy, at a meeting duly called for such purpose at which a quorum is present.

(2) The repair or reconstruction of any damaged improvements within any Lot shall be accomplished promptly by the Owner of the affected Lot at his or her own expense. If the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on the Owner's behalf. The expense of such performance may be assessed against that Lot as a Special Individual Assessment, and, if not paid, shall be a lien on the Lot having all of the priorities of an Assessment as provided for in this Declaration and shall be collectible and enforceable as provided in N.C.G.S. § 47F-3-116.

ARTICLE VIII
MAINTENANCE OF PROPERTY

Section 8.1 Maintenance by Association. The Association shall be responsible for the operation, maintenance and repair of the Common Elements as provided in **Section 3.3** and for the maintenance and repair of all Roadways until they are accepted for maintenance by a governmental entity or agency. In addition, the Association may repair, maintain and/or improve land located outside the Property (including, without limitation, public rights-of-way) to the extent the Board of Directors determines in its sole discretion that the repair, maintenance, or improvement of the land is in the best interests of the Association or its Members. Notwithstanding any references or notations appearing on the Plat, the Association shall only be responsible for the maintenance of easements located on the Common Elements except to the extent the Association is assigned maintenance responsibility for easements on Lots in this Declaration. Notwithstanding the foregoing, the Association shall not be responsible for the maintenance or repair of damage caused, in whole or in part, by the negligent or intentional act or omission of any Owner, or that of his agents, invitees, guests or family members and any costs or expenses incurred by the Association for such maintenance or repairs shall be the responsibility of that Owner and may be charged to that Owner as a Special Individual Assessment under **Section 5.5**.

Except as may be specifically required to the contrary with respect to the Lots within a particular Neighborhood, the Association shall have no obligation to repair or maintain any portion of any Lot or any Dwelling or other improvement located thereon except as follows:

(a) The Association shall provide **lawn and landscaping maintenance** with respect to each Lot within the Twin Villa Neighborhood and Ranch Neighborhood, which shall include mowing, blowing, edging, fertilizing, application of weed treatment on the turf portions of the lawn and the installation of mulch and/or pine needles in plant beds. Declarant and the Association, acting through the Board, may adopt rules and regulations requiring the removal of property, animals, and other possible obstructions from the Lot so that lawn maintenance can be efficiently completed. To the extent areas on any Lot are fully fenced in or are otherwise inaccessible, the Owner of the Lot shall be responsible for maintaining those areas Lot in accordance with the Community-Wide Standard as provided in **Section 8.2** at Owner's sole expense and without any assessment credit or reduction. Owners shall not interfere with, hinder or in any way seek to instruct or direct the contractor selected by the Association and sent to the Lot to provide lawn maintenance as provided herein. Lawn and landscaping maintenance services provided pursuant to this subsection (a) shall be paid using Neighborhood Assessments authorized under **Article V** hereof. For the avoidance of doubt, Neighborhood Assessments for lawn and landscaping maintenance services which are charged to Lots within the Twin Villa Neighborhood need not be identical to Neighborhood Assessments for lawn and landscaping services charged to Lots which are part of the Ranch Neighborhood, as the cost of lawn and landscaping services may vary from Neighborhood to Neighborhood.

(b) The Association may pay the costs to maintain a **termite bond** on all of the Twin Villas, but is under no obligation to do so.

(c) Except as provided otherwise herein, the Association shall maintain, repair, and replace all **retaining walls** constructed by the Declarant anywhere on the Property, including the Lots, as well as all the surfaces, foundations, structures, and improvements which are part of or provide support for the walls ("Retaining Walls"). The costs and expenses incurred by the Association to maintain, repair and/or replace the Retaining Walls shall be Common Expenses. The Declarant reserves and grants to the Association an easement which extends 15' from the sides/faces and the ends of each Retaining Wall located on the Property or as otherwise shown on the Plat ("Retaining Wall Easement") for the purpose of allowing the Declarant and/or the Association to maintain, repair, or replace each Retaining Wall when necessary. No Owner, Occupant, guest, or invitee shall in anyway interfere with or hamper the Declarant and/or the Association or their employees, contractors, successors or assigns in maintaining, repairing, or replacing the Retaining Walls. Declarant also reserves and grants to the Association an easement over the Property, including all Lots, for the purpose of providing access to the Retaining Walls and the Retaining Wall Easements reserved and granted herein. Notwithstanding the foregoing, any retaining wall that is located entirely within the boundaries of a single Lot shall be maintained, repaired, and replaced by the Owner of the Lot on which the retaining wall is located, and the Association shall have no responsibility for any such wall or part thereof.

(d) The Association shall be responsible for maintaining the **improvements and facilities located within the storm water and public drainage easements** which appear on the Plat or are established as provided in **Section 10.6** which serve portions of the Property other than Lot on which they are located. The Association's repair responsibility under this subsection shall include all pipes, culverts and catch basins installed on a Lot and within an established easement that serve portions of the Property other than the Lot on which they

are located, including any settlement or subsurface collapse that occurs as a result of a failure of any component or improvement which is part of the storm water management or public drainage system.

(e) The Association shall maintain all **sidewalks** constructed on the Property, including those located on Lots (but excluding walkways and driveways located on and intended to serve a single Lot), unless and until the responsibility for maintaining the sidewalks is assumed and accepted by a governmental entity or agency.

Section 8.2 Maintenance by Owners; Establishment of Community-Wide Standard. The Owner of any Lot (but not Declarant) shall maintain at such Owner's sole cost and expense, each Lot owned by such Owner, including the Dwelling and any other improvements located thereon in compliance with the covenants, conditions and restrictions contained in this Declaration and in compliance with the Community-Wide Standard ("CWS"); provided, however, that Owners of Lots shall have no responsibility for the maintenance of their Lot or the Dwelling or improvements constructed thereon to the limited extent that specific maintenance and repair responsibilities are expressly assigned to the Association in this Declaration.

Nothing shall be changed, added, modified, or altered on any Lot unless first approved as provided for in Article IX below. Notwithstanding any other provision in this Declaration, each Owner shall be solely responsible for maintaining (1) any portion of the Owner's Dwelling and/or Lot that is altered, modified or changed, other than changes, alterations or modifications made by the Association or the Declarant, and (2) anything added to the Lot or Dwelling other than additions by the Association or the Declarant, regardless of whether the modification, change or addition is approved as required under **Article IX** below.

The CWS shall be established and may be expanded, modified, and amended by the Board as provided below. At a minimum, the CWS shall require the following:

(a) Prompt removal of all litter, trash, refuse and waste;

(b) Prompt removal of trash, refuse, debris and weeds from all lawns, shrub beds, improved natural areas and landscaping;

(c) Full and continuous compliance with all governmental health and police requirements;

(d) Pruning of all trees and shrubs at least once every six (6) months in order to keep vegetation neatly and evenly trimmed;

(e) Mowing of all lawn and all turf areas for which Owner is responsible, if any, so that grass does not exceed four (4) inches in height;

(f) Regular watering of the Lot to keep lawn and vegetation alive;

(g) All exterior lighting and mechanical facilities must be kept in working order at all times;

(h) Prompt removal and/or replacement of any dead plant material;

(i) Prompt repair of cracked, broken, or damaged areas in parking areas and driveways and to prompt removal of vegetation from parking areas and driveways;

(j) Prompt repainting, refinishing, and/or repair of any part of the exterior of the Dwelling and all other improvements on the Lot that fades, chips, cracks, peels, discolors or otherwise deteriorates;

(k) Prompt repair or replacement of any damage to the Dwelling and all other improvements on the Lot. If any Dwelling or other improvement on a Lot is damaged or destroyed by fire or other casualty, then the Owner of the Lot on which the damaged Dwelling or improvement is situated must repair and restore such damage or, in the alternative, remove the damaged Dwelling or improvement and restore the Lot to its condition existing prior to the construction of such Dwelling or improvement within six (6) months following the date such damage or destruction occurs;

(l) Maintenance of all portions of the Lot which are not improved by an impervious surface or a structure with approved turf, vegetation, or groundcover;

(m) Barren earth shall not be exposed anywhere on a Lot;

(n) Prompt removal and replacement of any diseased, dead or dying plants, turf, shrubs, or trees (regardless of size);

(o) Prompt repair or replacement of any exterior building surface or component on the Dwelling or any other improvement on the Lot, which is missing, broken or otherwise in a state of disrepair;

(p) Items to enhance the outdoor usability of a Dwelling, or items used to decorate a Dwelling, shall not have obvious missing parts, be broken, or otherwise be in a state of disrepair and must be immediately repaired or removed from sight until repaired. Examples of such items would be outdoor furniture, flower planters, patio umbrellas, banners, flags, and holiday decorations; and

(q) Decks or other natural wood improvements, such as pergolas, shall not have any unprotected exposed wood.

For purposes of the CWS, any requirement that an Owner must take "prompt" action shall be understood to require that the Owner take the required action within ten (10) days after the Association mails written notice of the need for the required action to the Owner at his/her address of record with the Association.

In addition to (a) – (q) above, the Board may adopt and establish other standards and requirements in a separate CWS document. The CWS may be modified, expanded, or amended by the Board from time to time without any approval from the Members. No separate CWS document shall be recorded but shall be made available to any Member on request. Notwithstanding anything contained herein to the contrary, the CWS shall apply to each Lot only upon and after the conveyance of such Lot by Declarant to an Owner who acquires the Dwelling and Lot for residential use.

If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and/or Declarant may give such Owner written notice of such failure and such Owner must perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described herein within ten (10) days after receiving such notice. Notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested or when sent by email to the Owner's email address. Provided, however, this cure period may be extended for a time not to exceed sixty (60) days so long as the Owner shall have commenced action to cure and diligently pursues completion of the same. If the Owner fails to cure the nonconformity or violation within the period specified, the Declarant and/or the Association may enter the Lot and cure the nonconformity or violation, and all costs and expenses incurred by the Declarant or the Association plus an additional administrative fee equal to twenty-five (25%) percent of the total costs and expenses incurred may be charged to the Owner and against the Lot as a Special Individual Assessment pursuant to **Section 5.5**. The Association's rights under this paragraph are in addition to the Association's power and authority to impose administrative fines and to suspend voting rights, privileges and/or services for violations as provided herein and in the **Act**.

In the event the Association incurs costs or expenses in connection with the investigation of conditions which require maintenance or repair, and it is determined that the repair and maintenance needed is the responsibility of the Owner, the Association may recover those investigatory costs and expenses from the responsible Owner as a Special Individual Assessment.

ARTICLE IX
ARCHITECTURAL AND LANDSCAPING CONTROL

Section 9.1 General. No Improvements (as defined in **Section 9.5** below), including, without limitation, site preparation on any Lot, change in grade, drainage, or slope of any Lot, or erection, alteration or addition to or of any building situated upon the Property, erection of, or changes or additions of or to fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected, installed or maintained on any portion of the Property or be changed, modified, altered, enlarged or expanded until: (a) the Reviewer (as defined herein) has received and reviewed the plans and specifications therefor and the location, materials, size and design of such Improvements and has given its **written approval** in accordance with the terms, requirements and procedures set forth in this Article and any Architectural and Landscape Guidelines. In addition to any standards established pursuant to this Declaration, Declarant may establish or apply other or different architectural and landscaping control standards, guidelines, and restrictions in regard to various Phases or sections of the Property. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN TO THE CONTRARY, THE PROVISIONS OF THIS ARTICLE IX SHALL NOT APPLY TO THE CONSTRUCTION OF ANY IMPROVEMENTS COMMENCED, ERECTED, MODIFIED, OR MAINTAINED BY DECLARANT ON ANY PART OF THE PROPERTY.**

Approval of an Improvement may be conditioned upon commencement and/or completion within specified periods or by specified dates. If no specific period is specified, every Improvement must be commenced within six (6) months of the date approved and if not, a new written approval must be requested and obtained as provided herein.

Section 9.2 Designation of the Reviewer

(a) During the Declarant Control Period and Before Release. During the Declarant Control Period, the Reviewer shall be the Declarant and/or persons appointed, from time to time, by Declarant. Control of architectural and landscaping issues and decisions shall remain vested in Declarant until the Declarant releases in writing its right to review some or all architectural or landscaping requests with respect to one or more of the Lots and allows some or all architectural or landscaping requests submitted thereafter to be reviewed by the Board or the ARB as provided for in subsection (b) below. The Declarant may revoke any prior release of its right to review architectural or landscaping requests, in whole or in part, at any time during the Declarant Control by giving written notice of revocation to the Board or the ARB. Nothing herein shall require the Declarant to release its Reviewer status with respect to any Lot prior to the termination of the Declarant Control Period, it being the Declarant's right to act as the Reviewer with respect to all of the Property unless and until the Declarant elects to release its Reviewer status and rights in writing as permitted herein.

(b) After the Declarant Control Period or After Release. After the Declarant Control Period ends, the Board shall act as Reviewer unless the Board appoints, in its discretion, an Architectural Review Board ("ARB") for that purpose. The ARB, if appointed, shall be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the ARB to be designated from time to time by the Board.

The decision of the Reviewer shall be final and binding in all respects. In the case of decisions made by the Board or ARB acting as Reviewer, all such decisions shall be by majority vote. In its capacity as Reviewer, neither the Board nor the ARB shall be required to observe corporate formalities and may informally vote on and/or make decisions, whether electronically or otherwise, on requests submitted; provided, however, that a written record shall be made of decisions made on requests submitted.

The members of the ARB need not be Owners. In the event of the death or resignation of any member of the ARB, the Board shall have full authority to designate and appoint a successor. Members of the ARB may be removed and replaced at any time, with or without cause, and without prior notice, by the Board.

Section 9.3 Professional Services. Notwithstanding anything contained herein to the contrary, the Reviewer shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Reviewer as described in this **Article IX**; provided, however, that any expenditures for professional services after the termination of the Declarant Control Period or after Release shall be approved in advance by the Board. Professional fees for services requested by and rendered to the Reviewer may be taxed to the Owner submitting a request and if unpaid, shall become a Special Individual Assessment enforceable as provided in **Section 5.5**.

Section 9.4 Architectural and Landscape Guidelines.

(a) The Declarant, during the Declarant Control Period, and thereafter the Board may, from time to time, publish and promulgate architectural and design guidelines (the "Architectural Guidelines"). The Architectural Guidelines shall be explanatory and illustrative of the general intent

of the development of the Property and are intended to be a guide to assist Owners in preparing and submitting applications, plans, specifications, and supporting information for proposed Improvements and as a reference to assist the Reviewer in reviewing applications, plans, specifications, and supporting information for proposed Improvements, excluding only landscape Improvements, which are addressed in **Section 9.4(b)** below. The Architectural Guidelines may set out, among other things, the procedures for submission, review and approval of plans and specifications for the construction of non-landscape Improvements to and by the Reviewer. The Reviewer is authorized to request the submission of samples of proposed construction materials. **To the extent standards, requirements, methods, and procedures are established in the Architectural Guidelines, they shall be binding upon and must be complied with by all Owners and their contractors and sub-contractors and shall be assumed to be incorporated into any written approval issued pursuant to this Article unless expressly varied in writing by the Reviewer. The Architectural Guidelines may be revised and amended at any time by the Reviewer, in its sole discretion.**

(b) The Declarant, during the Declarant Control Period, and thereafter the Board may, from time to time, publish and promulgate landscape guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscaping of the Property and are intended as a guide to assist Owners in preparing and submitting applications, plans, specifications, and supporting information for proposed Improvements and as a reference to assist the Reviewer in reviewing applications, plans, specifications, and supporting information for proposed Improvements. The Landscape Guidelines may set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the Reviewer. In addition, the Landscape Guidelines may establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including removal of trees. **To the extent standards, requirements, methods, and procedures are established in the Landscape Guidelines, they shall be binding upon and must be complied with by all Owners and their contractors and sub-contractors and shall be assumed to be incorporated into any written approval issued pursuant to the provisions of this Article unless expressly varied in writing by the Reviewer. The Landscape Guidelines may be revised and amended at any time by the Reviewer, in its sole discretion.**

(c) The Declarant, during the Declarant Control Period, and thereafter the Board is also hereby authorized to publish and promulgate from time to time, and to revise and amend at any time, in its sole discretion, construction and/or installation rules to be followed by all Owners, contractors and installers performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

(d) The Architectural Guidelines, the Landscape Guidelines and the construction and installation rules shall herein collectively be referred to as the "Architectural and Landscape Guidelines" or the "Guidelines." The Declarant, during the Declarant Control Period, and thereafter the Board may issue and amend the Architectural and Landscape Guidelines from time to time and may publish and promulgate different Architectural and Landscape Guidelines for different Phases, sections, or portions of the Property.

Section 9.5 Definition of "Improvements". The terms "Improvement" or "Improvements" shall mean and include the Dwelling and any and all changes or additions that are made to a Lot or that are attached or affixed to a Lot, including, without limitation: (i) all structures and buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning

equipment, exterior security devices, solar heating and collection devices, etc.); (ii) exterior lights and illumination; (iii) roofed structures; (iv) parking or paved areas; (v) fences, including "invisible" fencing; (vi) pet "runs," lines and similar tethers or enclosures; (vii) exterior walls; (viii) irrigation equipment, apparatus and systems; (ix) landscaping (including cutting or removal of trees), gardens, hedges and mass plantings; (x) poles; (xi) driveways; (xii) ponds, lakes and other water features; (xiii) changes in grade or slope; (xiv) site preparation; (xv) hot tubs and Jacuzzis; (xvi) recreation equipment including, without limitation, sports or play apparatus; (xvii) signs, flags and banners, and the poles and structures from which they are hung or flown; and (xviii) yard art, exterior sculpture or fountains; and (xix) changes in any exterior color, design or shape. Antennae and satellite dishes one meter or less in diameter are specifically made subject to regulation and restriction to the fullest extent permitted under the Telecommunications Act of 1996, as amended. The forgoing definition includes both original Improvement(s) and all later changes or additions to Improvement(s). The definition does not, however, include the replacement or repair of Improvement(s) previously approved by the Reviewer, provided that such replacement or repair does not change any exterior color, material, design, or appearance from that which was previously approved by the Reviewer.

Section 9.6 Enforcement/Construction Compliance Deposit.

(a) The architectural control provisions contained in this Article (or in any Supplemental Declaration(s), if any) are to facilitate control of the architectural design, construction, installation and placement of all Improvements and landscaping, to establish quality standards for construction, installation, and related activity in the Project, and to help preserve property values within the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this **Article IX** and to enforce rulings and decisions of the Reviewer by a proceeding at law and/or in equity against the person or persons violating or attempting to violate any such provision, ruling or decision and/or through an administrative action as permitted by the Act, including the possible imposition of fines or suspension of rights and/or privileges. Declarant hereby specifically reserves and grants unto the Reviewer, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determining whether there exists any Improvement which is not approved or which violates the terms of any approval given by the Reviewer, the terms of the Architectural and Landscape Guidelines or the Project Documents.

(b) The Reviewer may require Owners to deliver a Construction Compliance Deposit to the Association in an amount up to but not exceeding Two Thousand Five Hundred Dollars ($2,500.00) to secure and insure compliance by such Owner with the Project Documents, the conditions and stipulations set forth in any approval given, the Architectural and Landscape Guidelines and all applicable laws, ordinances, regulations, and other governmental requirements. In the event of a violation or breach of any of the forgoing, the Association may apply all or part of the Construction Compliance Deposit to compensate the Association for any loss or damage sustained, to reimburse the Association for any expense incurred (including, without limitation, expenses for Roadway repair under **Section 11.12**), and to pay any duly levied fine(s) or to pay assessments under **Section 5.5**. The Owner posting the deposit shall be notified of the Association's application of any portion of the deposit as permitted herein. Any unapplied portion of the deposit remaining at the time construction is

fully complete and all requirements have been fully satisfied shall be returned to the person or entity from whom it was received.

(c) As to any nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Lot and/or Improvements to the condition existing prior to the construction or installation thereof (including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition, and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot or portion of the Property upon which such unapproved or nonconforming Improvements were commenced or constructed. In the event that it becomes necessary for the Association to file a civil action or to resort to any private dispute resolution process, to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy any violation of this Article, the Association shall be entitled to recover any court costs, attorneys' fees and expenses incurred by the Association and/or the Reviewer in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot or other portion of the Property upon which such Improvement was commenced or constructed.

Section 9.7 Failure of Reviewer to Act. WRITTEN APPROVAL AS SPECIFIED IN THIS ARTICLE SHALL BE REQUIRED IN EVERY CASE. No failure or delay by the Reviewer to approve or disapprove any plans and specifications and other submittals or to reject them as being inadequate or unacceptable shall be deemed or construed to be an acceptance or approval thereof. No verbal or oral statement or representation by any person or entity shall bind the Board, the Association, or the Reviewer. Further, the Reviewer has no right or power to waive or grant any variances relating to any Use Restrictions in Article XI or other mandatory requirements specified in this Declaration or any Supplemental Declaration, if any. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Reviewer may take no action with respect to the same or may reject them as being inadequate or may approve or disapprove them in part, either conditionally or unconditionally, and reject or approve the balance.

Section 9.8 Variances. Subject to the limitations set forth herein and in the preceding section and upon submission of a written request, the Declarant, during the Declarant Control Period, and thereafter the Board may, from time to time and in its sole and unfettered discretion, permit Owners to construct, erect or install Improvements which are at variance with architectural or landscaping requirements or provisions that might be otherwise applicable. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of standards, restrictions and requirements herein set forth. A written request for a variance shall be deemed to be disapproved unless and until the Reviewer has expressly approved the request in writing. Neither the Declarant nor Board nor any member or agent thereof shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from all other such requests. The action of or decision by the Declarant or Board with respect to any variance request shall not estop or prevent the Declarant or Board from taking different action or rendering a different decision on any variance request subsequently received. The grant of a variance to any Owner shall not constitute a waiver of the Declarant's or Board's right to strictly enforce any covenant, restriction and/or standard against any other Owner. **Nothing herein shall authorize the Declarant or Board to grant a**

variance with respect to the Use Restrictions set forth in Article XI or other mandatory requirements specified in this Declaration or any Supplemental Declaration, if any.

Section 9.9 Limitation of Liability. Neither the Reviewer nor any member or agent thereof shall be liable for any claims, causes of action or damages (except where occasioned by willful misconduct of such Member) arising out of services performed or decisions made pursuant to this **Article IX**. Neither the Reviewer, nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove, any plans and specifications. The approval of plans and specifications by the Reviewer shall not be deemed or construed as a representation or warranty of the Reviewer, the Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, safety, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications, and any responsibility or liability therefor is hereby expressly disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against Declarant, the Association, the Reviewer, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, waives, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm, or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

ARTICLE X
EASEMENTS

Section 10.1 Use of Common Elements. Subject to any limitation or restriction set forth in this Declaration (including rules and regulations made or amended under **Section 11.24**), Declarant declares that the Common Elements are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies to use the Common Elements for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Supplemental Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Elements, any conveyance or encumbrance of such areas is subject to this easement.

Section 10.2 Right-of-Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, and to each

Occupant of a Lot, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property.

Section 10.3 Right of the Association and Declarant to Enter Upon the Common Elements. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Elements for the purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Elements now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter re-designated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct improvements which an Owner is required to maintain, construct or repair.

Section 10.4 Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easements for encroachment shall include easements for the maintenance and use of the encroaching improvements in favor of Declarant, the Association, the Owners and all their designees.

Section 10.5 Easements Appearing on the Plat. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors, and assigns, any and all easements shown on the Plat, if any; provided, however, that the Association shall have no responsibility for the maintenance of any such easements except to the extent maintenance of the easement is expressly made the responsibility of the Association in this Declaration.

Section 10.6 Additional Easements for Utilities and Drainage.

(a) Declarant, prior to the conveyance of the Common Elements to the Association, and the Association (at any time thereafter) may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace pipes; ducts; sewer lines; water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements or within the Roadways. Utilities purposes shall include, without limitation, lighting, irrigation, drainage, storm water management and solid waste disposal services and purposes. Further, the Association may grant such permits, licenses, and easements over the Common Elements for utilities, roads, and other purposes reasonably necessary or useful in the discretion of the Board for the purpose of maintenance and operation of the Project. Notwithstanding the foregoing, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially approved by

Declarant or thereafter approved by Declarant or the Board.

(b) Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along (i) a ten (10) foot strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property, (ii) a ten (10) foot strip of land adjacent to and around the perimeter of the buildings on the Property, and (iii) all easements appearing on the Plat and described in **Section 10.5** above, for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, septic system, sanitary sewer and drainage facilities, storm drainage and/or other utilities, if any.

Section 10.7 Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant hereto, including any improvements in such areas, which are not expressly to be maintained by the Association or a public authority or utility, shall be maintained continuously by the Owner of such Lot or other portion of the Property.

Section 10.8 Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant shall further have an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are intended to be utilized in such construction. No Owner nor any guests or invitees, shall in any way interfere with or hamper Declarant, its employees, successors, agents or assigns in connection with any such construction. Declarant also reserves an easement over the Property, including all of the Lots, for purposes of satisfying and/or complying with any directions or requests of any governmental entity with respect to the Property.

Section 10.9 Right of Access. Every Owner grants a right of access to his Lot to the Declarant, Board and any other person authorized by the Declarant or Board (including, without limitation, the Independent Manager) for the purpose of making inspection of or correcting any condition originating in his Lot and for the purpose of performing installations, alterations or repairs to any portion of the Common Elements adjoining his Lot; provided, however, that such any such entry shall be requested in advance and be made at a time reasonably convenient to the Owner, except in the case of an emergency where no request shall be required and entry may be made at any time.

Section 10.10 Reserved Easements and Rights for Declarant.

(a) Each deed from Declarant to the Association conveying all or any part of the Common Elements shall be made subject to and be deemed to include non-exclusive reserved easements in favor of Declarant for the purpose of pedestrian and vehicular access to and from all Roadways, for the use of the utility facilities (such as sewer and water mains and metering facilities) installed by Declarant in connection with its initial development of the Property, for the installation, operation, repair and replacement of additional utility facilities, and for the creation, installation, maintenance, repair or replacement of signage (whether related to the Project, any other project of Declarant or for any other purpose). Any such easements may be transferred, conveyed, or assigned by the Declarant to other

persons or entities by the recordation of a written instrument in the County public registry.

(b) In addition, Declarant reserves and shall have an easement over the entire Property for the purpose of complying with the requirements, rules, or regulations of any federal, state, or local government office, entity, board, or agency, including, without limitation, any requirement that the land or any structures, improvements or obstructions located thereon be constructed, reconfigured altered or removed. To the extent the Declarant exercises the rights and authority reserved herein, the Declarant shall not be liable to the Association, any Owner or any other person or entity for trespass, conversion or based on any other legal claim or theory. The easement rights and authority reserved herein shall terminate and expire five (5) years after the termination of the Declarant Control Period.

(c) During the Declarant Control Period and for a period of ten (10) years thereafter, Declarant hereby reserves for the benefit of Declarant and any builder, a blanket easement on, over and under the ground within the Property (excluding the area where a Dwelling is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any builder to correct or maintain any drainage facilities within the Property. Any damage to a Lot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

Section 10.11 Easements Over Lots to Perform Maintenance. The Association shall have an easement over each Lot for the purpose of performing any maintenance that the Association is required or permitted to perform under this Declaration.

Section 10.12 Emergency Access. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and all similar persons to enter upon the Property or any portion thereof which is now or hereafter may be made subject to this Declaration in the performance of their respective duties. The Association and its agents shall also have the right to enter the Lots and any improvements located thereon for the purpose of making any emergency repairs or replacements.

Section 10.13 Signage Easement. Declarant reserves to itself a perpetual easement over the Common Elements for the installation of signage promoting the development and sale of the Property or promoting the development and sale of any of Declarant's other properties developments or communities.

Section 10.14 Easements for Bulk Services Infrastructure. Declarant hereby reserves, for the benefit of itself and the Association (and each of their respective authorized agents, employees, lessees, invitees, designees, successors and assigns), a perpetual easement over, across, under and through all of the Property, including, without limitation, the Lots and Dwellings thereon, for the purpose of constructing, installing, repairing and maintaining any and all wires, conduit, cables, equipment and infrastructure of any type which is required in connection with the provision of Bulk Services to the Property pursuant to any Bulk Service Contract(s), as defined in **Article VI** hereof.

ARTICLE XI
USE RESTRICTIONS

Section 11.1 Residential Use Only. Each Owner shall use his Lot for residential purposes only and shall not permit his Lot to be used in any unlawful manner. The maximum number of residents for any Lot shall not exceed any maximum that applies to the Lot pursuant to any applicable governmental requirement, regulation, ordinance, or statute. For purposes of this Section, a person shall be presumed to be a "resident" in the Lot if they occupy the Lot overnight for ten (10) consecutive days or for fourteen (14) days during any sixty (60) day period. Residency may otherwise be established by the Board by the totality of the circumstances. To the extent permitted by law, any Owner may use his Lot as a home office, provided, however, that such home office use (a) shall be ancillary to the residential use of the Lot, (b) does not generate any additional pedestrian or vehicular traffic to or from any Lot or the Common Elements, and (c) does not cause any disturbance of other Owners, residents, or Occupants of the Property. In addition, Declarant shall have the right to use any portion of the Property as a sales office, construction office, storage areas, model Lot, or similar facility in connection with its development of the Property.

Without limiting the foregoing, no Lot or any portion of the Property shall be used for or as a "Residential Institution" except to the extent such use is expressly required to be allowed by law. For purposes of this paragraph, a "Residential Institution" shall mean and refer to a nursing home, child care center, boarding house, "half-way house," dependent living facility, adult care center, adult care home, family child care home, group home, residential day care, house of detention, reform school, asylum, or institution of a kindred character, or any structure to house, provide a residence for, or be occupied by three or more persons, unrelated by blood, marriage or adoption on a temporary or permanent basis.

Section 11.2 No Fly Zone. The operation of Unmanned Aircraft Systems (UAS) and Unmanned Aerial Vehicles (UAV), commonly known as drones, is prohibited anywhere within the Property and within the air space above the Property from the surface to 500 feet above ground level ("No Fly Zone"), provided, however, that Declarant may operate UAS and/or UAV in Declarant's discretion at any time during the Declarant Control Period. No person or entity shall launch, land, or fly any UAS or UAV within the No Fly Zone nor shall any person or entity use a UAS or UAV for the purpose of photographing or surveillance of any person without that person's written permission. No person shall request or solicit a UAS or UAV flight into or within the Property for any purpose, including the delivery of goods or services. Each separate flight and each photograph taken without authorization shall constitute a separate violation of this Section. Notwithstanding the foregoing, the Board of Directors may establish and amend rules and regulations regarding UAS and UAV operations within the No Fly Zone and/or issue general or specific licenses to Members, Occupants, guests, or outsiders allowing UAS and UAV operations within the No Fly Zone established herein.

Section 11.3 Care and Maintenance. Each Owner shall: (a) maintain the Lot, the Dwelling and all improvements thereon as required by **Section 8.2**; (b) permit no unsafe, unsanitary or hazardous conditions in or on his Dwelling and Lot; (c) comply with any and all obligations imposed upon Owners by applicable building and housing codes; and (d) neither deliberately nor negligently destroy, deface, damage or remove any part of any Dwelling or Lot or the Common Elements, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so, the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as

provided in **Section 8.2**. For purposes of this section, "Lot" shall include all easements granted to or reserved for the Declarant or the Association during any period that neither the Declarant nor the Association are using them or exercising their rights in or over them.

Section 11.4. Antennas/Satellite Dishes. No outside radio or transmission tower or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed on the Common Elements under any circumstances or by an Owner on a Lot without the prior approval of the Board or the Reviewer. To the extent antennas or dishes are allowed by law, the Association reserves the right to approve, regulate and require screening to the fullest extent the law allows. In the event the erection or installation of any dish or device damages or otherwise requires maintenance or repair to any portion of the Lot or Dwelling that the Association is responsible to maintain, the Association may require the Owner to properly repair and restore the affected area or, in the alternative, the Association may itself provide for the repair or maintenance of the affected area and recover all of the costs and expenses thereof from the Owner as a Special Individual Assessment.

Section 11.5 Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines. Night lighting of recreational facilities on Lots is not permitted except to the extent expressly allowed by the Reviewer. All exterior lighting that is approved shall be configured, positioned, and directed (i) so that bulbs are not visible from any point outside the boundaries of the Lot where the lighting is installed, and (ii) so that they do not cast light beyond the boundaries of the Lot where the lighting is installed.

Section 11.6 Fences and Walls. No fence or wall (including those consisting of planted hedges, rows, or similar landscape barriers) shall be erected, placed, or maintained on any Lot except as approved by the Reviewer under **Article IX**. No fence or wall shall be erected, placed, or installed in any location or manner that impacts, impedes, or hinders the flow of surface water. Split rail fencing, chain link fencing, shadowbox fencing, picket fencing and privacy fencing are prohibited. All fences and walls shall be maintained in a structurally sound and attractive manner and in compliance with the CWS. No fence or wall shall be erected on any Lot until the Reviewer under **Article IX** has given its prior written approval of the color, size, design, materials and location for such fence or wall. Underground or otherwise “invisible” fencing will be considered for approval only in the Rear Yard of a Lot.

Section 11.7 Mail and Newspaper Boxes; Dwelling Numbers. The Declarant, in its sole discretion, or if required by the United States Postal Service may require that mail will be distributed in the community using shared, cluster mailboxes. The design, type, appearance, and location of the shared, cluster mailboxes shall be as specified and approved by the Declarant. The design, type, appearance and location of mailboxes and newspaper boxes on Lots adjacent to the Roadway (if approved and allowed by the Declarant) must be approved in writing by the Reviewer under **Article IX**. Dwelling numbers may be displayed on the Dwelling only as approved by the Reviewer under **Article IX**.

Section 11.8 Zoning Standards. All Owners shall comply with all zoning standards and regulations including all standards and conditions applicable to the Property, which are incorporated by reference herein.

Section 11.9 Restricted Activities in Common Elements. There shall be no disturbance or obstruction of, nor any cutting of vegetation, dumping, digging, filling, destruction, or other waste upon the Common Elements. Nor shall anything be kept, stored, altered, constructed, planted, or removed therein without the prior written consent of the Declarant during the Declarant Control Period or the consent of the Board thereafter. The Declarant, Association and all Owners shall strictly comply with any applicable restrictions or regulations that require portions of the Property to remain undisturbed or that subject any portion thereof to tree preservation, wetlands, BMP, and buffer requirements prohibiting or restricting any activities within those areas. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Elements caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions in this paragraph shall not apply to Declarant in connection with Declarant's development or construction activities on the Property or to the Association in connection with Association's activities in discharging its duties and responsibilities.

Section 11.10 Recreational and Other Equipment. No recreational equipment including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation shall be attached to the exterior of any Dwelling or otherwise placed or kept on any Lot, except in the Rear Yard and as approved by the Reviewer. Provided, however, that basketball goals, backboards and hoops may be placed/installed at other locations if and as allowed in the Guidelines. Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall be kept in the garage or the Rear Yard except when in use. Notwithstanding any of the foregoing, all recreational equipment shall be screened so as not to be visible from any Roadway, and all screening used must be approved by the Reviewer.

Section 11.11 Vehicles, Parking and Storage.

(a) Except as may be expressly permitted by the Board in writing and in advance, trailers, recreational vehicles ("RVs"), motor homes, vehicles with enclosed bodies of the type which may be placed on or attached to a vehicle (known generally as "campers"), commercial vehicles of any kind (as defined by the Board of Directors from time to time in the Association's rules and regulations), boats and boat trailers are not permitted on any Lot or any other portion of the Property (including the Roadways) at any time except fully within an enclosed garage. No vehicle of any type which is unlicensed, without a current inspection, abandoned, inoperative or unsightly as determined by the Board of Directors, in its sole and absolute discretion, shall be parked, stored, or kept on any Lot or elsewhere within the Property.

(b) Parking on Roadways is prohibited at all times, *except* in designated on-street parking spaces and otherwise as may be permitted in writing by the Board or in the Association's rules and regulations.

(c) No vehicles of any type shall be parked, placed, or stored on any part of a Lot except inside a garage or on the driveway serving the Lot. Garage doors shall remain closed except when opened to allow a vehicle to enter or exit the garage.

(d) No vehicles or other mechanical equipment may be repaired, dismantled, or serviced on any Lot except within a garage.

(e) No vehicles of any type shall be parked on the Common Elements, including any street or Private Alley that is a part thereof or is adjacent thereto, except in specifically designated parking areas within the Common Elements, or otherwise as may be permitted in writing by the Board or in the Association's rules and regulations. The Common Elements parking areas are reserved solely for temporary parking by visitors and guests; Owners and permanent Occupants of a Lot shall park their vehicles only within the boundaries of their Lot and otherwise in compliance with the requirements of this **Section 11.11**.

(f) No construction office trailers may be placed, erected, or allowed to remain on any Lots during construction, except as approved in writing by the Reviewer under **Article IX**. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be parked or placed on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Board, or as may be specifically permitted by the Reviewer in connection with an approved application under Article IX.

(g) Unlicensed, non-electric equipment or vehicles shall not be operated on the Property (including the Roadways), provided, however, lawnmowers, lawn equipment and lawn and garden tractors are permitted. Owner shall provide the Association, upon request, with documentation verifying the licensing of non-electric vehicles or equipment.

(h) Subject to any applicable governmental regulations or limitations, the Association shall have the right to tow, disable, remove or store any vehicle, trailer, or equipment of any type which is parked, stored, or kept in violation of this section without notice or prior warning and all costs incurred in connection with any such action shall be the joint and several responsibility of the owner of the vehicle, trailer or equipment and of any Owner with whose knowledge or permission the vehicle, trailer, or equipment was present on the Property.

(i) Notwithstanding anything else to the contrary, the provisions of this section shall not apply to Declarant or to contractors, subcontractors, vendors, suppliers, or other persons present on the Property at the request of or to provide services for the benefit of the Declarant or the Association.

Section 11.12 Restricted Activities in Roadways. No Owner shall alter any portion of a Roadway or place anything within a Roadway. Any changes made shall be corrected and any items placed, constructed, or installed in violation of this section shall be removed immediately at the request of the Declarant or the Association. All costs and expenses incurred by the Declarant or the Association as a result of a violation of this section by any Owner shall be charged to that Owner as a Special Individual Assessment.

Section 11.13 Restricted Activities in Easements. No action shall be taken nor shall any structure, planting or other material be placed or permitted to remain in, upon, or within any easement shown on the Plat or provided for in this Declaration that could (i) damage, undermine, weaken, compromise, destabilize or interfere with any utilities or improvements located thereon; (ii) change the direction or flow of drainage channels; (iii) retard, obstruct or reverse the flow of water; alter or interfere with an established slope ratios; or (iv) create erosion within any easement shown on the Plat or provided for in **Article X**. All costs and expenses incurred by the Declarant or the Association as a result of a violation of this section by any Owner shall be charged to that Owner as a Special Individual Assessment. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Reviewer under **Article IX**, over such easements.

Section 11.14 Offensive Activity and Nuisance. No unlawful, noxious, or offensive trade or activity shall be conducted upon any Lot, or in the Common Elements, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Owner as determined by the Board of Directors, in its sole and absolute discretion, or which may endanger the health or safety of any Owner or other person on the Property. The Board may more specifically regulate, restrict, or prohibit such conduct by and through rules and regulations adopted as provided in **Section 11.24**.

Section 11.15 Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner. The Board may more specifically regulate, restrict, or prohibit such conduct by and through rules and regulations adopted as provided in **Section 11.24**.

Section 11.16 Rubbish. All rubbish, trash, garbage, junk, and other waste shall be kept temporarily in sanitary containers within each Lot and removed at least weekly from the Property. All trash containers or other equipment for storage or disposal of such waste shall be kept in a clean, odor-free, and sanitary condition and shall be located so as to be concealed from view from any Roadway or Dwelling except on the days and during the periods established by the Board from time to time when containers may be moved to a designated location for pickup.

Section 11.17 Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Dwelling except that dogs or cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes ("Pets"). The number of Pets shall not exceed three (3), except for newborn offspring which are under six (6) months in age. Notwithstanding the forgoing, the Board shall have the power and authority to adopt a rule, at any time and without the consent or approval of the Members, that prohibits any breed or type of Pet from being bought to or kept on the Property that the Board, in its sole and absolute discretion, determines has dangerous propensities, may be or create a nuisance or may be safety hazard. If any Pet demonstrates dangerous propensities or creates a nuisance or safety hazard as determined by the Board, in its sole and absolute discretion, then the Owner shall remove the Pet from the Property within fifteen (15) days after written notice from the Board, and the Pet shall not be allowed to return to the Lot or the Property. Failure to do so by the offending Owner may result in imposition of a fine or fines as determined by the Board until the Owner complies.

All permitted Pets shall be controlled so as not to create noise that is audible on the Property and outside the Lot where the Pet is kept between the hours of 9 p.m. and 7 a.m. or which is unreasonably excessive at any other time during the day. Pets shall be under leash when walked or exercised outdoors on any portion of the Property, except that Pets may be allowed off-leash in areas which are specifically designated for permitted off-leash play by the Association's Board, including any "dog park" which is or may be constructed on the Property. No Owner shall permit a Pet to defecate in the Common Elements, Roadways or any Lot other than the Owner's Lot, and each Owner shall immediately clean up after his or her Pet if such occurs. All Pets shall be registered, licensed, and inoculated if and as required by law. Every person owning or having possession, charge, care, custody, or control of any permitted Pet shall keep such Pet exclusively upon his own Lot; provided, however, that such Pet may be off the Lot if it is under the control of a competent person and (i) restrained by a chain, leash, or other means of adequate physical control, or (ii) in an area designated for off-leash play by the Board.

Each Owner agrees to hold the Association harmless from any claim or loss resulting from any action of his Pet, and shall repair at the Owner's sole expense any damage to the Common Elements caused by his Pet. Each Owner shall indemnify and hold the Association harmless from any claim or costs, including reasonable attorney's fees, resulting from any action of his Pet, and shall repair at his expense any damage to the Property caused by his Pet. If any Owner violates these rules more than twice in any twelve (12) month period, the Association shall have the right to require the Owner to remove the Pet permanently from the Property upon not less than ten (10) days' written notice, which remedy shall be in addition to all other rights or remedies.

Section 11.18 Signs and Flags. No signs of any kind, including political signs, shall be placed, or displayed in the public view on any Lot or anywhere on the Property except signs expressly permitted in the Architectural Guidelines or otherwise approved in writing by the Reviewer. Notwithstanding the forgoing and subject to the exception/exemption for the Declarant and its property set forth below, no sign advertising or offering any Lot or Dwelling for sale, for lease or for rent shall be placed or displayed in the public view on any Lot or anywhere on the Property during the Declarant Control Period.

No flags, banners, or pennants of any kind, including the flag of the United States of America or the State of North Carolina, shall be placed, flown, or displayed in the public view on any Lot or anywhere on the Property except as expressly permitted herein, in the Architectural Guidelines or otherwise approved in writing by the Reviewer; provided, however, (1) that the display of the flag of the United States of America may be restricted and limited only as permitted in the Freedom to Display the American Flag Act of 2005, and (2) that a single United States flag, no greater than 4 feet by 6 feet in size which is displayed on a pole (not to exceed five feet in length) affixed to the front façade of the Dwelling on a Lot shall be permitted without prior review or approval by the Reviewer.

The provisions of this Section shall not prevent the placement of signs and/or flags identifying the Project anywhere on the Property, nor shall it prevent Declarant or its agents from placing signs or flags to advertise the Property during the construction and sale period, including signs or flags on the Common Elements or any part of the Property owned by the Declarant. **Signs or flags placed or displayed in violation of this Section may be removed and destroyed without notice by Declarant and/or the Association.**

Section 11.19 Clotheslines. No outdoor clothesline or clothes drying structure or equipment of any type shall be placed, used, or allowed to remain on any Lot.

Section 11.20 Leases and Renting. For purposes of this Declaration, a Lot shall be deemed "rented" or "leased" if any Occupant pays or provides money or other consideration of any type in exchange for permission to occupy all or any part of a Lot, for any period of time, regardless of whether the arrangement is characterized as a "lease," "rental," "license," or any other legal relationship between the Lot Owner and Occupant.

No Lot or Dwelling thereon may be leased or rented for a period shorter than twelve (12) months and no lease may be executed sooner than 12 months after the execution of any prior lease. ("Minimum Lease Term"). Lots may be leased or rented only to tenants who intend to occupy the Lot for at least the Minimum Lease Term. No Owner shall offer or advertise his Lot for lease or rental for less than the Minimum Lease Term. Each solicitation, advertisement or offer of leasing, rental, or

occupancy for less than the Minimum Lease Term shall be deemed to be a separate violation of this section on each day each offer, advertisement or solicitation is made. If any lease, rental agreement or tenancy is terminated before the expiration of the Minimum Lease Term or if any tenant/Occupant fails to continuously occupy the Lot for entire Minimum Lease Term, there shall be a rebuttable presumption that the tenancy was for less than the Minimum Lease Term and each day from the date the tenancy is terminated, or the Lot is vacated to end of the Minimum Lease Term shall be deemed a separate violation of this section.

A complete copy of every lease or rental agreement of any type shall be provided to the Association prior to its commencement and upon request. No Owner shall rent his Lot or the Dwelling thereon for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either (i) a rental for any period less than the Minimum Lease Term, or (ii) any rental, of any duration, if the lessee of the Lot or the Dwelling thereon is provided periodic cleaning, housekeeping, or other customary hotel services. Any lease of a Lot and Dwelling thereon shall be for the entire Lot and Dwelling and not a portion thereof, shall be in writing, shall identify the lessee and all permitted Occupants, shall provide that the lease, the lessee and all Occupants of the Lot shall be subject in all respects to the Project Documents, and shall provide that any failure by the lessee (or any Occupant or other person present on the Lot with lessee's knowledge or consent) to comply with all of the terms of the Project Documents shall constitute a default under the lease. In the event of a violation of the Project Documents by any such person (whether the lessee or any of his guests or invitees), the Association may require the Owner to terminate the lease and to immediately evict or remove the lessee and all violators. Fines and sanctions imposed for violations of the Project Documents shall be the responsibility of the Owner and all lessees, jointly and severally. If a Lot is leased as permitted herein, the lessees and the permitted Occupants of the Lot shall be entitled to exercise all of the use, rights and privileges of the Owner, and the Owner shall not exercise or attempt to exercise any of those rights and privileges until the approved lease is terminated and the Owner takes possession of and occupies the Lot. **TIME SHARING, INTERVAL OWNERSHIP AND ALL OTHER FORMS OF FRACTIONAL OWNERSHIP ARE HEREBY EXPRESSLY PROHIBITED.**

Section 11.21 Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall be applicable and complied with in regard to the Lots. Each Owner, Occupant, guest, or other person present on the Property shall comply with all applicable laws, regulations, ordinances and other governmental rules and restrictions at all times. Without limiting the generality of the foregoing, the use of and activities upon areas designated as undisturbed natural areas, tree save areas, revegetated natural areas, wetlands or BMPs (wet ponds) are limited, restricted and in some cases, prohibited by law, regulations, and ordinances with which all Owners must comply.

Section 11.22 Occupants and Guests Bound. All provisions of this Declaration, any Supplemental Declaration, and the Bylaws and any and all rules and regulations, use restrictions or Architectural and Landscape Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners, and which provide for sanctions against Owners shall also apply to all Occupants and guests even though Occupants and guests are not specifically mentioned.

Section 11.23 Plat Notes, Restrictions and Requirements. All notes, restrictions, requirements, and limitations shown on the Plat are incorporated herein by reference. To the extent

that anything shown on the Plat is in conflict with any express provision in this Declaration, the provision in this Declaration shall control.

Section 11.24 Rules and Regulations. In addition to the restrictions set forth in this **Article XI**, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Board without further approval until the Declarant Control Period terminates. After the termination of the Declarant Control Period, rules and regulations made by the Board and all amendments thereto shall not be effective unless and until they are approved by a majority vote of those Members present and voting in person or by proxy at a duly called meeting. Rules and regulations adopted as allowed herein may relate to and regulate subjects, issues, activities, and conditions that are addressed in other provisions of this Declaration, including, without limitation, this **Article XI**, and may be more restrictive than those provisions. Copies of all such rules and regulations and any amendments thereto shall be published prior to their effective date and shall be furnished by the Association to Members upon request.

Section 11.25 Enforcement. The Association or its agent shall have the right to enforce the provisions of this **Article XI**, including Rules and Regulations adopted pursuant to **Section 11.24** in any manner permitted by law, including, without limitation, by seeking injunctive relief and/or the imposition of fines or other sanctions permitted by N.C.G.S. § 47F-3-102(12) and § 47F-3-107.1.

Section 11.26 Wetlands, Lakes, and Other Water Bodies. The ponds, streams and other water bodies within the Property are primarily aesthetic and/or are intended for the retention of storm water. The Association may permit limited uses of such bodies of water such as recreational fishing, canoeing, and kayaking, pursuant to rules and regulations established by the Board as such rules and regulations may be changed from time to time. Owners and Occupants of Lots have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear or otherwise disturb vegetation in the area between the boundary of the Lot and the water's edge, or within any non-disturbance buffer on any Lot. In addition, use of lakes, ponds, streams, or other water bodies within the Property is expressly restricted by separate governmental regulations, restrictions, agreements, and ordinances, all of which must be observed by all Persons who make use of any lakes, ponds, streams, or other water bodies within the Property, as those governmental regulations, restrictions, agreements, and ordinances may be changed from time to time. Neither Declarant nor the Association shall be responsible for any loss, damage, or injury to any Person or property arising out of any use of lakes, ponds, streams, or other bodies of water within or adjacent to the Property.

Section 11.27 Yard Sales. The barter, sale, or exchange of new or used personal property at any Lot (by way of description and not limitation, such events are commonly referred to as "yard sales," "moving sales," "attic sales," "estate sales," or "garage sales") will be allowed only on such dates as the Association may designate and then only if (a) sponsored by the Association, or (b) expressly authorized in writing by the Board. The Association may, but it is not required to, adopt rules and regulations regarding such sales.

Section 11.28 Declarant Activities Exempted. Notwithstanding any provision in this Declaration to the contrary and until the expiration or termination of the Declarant Control Period:

(a) Declarant, Declarant Affiliates and/or their contractors, agents, and licensees may construct and maintain upon portions of the Common Elements and upon any Lot owned by the Declarant such facilities and may conduct such events and other activities which Declarant, in its sole

discretion and opinion, deems reasonably required, convenient, or incidental to the construction or sale of Dwellings upon the Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its contractors, agents, and licensees have an easement over and across the Common Elements for access and use of such facilities at no charge.

(b) Declarant, Declarant Affiliates, and any builders will be entitled to conduct on the Property all activities normally associated with, and convenient to the development of the Property and the construction and sale of Dwellings on the Property.

Section 11.29 Solar Panel Installations. "Solar Panels," shall mean and refer to any equipment which gathers solar radiation as a substitute for traditional energy. Solar Panels may be installed only on the rear roof of a Dwelling if the location meets the other requirements set forth herein. Solar Panel(s) which is/are visible by a person standing on the ground shall not be permitted in any of the following locations within the Property:

(1) On the façade of a Dwelling that faces areas open to common or public access;

(2) On a roof surface of a Dwelling that slopes downward toward areas open to common or public access that the façade of the Dwelling faces; or

(3) Within the area set off by a line running across the façade of the Dwelling and extending to the property boundaries on either side of the façade and any area of common or public access faced by the Dwelling.

ARTICLE XII
AMENDMENT OF DECLARATION

Section 12.1 Amendment Generally. Except as is otherwise specifically authorized herein, this Declaration may be amended only as provided in N.C.G.S. § 47F-2-117, provided, however, that no amendment shall be effective without Declarant's written consent thereto for so long as the Declarant owns any portion of the Property. No amendment to the Declaration shall be effective unless and until it is executed on behalf of the Association by any officer designated for that purpose and recorded in the County public registry.

Notwithstanding the forgoing or any other provision contained in this Declaration and regardless of whether the amendment occurs during or after the Declarant Control Period, the Declarant's written consent shall be required for any amendment that proposes to change, modify, reduce, or eliminate any right, power or privilege granted to or reserved for the benefit of the Declarant or any Declarant Affiliate in this Declaration, and no such amendment shall be effective without Declarant's written consent thereto.

Section 12.2 Amendment of Declaration Without Approval of Owners. During the Declarant Control Period, the Declarant shall have the right to amend, modify, delete terms or provisions from, or add new terms and provisions to this Declaration unilaterally and for any reason, without the consent or approval of any other Owner or other person or entity and without the consent, joinder or approval of any Association officer or director.

Section 12.3 Changes to Plans for the Project. All master plans, site plans, brochures, illustrations, information, and marketing materials relating to the Property ("Plans") are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and improvements, including but not limited to any amenity centers and open spaces, reflected on the Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or outside of the Property may include uses which are not shown on the Plans. Neither Declarant nor any builder or other developer of any portion of the Property makes any representation or warranty concerning such land uses and improvements shown on the Plans or otherwise planned for the Property. **It is expressly agreed and understood that no Owner shall rely upon the Plans, or any statements made by the Declarant or any of Declarant's representatives regarding any existing or proposed land uses or proposed or planned improvements in making the decision to purchase any Dwelling and/or Lot within the Property.** Each Owner who acquires a Lot within the Property acknowledges that development of the Property, including the Common Elements will likely extend over many years, and agrees that the Association may not engage in, or use Association funds to support, any protest or challenge, or make any form of objection to, development of the Property or the Common Elements or changes in the Plans as they may be amended or modified from time to time. Without limiting the generality of the forgoing, and notwithstanding anything else to the contrary: (i) Declarant makes no representation or warranty regarding the total number of Lots to be developed and/or built upon within the Property, (ii) Declarant shall not be required to build, construct, or provide any amenity or amenity areas, (iii) Declarant may, in Declarant's discretion and consistent with Section 12.2 above, amend this Declaration and/or other Project Documents for the purpose of reducing benefits and/or services provided to the Lots and Owners if Lots hereunder, and (iv) Declarant makes no representation or warranty whatsoever regarding the ratio of owner-occupied Lots to leased Lots within the Property and Declarant specifically reserves the right, in Declarant's discretion, to convey portions of the Property, or the Property in its entirety, to one or more Owners for the express purpose of leasing the same to non-Owner Occupants.

ARTICLE XIII
TERMINATION, DURATION, CONDEMNATION

Section 13.1 Termination. The Project is a planned community under the Act that may be terminated only as set forth in N.C.G.S. § 47F-2-118.

Section 13.2 Duration. This Declaration and the controls, covenants, restrictions, and standards set forth herein shall run with and bind the Property and any Owner and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the County public registry. At the end of such thirty (30) year period, all of the easements, controls, covenants, conditions, and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of any such period, Owners entitled to cast at least sixty-seven percent (67%) of the total votes in the Association execute and record an instrument terminating this Declaration. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is provided for in this Declaration.

Section 13.3 Condemnation. Whenever all or part of the Common Elements shall be taken or condemned by any authority having the power of eminent domain, all compensation, and damages

for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Elements, without limiting the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot or other portion of the Property, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Elements. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Elements, provided such restoration is possible, with the excess of such compensation or damages, if any, retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein contained shall prevent any Owner whose Lot or other property is specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on his own behalf for consequential damages relating to loss of value of the affected Lot, or other property, or improvements, fixtures, or personal property thereon, exclusive of damages relating to the Common Elements. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Elements, Lots or other property without such allocation, the award shall be divided between or among affected Owners and the Association by the Board, in its sole discretion.

ARTICLE XIV
ENFORCEMENT RIGHTS, REMEDIES, REQUIREMENTS AND PROCEDURES

Section 14.1 Enforcement. Declarant, Association, and the Owner of each Lot, by acceptance of a deed therefor, is deemed to covenant and agree that any controversy, claim or dispute arising out of or relating to the Project, the Association or any provision of the Project Documents, or any breach or violation thereof may be enforced by any means allowed under North Carolina law ("Enforcement Action") and each has standing to seek and pursue Enforcement Action subject to the enforcement requirements and limitations set forth in this Article.

Notwithstanding any other provisions contained in this Declaration, the Declarant shall have legal standing to file suit and a direct right of enforcement against the Association and/or any Owner or Owners to enforce any of the covenants, conditions, terms, and provisions of this Declaration and may do so without the consent, joinder or approval of any other person or entity. The enforcement rights reserved herein shall terminate and expire five (5) years after the termination of the Declarant Control Period.

Section 14.2 Owner Approval of Enforcement Action by the Association. No Enforcement Action shall be initiated by the Association unless Owners entitled to cast seventy-five percent (75%) of the total votes in the Association approve the initiation and prosecution of the Enforcement Action in writing and advance, except that no such approval shall be required for actions or proceedings: (a) initiated with the consent of the Declarant during the Declarant Control Period; (b) initiated by the Association against Owners to enforce the Project Documents, including, without limitation, the Use Restrictions contained in **Article XI** and the Rules and Regulations, (c) to collect assessments, fines or other sums due to the Association or to foreclose liens securing repayment of those sums due; (d) initiated to challenge ad valorem taxation or condemnation proceedings; (e) initiated against any contractor, vendor or supplier of goods or services arising out of a contract with the Association for services or supplies; or (f) to defend claims filed against the Association or to assert counterclaims in actions or proceedings instituted against it.

In the event any claim is made against the Declarant, or any Enforcement Action is instituted against the Declarant, then the Association shall separately assess all Members other than the Declarant for all of the costs of the Enforcement Action, including, without limitation, attorney fees incurred or payable. Funds assessed and collected to pay enforcement fees and costs must be maintained in a separate account specifically designated and used solely for that purpose. Funds from annual assessments or reserves shall not be used to pay enforcement fees and costs.

Section 14.3 Right to Enter and to Correct or Cure. Should any Owner fail to satisfy or fulfil any obligation or responsibility under the Project Documents or to cure or correct any violation of the Project Documents, the Declarant and/or the Association shall have the right, power, and authority to go upon the Owner's Lot and to take any action necessary to satisfy the Owner's responsibility or obligation or to correct and cure any violation. Any entry upon the Lot by the Declarant and/or the Association or their respective agents, employees or representatives under this section shall not be deemed a trespass. Actions permitted under this section shall include, but are in no way limited to, (a) removing or repairing non-conforming structures or improvements; (b) mowing, pruning, removing, clearing, or cutting underbrush, weeds or other vegetation and trash; and (c) grading, landscaping, and constructing and maintaining erosion prevention devises before or after improvements have been constructed. All costs and expenses incurred by the Declarant and/or the Association in taking such action plus an additional administrative fee equal to twenty-five (25%) percent of the total costs and expenses incurred shall be charged to and collected from such Owner as a Special Individual Assessment under **Section 5.5**, including, but not limited to, administrative fees and costs, reasonable attorney's fees and interest at the maximum rate allowed by law. The Owner shall pay all such costs incurred within thirty (30) days after receipt by said Owner of an invoice from the Declarant or the Association setting forth the cost of such work.

Section 14.4 Limitation on Damages Recoverable. Consequential damages, exemplary damages, punitive damages, treble damages, or any other damages which are greater than the compensatory damages or which are based on a multiple of compensatory damages shall not be recoverable by any party in any Enforcement Action, the right to recover such damages being expressly waived.

Section 14.5 Responsibility for Attorney Fees and Costs. Each party in any Enforcement Action shall bear its own costs and expenses, including attorney fees.

Section 14.6 Amendments not Enforceable against Declarant without Consent. Any attempt to amend or eliminate any of the provisions in this Article shall not be binding upon or enforceable against the Declarant unless that Declarant consents in writing to the change.

Section 14.7 Conflicts. In the event of any conflict between this Article and any other provision of the Project Documents, this Article shall control. In the event any claim also falls within the scope of a valid arbitration clause contained in the sales contract with an Owner, this Declaration shall control to the extent there is any inconsistency in the terms governing the arbitration.

Section 14.8 Use of Funds. In the event a claimant initiates any Enforcement Action against Declarant seeking damages for an alleged defect or deficiency, any judgment or award in connection therewith shall first be used to correct and/or repair the defect or deficiency found to exist or to reimburse the claimant for any costs actually incurred by such claimant in correcting and/or repairing

the defect or deficiency found to exist. Any excess funds remaining after repair of any defect or deficiency found to exist shall be paid into the Association's reserve fund.

Section 14.9 Right of Action Restriction. Notwithstanding any other provisions contained herein, the Association shall not have the power to institute, pursue, join, intervene in, settle, or compromise litigation, arbitration, or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more), or (ii) pertaining to a claim relating to the design, construction, or repair of a Dwelling, a Lot, or any improvements on a Lot. This Section may not be amended to remove or modify this right of action limitation and restriction with respect to the Declarant or any Declarant Affiliate without the expressed written consent of the Declarant which must be recorded with the amendment.

ARTICLE XV
DISCLOSURES AND DISCLAIMERS

The Association, the Board of Directors, and each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledge and accept the following disclosures and disclaimers which are in addition to and supplement any other disclaimers and disclosures set forth in this Declaration. References to "Declarant" in this Article shall include Declarant's officers, directors, members, managers, shareholders, employees, affiliates, and agents as well as Declarant's successors and assigns and all Association officers and directors appointed by Declarant as permitted in this Declaration.

Section 15.1 Construction Activities. All Owners, Occupants and other persons who use the Property hereby are placed on notice that Declarant, any builders and/or their respective contractors, subcontractors, licensees, and other designees may, from time to time, conduct blasting, excavation, construction, and other activities within the Property. By the acceptance of a deed, leasehold, license, or other interest to any portion of the Property or by using any portion of a Lot or the Property generally, such Owners, Occupants and other persons acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (iii) that Declarant, any builders and their respective contractors, subcontractors, licensees, and other designees shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any acquisition or use of any portion of the Property was and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of the Property.

Section 15.2 Conveyance of the Common Elements. Declarant may convey or transfer all portion of the Property it owns, including but not limited to Common Elements, and including all improvements thereon, to the Association in an "AS IS, WHERE IS" condition and may designate the same as Common Elements. Declarant hereby disclaims and makes no representations, warranties or other agreements, express or implied, by law or fact, with respect to any Property or Common Element conveyed or any improvements thereon, including, without limitation, representations or warranties of or regarding merchantability, fitness, condition, construction, accuracy, completeness, design,

adequacy of size or capacity thereof, date of completion, or future performance or durability of the materials, furniture, or equipment used therein. Neither the Association nor any Owner, Occupant or any other person shall make any claim against Declarant relating to the condition, operation, use, accuracy, or completeness of the Common Elements, or for incidental or consequential damages arising therefrom.

Section 15.3 Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of Common Elements and the collection of assessments.

Section 15.4 Public Facilities and Services. Certain facilities and areas within and adjoining the Property may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenways, trails and paths, parks, and other spots conducive to gathering and interaction, roads, sidewalks, and medians. In addition to any such facilities and areas that are open for use and enjoyment of the public pursuant to Legal Requirements, Declarant may designate facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Common Elements or the Board may so designate at any time thereafter.

Section 15.5 Safety, Security, Privacy, and Assumption of Risks. **Each Owner and Occupant of a Lot, and their respective tenants, guests, and invitees ("Person" or "Persons") shall be responsible for their own personal health, welfare, and safety while on the Property and for the security of their property. The Association may, but shall not be obligated to, maintain, or support activities designed to enhance the health, welfare, safety or security of Persons and their property. The Association, the Board, the managing agent, and the Declarant shall not in any way be considered insurers or guarantors of the health, welfare, safety or security of Persons or their property, nor shall any of them be held liable or responsible for any loss or damage by reason of any failure to protect the health, welfare or safety of any Person or their property or ineffectiveness of activities or measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Project, cannot be compromised, or circumvented, or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner and Occupant acknowledges, understands and shall be responsible for informing each Person that the Association, the Board, the managing agent, or the Declarant are not guarantors of the health, welfare, safety or security of any Person or their property and that each Person assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties or all risks associated with the use and enjoyment of the Property, including any recreational facilities.**

Further, the Association, the Board, the managing agent, and the Declarant shall not be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines, facilities, or equipment on, adjacent to, near, over, or on the Property. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage

arising from the presence of utility lines, facilities or equipment and further acknowledges that the Association, the Board, the managing agent, and the Declarant have made no representations or warranties, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed

Finally, while the Declarant, the Association or the Board may adopt policies or procedures designed, directly or indirectly, to support the privacy of Persons, property and/or data, the Declarant, the Association, and the Board Association have no obligation to do so, and each Person agrees and accepts that the Declarant, the Association, and the Board cannot and do not guarantee the privacy of any Person or his or her property or data. Neither the Declarant, the Association nor the Board shall have any duty of any kind, express or implied, to protect the privacy of any Person, including without limitation the privacy of his or her person, property or data, and each Person releases the Association and the Declarant and their respective board members, officers, employees and agents from any liability, responsibility and damage of every kind relating to privacy or a breach, loss, or invasion of privacy.

Each Owner acknowledges, understands and shall be responsible for informing each Person that the Association, its Board and committees and the Declarant are not guarantors of security, safety, or privacy and that each Person using the Project assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, and any breach, loss or invasion of privacy resulting from acts or omissions of third parties or from conditions present on or adjacent to the Property.

Section 15.6 View Impairment. Neither Declarant nor the Association guarantee or represent that any view from, over, or across any portion of the Property will be preserved without impairment. Neither the Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association has the absolute right to add or remove trees and other landscaping to and from the Common Elements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 15.7 Water Management. Each Owner, Occupant and any other person who uses any portion of the Property acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Property), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of stormwater, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner, Occupant and other such person further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner, Occupant and other such person releases and discharges Declarant from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to, or arising out of any claim relating to such fluctuations in water elevations.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the perpetual, non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within or adjoining Property to do any or all of the following: (i) install, operate,

maintain, and replace pumps to supply irrigation water to the Common Elements; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Elements and Lots (but not the residential structures thereon) adjacent to or within 50 feet of bodies of water within or adjoining the Property, in order to do any or all of the following: (i) temporarily flood and back water upon and maintain water over such portions of the Property; (ii) alter in any manner and generally maintain the bodies of water within and adjoining the Property; and (iii) maintain and landscape the slopes and banks pertaining to such areas. Nothing herein shall be construed to make Declarant or any other person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

Owners, Occupants, and other persons who use any portions of the Property shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Property without the prior written approval of the local permitting authority, the Association, the Declarant, the U.S. Army Corps of Engineers (to the extent it has authority), and all other governmental agencies and entities that have jurisdiction over such matters.

Section 15.8 Special Event Easement Reserved. Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over the Common Elements for the purpose of conducting parades; running, sailing, fishing, biking, or other sporting events; educational, cultural, artistic, musical and entertainment activities; and other activities of general interest at such locations and times as Declarant or the Association, in their sole discretion, deem appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement.

Section 15.9 Sales Center Property. Models and any sales center or office, and the Lots on which any are located (collectively, the "**Sales Center Property**") are owned and maintained by the Declarant solely for the benefit of the Declarant and are not part of the Common Elements or any amenity offering for the Community. Declarant reserves all rights with respect to the Sales Center Property after Declarant no longer requires it or any portion of it for sales and marketing purposes. Without limiting the foregoing, Declarant may construct a residence upon each Lot comprising the Sales Center Property and sell such Lots and residences thereon to third parties or sell the Lots to the Association or to a third party for any use permitted under applicable law.

Section 15.10 Wildlife Control. Declarant and the Association reserve the right to but have no duty to undertake such measures as may be appropriate to control wildlife within the Property including, but not limited to, the taking of alligators, deer, turkeys, beaver, snakes, and large birds. Without limiting the foregoing, Declarant or the Association may, in their discretion, establish regular control programs such as, for example, the use of dogs to prevent non-migratory geese and other species from nesting within and/or causing damage to the Property or otherwise becoming a nuisance and may limit, control, or prohibit the placement or distribution of food or other items consumed by or attractive to wildlife.

ARTICLE XVI
MISCELLANEOUS PROVISIONS

Section 16.1 Covenants Running with the Land. Each Owner, by his acceptance of a deed of conveyance for a Lot, accepts title to that Lot subject to all of the restrictions, conditions, covenants, reservations, liens, charges, jurisdiction, rights, and powers created in and/or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all responsibilities and obligations hereby imposed, shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 16.2 Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating, preserving, and maintaining the development and operation of a residential community.

Section 16.3 No Waiver or Claims Based on Failure to Enforce. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur. There shall be no waiver of strict compliance with the provisions of the Project Documents except expressly and in a writing signed by the waiving party. Further, no failure of the Declarant or the Association to enforce the terms and provisions of the Project Documents shall give rise to any claim or liability against the Declarant, any Declarant Affiliate, the Association, or any of their partners, directors, officers, or agents. **Each Owner, by accepting title to all or any portion of the Property, hereby releases and shall hold harmless the Declarant, all Declarant Affiliates, the Association and their partners, directors, officers, and agents from and against any damages, claims, or liabilities arising out of or related to any failure by the Declarant or the Association to enforce the terms and provisions of the Project Documents.**

Section 16.4 Severability. The invalidity of any covenant, restriction, condition, limitation, or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

Section 16.5 Time Limits. If any of the privileges, covenants, restrictions, or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until the expiration of ninety (90) years from the date of recordation of this Declaration.

Section 16.6 Headings. The heading to each Article and Section of this Declaration is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of such Article or Section, or this Declaration in general.

Section 16.7 Use of Project Name and Trademarks by Residents and Owners. Declarant and/or its affiliates own numerous trademarks, including but not limited to the Project name and (collectively, "**Marks**"). Residents and Owners may not use the Marks in any way without Declarant's prior written consent, including without limitation (a) in domain names or in the names

and titles of websites and social media pages, and (b) in the name of real estate or other businesses. Notwithstanding the foregoing, residents and Owners may use the Project name solely to indicate that a particular Lot is located within the Project.

Section 16.8 Use of Project Name and Trademarks by the Association. The Association may not use the Marks in any way without Declarant's prior written consent, provided that the Association is permitted to use the mark Project name in its name. Immediately upon Declarant's request, the Association shall enter into a written trademark license agreement ("**License**") with Declarant and/or its affiliates, in form and substance satisfactory to Declarant in its sole discretion, with respect to the Association's use of the Marks. All use of the Marks by the Association, including but not limited to use of the Project name in its name, shall inure to the benefit of and be on behalf of Declarant and/or its affiliates and shall be subject to Declarant's and/or its affiliates' periodic review for quality control. The Association's breach of the License or failure to enter into the License upon Declarant's request, shall entitle Declarant to terminate the Association's right to use the Marks, whether in the Association's name or otherwise.

ARTICLE XVII
PARTY WALLS

Section 17.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Twin Villas upon the Property and placed on the dividing line between Twin Villa Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 17.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of the two (2) adjoining Twin Villa Lots utilizing such wall.

Section 17.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the Owner of the other Twin Villa Lot adjoining such wall shall contribute one-half (1/2) of the cost of restoration thereof without prejudice to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

Section 17.4 Weather-Proofing. Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act or omission, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protections against such elements.

Section 17.5 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 Lot and shall pass to such Owner's successors-in-title.

ARTICLE XVIII
SPECIAL DEL WEBB COMMUNITY COVENANTS

Section 18.1 Permission to Use Amenities and Recreational Facilities. The Association shall have the right to rent, lease, or make available, with or without charge, for any purpose, any portion of any amenity, clubhouse, or other recreational facilities within the Common Elements to any person or entity approved by the Board for such uses as may be approved by the Board.

Section 18.2 Activity Cards.

(a) Issuance by the Board. One (1) Activity Card shall be allocated to each Qualified Resident of a Lot, up to a maximum of two (2) Activity Cards per Lot. No Activity Cards shall be allocated to any Lot which is not occupied by a Qualified Resident. The Board shall determine entitlement to Activity Cards on an annual basis. Activity Cards shall be automatically renewed without charge, provided the Lot continues to be occupied by a Qualified Resident and all applicable assessments and other charges pertaining to the Lot have been paid. The Board may establish policies, limits, and charges regarding the issuance of additional or duplicate cards and guest privilege cards. The Board may issue Activity Cards to persons who have signed binding contracts to purchase a Lot, subject to such policies as the Board may determine from time to time. No Owner shall be entitled to any refund of assessments for any delays associated with the issuance of the Activity Cards.

(b) Assignment of Rights. The right to an Activity Card is based upon occupancy of a Lot. Any Owner who leases or otherwise transfers occupancy of his or her Lot shall be deemed to have assigned his or her rights to an Activity Card to the Qualified Residents of such Lot. Any Owner who leases or otherwise transfers the right to occupy his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association all previously issued Activity Cards. Activity Cards shall be surrendered by any holder who ceases to occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

(c) Vacation Getaways. Each Vacation Getaway located within the Project shall be allocated two (2) Activity Cards for use by the temporary occupants of the Vacation Getaway. Vacation Getaways located adjacent to the Project may be issued Activity Cards based on the arrangements set forth in the contract between the Association and the owner or owners of such Vacation Getaways.

(d) Issuance to the Declarant. During the Declarant Control Period, the Association shall provide the Declarant, free of charge, with as many Activity Cards as the Declarant, in its sole discretion, deems necessary for any purpose. The Declarant may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to the Declarant shall entitle the bearer to use all Common Elements subject to the payment of admission fees or other use fees charged to Qualified Residents holding Activity Cards.

(e) Activity Cards for Marketing or Promotion. During the Declarant Control Period, the Declarant may, in its sole discretion, issue or require the issuance of Activity Cards to persons or entities as part of its sales, marketing, or promotional activities.

Section 18.3 Vacation Getaways. During the Declarant Control Period, the Declarant may, in its discretion, use Dwellings which it owns or leases within the Project, or which are owned by other Owners who consent to such use, for temporary residency by purchasers or prospective purchasers of Dwellings within the Project (**"Future/Potential Residents"**), and designate such Dwellings as "**Vacation Getaways**." Declarant may permit such Future/Potential Residents to have access to the Common Elements in consideration of the payment of such fees as provided by a contract, or for no consideration, as the Declarant deems appropriate in its sole discretion.

The Declarant may transfer or lease Vacation Getaways and make Vacation Getaways available for use by Future/Potential Residents selected in its discretion. Future/Potential Residents of the Vacation Getaways shall be entitled to exercise the same use, access, and enjoyment rights in and to the Common Elements as Qualified Residents, including but not limited to any recreational facilities within the Common Elements, but only during the period of their authorized residency in the Vacation Getaway. The Board shall assign and issue Activity Cards or use privilege cards to the Declarant for use by Future/Potential Residents occupying any Vacation Getaway.

Section 18.4 Governmental, Educational, and Religious Interests. During the Declarant Control Period, the Declarant may designate sites within the Project, including portions of the Common Elements, for government, education or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. In the event of such a designation, the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, when directed to do so by Declarant.

Section 18.5 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Elements to non-profit, tax-exempt organizations for the benefit of the Project, the Association, or its Members or Occupants. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("**Code**"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

DECLARANT:

PULTE HOME COMPANY, LLC, a Michigan limited liability company.

By: _____
Chris Raughley
Its: Vice President of Land Development

STATE OF NORTH CAROLINA

COUNTY OF Wake

This 7 day of February, 2023, personally came before me **Chris Raughley** who, being by me duly sworn, says that he is **Vice President of Land Development** of **Pulte Home Company, LLC**, and acknowledged that said writing was signed by him, in his capacity as Vice President of Land Development of the limited liability company, by its authority duly given, and on behalf of the limited liability company.

Melisa Smetana

Notary Public Melisa Smetana

My commission expires: 07/27/25

[NOTARIAL STAMP/SEAL]

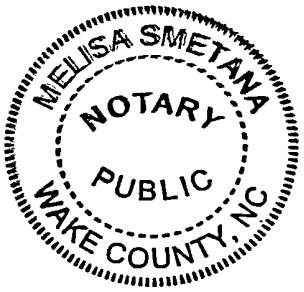


Exhibit A

Description of the Property

Commencing at a point, said point being an iron pipe found along the eastern right-of-way of City Road (SR 1709) in Clayton Township, Johnston County, North Carolina. Said point also being located along the southern right-of-way of Covered Bridge Road (SR 1700). Point further described as a western corner of Tract One of the Raymond Elmore Earp, Jr. Family Trust property as recorded in Deed Book 4576 Page 215 and also shown in Plat Book 92 Page 253, Johnston County Registry and the **POINT OF BEGINNING.** Thence along the southern right-of-way of Covered Bridge Road in a southeasterly direction S 76°33'44" E a distance of 134.27 feet to an iron pipe found. Thence with a curve turning to the right with an arc length of 203.00 feet, with a radius of 890.00 feet, with a chord bearing of S 52°45'56" E, and a chord length of 202.56 feet to an iron pipe found. Thence S 46°13'53" E a distance of 195.90 feet to an iron pipe found. Thence with a curve turning to the left with an arc length of 178.02 feet, with a radius of 6840.01 feet, with a chord bearing of S 46°58'37" E, with a chord length of 178.01 feet to an iron pipe found. Thence N 42°16'39" E a distance of 10.00 feet to an iron pipe found. Thence with a curve turning to the left with an arc length of 658.70 feet, with a radius of 5850.00 feet, with a chord bearing of S 50°35'49" E, with a chord length of 658.35 feet to an iron pipe found. Thence S 53°49'21" E a distance of 125.41 feet to an iron pipe found. Thence with a curve turning to the left with an arc length of 286.98 feet, with a radius of 1250.00 feet, with a chord bearing of S 60°23'59" E, with a chord length of 286.35 feet to an iron pipe found. Thence S 66°58'37" E a distance of 785.25 feet to a point. Thence with a curve turning to the left with an arc length of 70.88 feet, with a radius of 5430.00 feet, with a chord bearing of S 67°23'16" E, with a chord length of 70.88 feet to a point. Thence leaving the southern right-of-way of Covered Bridge Road in a southeasterly direction S 10°21'01" E a distance of 113.42 feet to a point. Thence S 25°39'06" E a distance of 77.63 feet to a point. Thence S 74°21'36" W a distance of 13.20 feet to a point. Thence S 01°37'33" E a distance of 98.29 feet to a point. Thence S 43°38'00" E a distance of 41.08 feet to a point. Thence S 23°26'05" W a distance of 19.35 feet to a point. Thence S 09°27'13" E a distance of 86.23 feet to a point. Thence S 23°13'45" E a distance of 66.93 feet to a point. Thence S 01°55'47" W a distance of 45.42 feet to a point. Thence S 12°27'33" W a distance of 24.04 feet to a point. Thence S 06°09'53" W a distance of 106.76 feet to an iron pipe found. Thence S 14°38'12" E a distance of 70.00 feet to an iron pipe found. Thence S 77°17'48" W a distance of 148.21 feet to an iron pipe found. Thence S 14°38'12" E a distance of 177.05 feet to a point. Thence S 00°00'00" E a distance of 730.50 feet to an iron pipe found. Thence S 88°28'02" E a distance of 51.50 feet to an iron pipe found. Thence N 81°34'41" E a distance of 75.20 feet to an iron pipe found. Thence S 68°03'52" E a distance of 223.27 feet to an iron pipe found. Thence S 25°57'26" E a distance of 315.30 feet to an iron pipe found. Thence S 39°27'34" E a distance of 141.01 feet to an iron pipe found. Thence N 85°23'47" E a distance of 102.88 feet to an iron pipe found. Thence S 20°54'46" E a distance of 495.64 feet to a point along the run of Sam's Branch. Thence along the run of Sam's Branch S 06°22'12" W a distance of 31.73 feet to a point. Thence S 38°27'00" E a distance of 35.79 feet to a point. Thence S 59°26'45" E a distance of 71.72 feet to a point. Thence S 13°37'28" W a distance of 28.25 feet to a point. Thence N 69°33'57" W a distance of 76.68 feet to a point. Thence N 54°46'22" W a distance of 37.79 feet to a point. Thence S 83°46'40" W a distance of 16.73 feet to a point. Thence S 10°10'06" W a distance of 85.68 feet to a point. Thence S 20°09'29" W a distance of 122.53 feet to a point. Thence S 75°31'08" W a distance of 103.55 feet to a point. Thence S 62°57'11" W a distance of 58.40 feet to a point. Thence S 70°05'52" W a distance of 80.21 feet to a point. Thence S 75°47'12" W a distance of 61.28 feet to a point. Thence S 77°51'09" W a distance of 46.17 feet to a point. Thence S 63°46'59" W a distance of 75.51 feet to a point. Thence S 64°45'25" W a distance of 26.12 feet to a point. Thence S 76°28'40" W a distance of 43.61 feet to a point. Thence S 53°48'52" W a distance of 79.19 feet to a point. Thence N

89°58'29" W a distance of 72.73 feet to a point. Thence N 84°41'21" W a distance of 117.79 feet to a point. Thence N 84°03'12" W a distance of 68.10 feet to a point. Thence N 83°05'53" W a distance of 80.01 feet to a point. Thence N 77°52'22" W a distance of 62.52 feet to a point. Thence N 83°23'33" W a distance of 130.27 feet to a point. Thence N 73°28'36" W a distance of 90.61 feet to a point. Thence S 87°44'54" W a distance of 93.77 feet to a point. Thence N 78°45'25" W a distance of 144.94 feet to a point. Thence N 86°29'45" W a distance of 44.76 feet to a point. Thence N 83°27'49" W a distance of 27.87 feet to a point. Thence S 79°58'30" W a distance of 29.29 feet to a point. Thence S 59°40'56" W a distance of 47.26 feet to a point. Thence leaving the run of Sam's Branch in a northerly direction N 00°29'04" W a distance of 126.60 feet to a point. Thence N 87°30'56" E a distance of 132.30 feet to a point. Thence N 00°16'04" W a distance of 1009.09 feet to an iron pipe found. Thence N 88°49'16" E a distance of 128.40 feet to an iron pipe found. Thence N 17°42'29" E a distance of 835.24 feet to an iron pipe found. Thence N 69°25'27" W a distance of 1010.24 feet to an iron pipe found. Thence N 69°25'27" W a distance of 1065.11 feet to an iron pipe found along the eastern right-of-way of City Road. Thence along the eastern right-of-way of City Road N 00°05'56" W a distance of 1676.40 feet to an iron pipe found and the **POINT OF BEGINNING** and containing 112.952 acres (4920185 square feet).

AND

Being all of Tract Two, containing approximately 164.668 acres, as shown on that plat entitled "Raymond Elmore Earp, Jr. Family Trust", dated October 15, 2020, prepared by True Line Surveying, P.C. and recorded in Plat Book 92, pages 253 through 255, inclusive, Johnston County Registry.