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89

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FALLS COVE  
("Declaration")**

**EACH PERSON ACQUIRING A LOT IN FALLS COVE IS BOUND BY ALL OF THE TERMS AND PROVISIONS OF THIS DECLARATION. THIS DECLARATION MUST BE READ IN ITS ENTIRETY IN ORDER TO BE FULLY AWARE OF EACH AND EVERY REQUIREMENT IMPOSED.**

**AMONG SUCH REQUIREMENTS ARE THE FOLLOWING:**

- **EACH OWNER OF A LOT SHALL BE A MEMBER OF, AND PAY ASSESSMENTS TO, FALLS COVE PROPERTY OWNERS ASSOCIATION, INC.**
- **APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE MUST BE OBTAINED BEFORE COMMENCEMENT OF ANY IMPROVEMENT UPON OR DISTURBANCE OF A LOT, OR CONSTRUCTION OF ANY DOCK, PIER, BOATSLIP, OR SIMILAR IMPROVEMENT, AS MORE PARTICULARLY SET FORTH IN ARTICLE VIII.**

- UPON TRANSFER OR SALE OF ANY LOT, THE PROCEDURES OF ARTICLE XI MUST BE FOLLOWED, INCLUDING THE REQUIREMENT THAT A RE-SALE CERTIFICATE AND AGREEMENT BE EXECUTED BY THE SELLER AND PURCHASER OF ANY LOT.
- PAYMENT OF A TRANSFER FEE UPON EACH TRANSFER OF A LOT (WHETHER IMPROVED OR UNIMPROVED) OTHER THAN EXEMPT TRANSFERS, AS PROVIDED IN ARTICLE V-A.

THE RECITATION OF CERTAIN REQUIREMENTS OF THIS DECLARATION ABOVE DOES NOT RELIEVE ANY OWNER OF A LOT IN FALLS COVE FROM THE REQUIREMENTS OF ALL PROVISIONS OF THIS DECLARATION AND ANY AMENDMENTS TO THIS DECLARATION WHICH MAY HEREAFTER BE RECORDED.

AS SET FORTH IN THIS DECLARATION, DECLARANT RESERVES TO ITSELF THE RIGHT TO MODIFY, ALTER OR CHANGE THE DEVELOPMENT PLAN FOR FALLS COVE, CONSISTENT WITH THE UNIFORM SCHEME OF DEVELOPMENT FOR FALLS COVE. DECLARANT HAS RESERVED CERTAIN RIGHTS TO UNILATERALLY AMEND THIS DECLARATION, AS PROVIDED IN ARTICLE XII. DECLARANT HAS ALSO RESERVED THE RIGHT TO ANNEX ADDITIONAL PROPERTY INTO FALLS COVE.

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

✓ Drawn by and after recording return to:  
Falls Cove Development, LLC  
1913 Brawley School Road  
Mooresville, North Carolina 28117  
Attention: Sharon C. Arrowood

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STATE OF NORTH CAROLINA  
COUNTY OF IREDELL

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR FALLS COVE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FALLS COVE (this "Declaration") is made this 29th day of June, 2007 (the "Effective Date"), by **FALLS COVE DEVELOPMENT, LLC**, a Delaware limited liability company (the "Declarant"). All capitalized terms used in this Declaration shall have the meanings set forth in Article I or elsewhere in this Declaration.

Declarant is the owner of that certain real property located in the Town of Troutman, Iredell County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated by reference, which real property is being developed by Declarant (and, possibly, one or more affiliates of Declarant) as a part of a residential planned community known as Falls Cove. As of the Effective Date, it is anticipated Falls Cove will include two non-contiguous sections: One section in Iredell County, North Carolina, called Parkwood at Falls Cove (or sometimes Falls Cove-Parkwood); and the other in the Town of Troutman, North Carolina, called Streamwood at Falls Cove (or sometimes Falls Cove-Streamwood). The real property described in Exhibit "A" together with any Additional Property added pursuant to Section 2.02, is referred to as the "Property."

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Project, and for the maintenance of the Property and Improvements, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens set forth and/or described below.

Although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may or may not include easements, covenants, conditions and restrictions similar to those contained in this Declaration) may be imposed with regard to the various phases or sections of the Project, Declarant desires to impose the easements, covenants, conditions and restrictions contained in this Declaration upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Project.

NOW, THEREFORE, Declarant subjects the Property to the easements, covenants, conditions, restrictions, charges and liens set forth below and declares that (subject to certain rights of amendment described below) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Project. Subject to the above-described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

ARTICLE I.  
DEFINITIONS

Section 1.01 "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the County Registry, with regard to a certain Phase, Tract, section or portion of the Property, as more particularly described in Section 2.02(c).

Section 1.02 "Additional Property" shall mean and refer to any real property near or contiguous to the Property, or within five (5) miles of any boundary of any of the Property. Additional Property may be made subject to the terms of this Declaration in accordance with the provisions of Section 2.02.

Section 1.03 "Amenity Area" or "Amenity Areas" shall mean and refer to the parcel or parcels of land labeled "Amenity Area" (or a similar term) on a Plat, together with recreational amenities or facilities constructed or placed thereon (which may include, without limitation and without any obligation to include, a clubhouse, swimming pool, tennis courts, splash pool, lazy river, playground, outdoor pavilion and parking areas) for the common use and enjoyment of all Owners. As of the Effective Date, it is anticipated the Amenity Area will be located within Streamwood at Falls Cove.

Section 1.04 "Annual Assessments" shall mean and refer to Assessments levied annually by the Association as described in more detail in Sections 5.02 and 5.03.

Section 1.05 "Architectural and Landscape Guidelines" (sometimes referred to herein as "Guidelines") shall mean and refer to, collectively: the Architectural Guidelines as set forth in more detail in Section 8.03(a); the Landscape Guidelines as set forth in more detail in Section 8.03(b); the Lake Buffer Guidelines described in Section 8.03 (b); and the construction rules described in Section 8.03(c).

Section 1.06 "Architectural Control Committee" or "ACC" shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in this Declaration.

Section 1.07 "Architectural Guidelines" shall mean and refer to architectural and design guidelines published by the ACC from time to time, as set forth in more detail in Section 8.03(a).

Section 1.08 "Architectural Review Committee" shall mean a committee, separate and apart from the ACC, appointed by the Board in its sole discretion, to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot, Tract or other portion of the Property.

Section 1.09 "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit "B" to this Declaration and incorporated by reference, as amended from time to time.

Section 1.10 "Assessment" or "Assessments" shall mean and refer to any or all of the following: Annual Assessments; Supplemental Annual Assessments; Special Assessments;

Special Individual Assessments; Special Septic System Assessments; Common Drive Reserve Assessments (as defined in Section 10.08); and Transfer Fees.

Section 1.11 "Association" shall mean and refer to FALLS COVE PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.12 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.13 "Building Envelope" for any Lot shall mean and refer to the area on such Lot in which buildings or other Improvements may be erected or permitted to remain, as provided in Section 7.23.

Section 1.14 "Bylaws" shall mean and refer to the Bylaws for the Association attached as Exhibit "C" to this Declaration and incorporated by reference, as amended from time to time.

Section 1.15 "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 1.16 "Common Area" or "Common Areas" shall mean and refer to the Amenity Area, Parking Area(s), Street Lights (other than those maintained by a governmental entity), Trail System, State Park Option Tract Recreational Facilities, and Roadways which have not been accepted for maintenance by the North Carolina Department of Transportation or other governmental entity, collectively, and any other property specifically shown and designated on any Plat as "Common Area," "Common Open Area," "Common Open Space," "Open Space," "OS," or "COS." The Common Areas shall initially be owned by Declarant and ultimately conveyed to the Association by Declarant and owned by the Association (except as otherwise provided herein) for the common use, benefit and enjoyment of the Owners. Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Project.

Section 1.17 "Common Expense" or "Common Expenses" shall mean and refer to the expenses of the Association set forth in Section 5.02.

Section 1.18 "County Registry" shall mean and refer to the Office of the Register of Deeds of Iredell County, North Carolina.

Section 1.19 "Cove Lots" shall mean and refer to the Lots designated as "Cove Lots" on any Plat, which Cove Lots do not have a Pier Zone or the right to construct and use a Waterfront Lot Pier, and are not Waterfront Lots.

Section 1.20 "Declarant" shall mean and refer to Falls Cove Development, LLC, a Delaware limited liability company, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" by the grantor of such conveyance, which grantor shall be the "Declarant" at the time of such conveyance. Provided further, that upon such designation of

such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" shall cease, it being understood that as to all of the Property, there shall be only one Person entitled to exercise the rights and powers of the "Declarant" at any time.

Section 1.21 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions as amended and/or supplemented from time to time.

Section 1.22 "Dwelling Unit" shall mean and refer to a portion of the Project, whether developed or intended for development, use and occupancy as an attached or detached dwelling for a single family. Each Lot containing vacant land intended for development or land on which Improvements are under construction or with respect to which the governmental entity having jurisdiction has issued a Certificate of Occupancy for a structure or structures on such Lot shall be deemed to contain one (1) Dwelling Unit. Each Tract shall be deemed to contain the number of Dwelling Units equal to the number of Lots shown on the Plats subdividing such Tract into Lots.

Section 1.23 "Entrance Monument Easements" shall mean and refer to the easements reserved by Declarant and granted to the Association in Section 10.07(a) over, across and under certain areas of the Property, for the installation and maintenance of entrance monuments, landscaping and related Improvements for the Project, all as more particularly described in Section 10.07(a).

Section 1.24 "Guidelines" shall mean and refer to the Architectural and Landscape Guidelines.

Section 1.25 "Guild Builder" shall mean and refer to a builder who is admitted to the guild of builders for the Project maintained by the ACC, in its sole discretion, as set forth in more detail in Section 8.08.

Section 1.26 "Improvement" shall mean and include any and all man-made changes or additions to a Lot or Tract, including the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; piers, docks and boatslips; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade or slope; site preparation; swimming pools; hot tubs; Jacuzzis; tennis courts; sport courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the ACC, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the ACC.

Section 1.27 "Interior Lots" shall mean and refer to those Lots which do not have frontage on the Lake.

Section 1.28 "Lake" shall mean and refer to that certain body of water commonly known as Lake Norman, located adjacent to portions of the Project.

Section 1.29 "Lake Buffer Area" shall mean and refer to that part of a Waterfront Lot, Waterview Lot or Cove Lot that is within fifty (50) feet of the mean high water mark of the Lake.

Section 1.30 "Lake Buffer Guidelines" shall mean and refer to guidelines promulgated from time to time by the ACC governing landscaping within the Lake Buffer Area in any Waterfront Lot, Waterview Lot or Cove Lot, as set forth in more detail in Section 8.03(b).

Section 1.31 "Landscape Easements" shall mean and refer to easements reserved by Declarant for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, as provided in Section 10.07(b).

Section 1.32 "Landscape Guidelines" shall mean and refer to those landscape guidelines promulgated from time to time by the ACC, as set forth in more detail in Section 8.03(b).

Section 1.33 "Lot" shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located. No tract of land shall become a "Lot" as that word is used herein until a Plat of the area in which the same is located is recorded in the County Registry.

Section 1.34 "Maintenance Areas" shall mean and refer to the easements reserved by Declarant in Sections 10.07 (a) through (d).

Section 1.35 "Member" shall mean and refer to every person or entity holding membership in the Association.

Section 1.36 "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot, Tract or Dwelling Unit.

Section 1.37 "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot, Tract and/or Dwelling Unit.

Section 1.38 "Occupant" shall mean and refer to any Person occupying all or any portion of a Lot, Tract or the Property for any period of time, regardless of whether such Person is a tenant of the Owner of such Lot, Tract or portion of the Property.

Section 1.39 "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, Tract or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation. Declarant shall be an Owner for so long as Declarant owns any portion of the Property.

Section 1.40 "Parking Area" shall mean and refer to the parking lot or lots which may be constructed over certain portions of the Common Area(s), including the Amenity Area, for the common use, benefit and enjoyment of the Owners, their families, guests and invitees.

Section 1.41 "Period of Declarant Control" shall mean and refer to the period of time during which Declarant shall at all times be entitled to appoint and remove the Board of Directors and the officers of the Association, and during which the Class I Members shall have no right to nominate, elect, or remove, or exercise any vote to nominate, elect, or remove, the Board of Directors.

Section 1.42 "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 1.43 "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats is or are recorded in the County Registry.

Section 1.44 "Pier Zone" shall mean and refer to the area(s) designated as "Pier Zone" on the Plat(s) or in any Supplemental Declaration or other document at any time filed in the County Registry pursuant to the provisions of this Declaration.

Section 1.45 "Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the County Registry.

Section 1.46 "Project" shall mean and refer to the residential development and amenity facility being developed by Declarant on the Property and commonly known as Falls Cove.

Section 1.47 "Property" shall mean and refer to that certain real property located in the Town of Troutman, Iredell County, North Carolina, and more particularly described on Exhibit "A" attached to this Declaration and incorporated by reference, as well as such Additional Property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II.

Section 1.48 "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F of the General Statutes of North Carolina.

Section 1.49 "Re-Sale Certificate and Agreement" shall mean and refer to the certificate and agreement required to be delivered by an Owner and purchaser of a Lot to the Association and Declarant under Section 11.03(b).

Section 1.50 "Reserve Fund" shall mean and refer to a reserve fund established by the Board for the periodic maintenance, repair and replacement of all or a portion of the Common Areas or Maintenance Areas and to fund anticipated and/or unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors.

Section 1.51 "Roadways" shall mean and refer to the roads, streets, entranceways and cul-de-sacs (including any curbs, gutters, sidewalks and other Improvements located therein) as shown on the Plats, and any other roads, streets, entranceways and cul-de-sacs on the Property intended to serve more than one Lot (including any curbs, gutters, sidewalks and other Improvements located therein), all to be privately maintained by the Association as set forth herein unless and until accepted for maintenance by the North Carolina Department of Transportation or other governmental entity.

Section 1.52 "Septic Easement" or "Septic Easements" shall mean and refer to the septic easement or septic easements reserved over the Septic Easement Areas for the benefit of each Septic Lot Owner, as more particularly described in Section 7.28.

Section 1.53 "Septic Easement Areas" shall mean and refer to those certain tracts of land described on the Plat(s) as "Septic Easement Areas," "S.F.E.," "SFE," or other similar designation.

Section 1.54 "Septic Inspection and Repair Easement" shall mean and refer to an easement over all property within the Project benefiting Declarant and the Association for the purposes of conducting the inspection, repair and/or replacement of Septic System as set forth in more detail in, and subject to the terms of, Section 7.29.

Section 1.55 "Septic Lots" shall mean and refer to those Lots utilizing the Septic Easement Areas to drain sewage from such Lots through a Septic System. The Owner of a Septic Lot shall be referred to as a "Septic Lot Owner."

Section 1.56 "Septic System" shall mean and refer to all pipes related to the transportation of sewage from each Septic Lot to the Septic Easement Areas and all drainage fields and equipment and apparatus installed within the Septic Easement Areas.

Section 1.57 "Sewer Connection Easement" shall mean and refer to an easement for the purpose of connecting residences upon certain Lots to public or private sewer lines, as set forth in more detail in, and subject to the terms of, Section 7.28.

Section 1.58 "Special Assessment" shall mean and refer to an Assessment levied by the Association for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area and/or Maintenance Area Improvements which are not originally constructed by Declarant or (ii) the reconstruction, repair or replacement of the Common Areas and/or Maintenance Areas, including any Improvements located thereon, and including the Amenity Area.

Section 1.59 "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including the following: to complete Improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising the Project ; to use easements through the Common Areas for the purpose of making Improvements within the Project or within any Additional Property that may be added to the Project; and to elect, appoint or remove any member of the Board during the Period of Declarant Control.

Section 1.60 "Special Individual Assessment" shall mean and refer to a Special Assessment applicable to a particular Owner for the purposes set forth in Section 5.05.

Section 1.61 "Special Septic System Assessment" shall mean and refer to a Special Individual Assessment assessed by the Association upon a Septic Lot Owner for the purpose of inspecting, maintaining, repairing or replacing the Septic System or other sewage disposal system serving such Septic Lot Owner's Septic Lot.

Section 1.62 "State Park Option Tract" shall mean and refer to that certain tract of land on the northerly border of Morrison Farm Road as more particularly shown on the site plan attached hereto as Exhibit "D" and incorporated herein by reference, which State Park Option Tract is subject to the State of North Carolina's right to purchase the tract of land from an affiliate of Declarant.

Section 1.63 "State Park Option Tract Recreational Facilities" shall mean and refer to any recreational facilities constructed or placed on the State Park Option Tract by Declarant for the common use and enjoyment of all Owners. If the State of North Carolina exercises its option to purchase the State Park Option Tract, or if Declarant at any time for any reason in its sole discretion otherwise determines it to be no longer feasible or desirable for the State Park Option Tract Recreational Facilities or any of them to be made available for the common use and enjoyment of Owners, some or all of the State Park Option Tract Recreational Facilities may be removed from the State Park Option Tract, dedicated to the public or otherwise used and may no longer exist or be used by the Owners of the Property.

Section 1.64 "Stream Restoration Area" shall mean and refer to any part of the Lake with respect to which Declarant or the Association has from time to time received all necessary approvals for the performance and maintenance of restoration Improvements, which areas may (but shall not be required to be) designated on a Plat, whether as "Stream Restoration Area" or other similar designation.

Section 1.65 "Street Lights" shall mean and refer to those certain street lights owned or leased by Declarant (any such lease to be assigned to the Association as provided in Section 3.01), the Association or a governmental entity (e.g. the Town of Troutman) and installed upon, along and/or over the rights-of-way of the Roadways, Parking Area(s) (if any), Maintenance Areas and Common Areas.

Section 1.66 "Supplemental Annual Assessment" shall mean and refer to a Supplemental Annual Assessment levied by the Board according to the provisions of Section 5.03(c).

Section 1.67 "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the County Registry, to bring Additional Property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Section 2.02.

Section 1.68 "Tract" shall mean and refer to any separate and identifiable tract of land which is a part of the Property, whether or not shown on a Plat, which is not a Lot or Common Area.

Section 1.69 "Trail System" shall mean and refer to any and all hard surface or soft surface sidewalks, trails, biking, walking or jogging paths, or similar pathways located upon those portions of the Property designated by Declarant as part of a system of hard surface or soft surface sidewalks, trails, biking, walking or jogging paths including all trail related signs and structures within the Property as may be shown on any Plat.

Section 1.70 "Transfer Fee" shall mean and refer to the fee that the Association may collect upon transfer of title to a Lot, as set forth in more detail in Article V-A.



Section 1.71 "Waterfront Lots" shall mean and refer to all Lots designated as "Waterfront Lots" on any Plat and which may have, as an appurtenance to the Lot, the right to construct and use a Waterfront Lot Pier as more particularly set forth in Section 7.34.

Section 1.72 "Waterfront Lot Boatslips" shall mean and refer to any boatslip that is constructed by a Waterfront Lot Owner adjacent to such Waterfront Lot Owner's Waterfront Lot.

Section 1.73 "Waterfront Lot Pier" shall mean and refer to any pier containing a Waterfront Lot Boatslip.

Section 1.74 "Waterview Lots" shall mean and refer to all Lots designated as "Waterview Lots" on any Plat, which Waterview Lots do not have a Pier Zone or the right to construct and use a Waterfront Lot Pier, and are not Waterfront Lots.

ARTICLE II.  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION  
OF THE ASSOCIATION

Section 2.01 Property Made Subject to this Declaration. The Property is made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines (including the provisions of the Guidelines), charges and liens set forth in this Declaration.

Section 2.02 Additions to the Property.

- (a) Declarant may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the County Registry, containing a description of the Additional Property and a statement by Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Each Supplemental Declaration need only be executed by Declarant. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations and/or Additional Declarations as provided in Sections 2.02(b) and 2.02(c).
- (b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify, change or add to the covenants and restrictions contained herein with respect to the Property as constituted prior to the filing of such Supplemental Declaration, or revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in this Declaration.

- (c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, Tract, section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the County Registry covering only such Phase, Tract, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners' association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.
- (d) So long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any Person to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements (including any Additional Declaration) on any part of the Property.

### ARTICLE III. PROPERTY RIGHTS

Section 3.01 Ownership of Common Area. Except as otherwise provided herein, Declarant shall convey to the Association the Common Areas; provided, with respect to any part of the Common Areas leased by Declarant (e.g., Street Lights), Declarant shall assign its rights under such lease to the Association. Such conveyance and any such assignment shall occur at such time as Declarant shall determine, in its sole discretion, but in no event later than the expiration of the Period of Declarant Control. Declarant reserves the right (but shall not be obligated) to construct or install within the Common Areas, among other things, (i) the Street Lights (which may be leased from a third party) and other lighting, signage and irrigation facilities, (ii) the Roadways, (iii) certain Improvements within the Amenity Area, (iv) the Trail System, and (v) certain additional recreational amenities and facilities, for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public (with the exception of the Roadways, which may eventually be accepted for public dedication and maintenance by the North Carolina Department of Transportation or other governmental entity).

At such time as Declarant shall convey the Common Areas to the Association, no acceptance or consent by the Association shall be necessary and the recordation of a deed from Declarant to the Association shall be deemed conclusive evidence of the Association's

acceptance of such conveyance of such Common Areas in their "as-is, where is" condition, and subject to all matters of record, but free and clear of all deeds of trust or other monetary encumbrances.

Section 3.02 Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- (a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners within the Common Areas;
- (b) subject to the terms of the Planned Community Act, the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid for longer than thirty (30) days, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) the right of Declarant or the Association to grant or reserve easements for the Trail System across the Common Areas;
- (d) the right of Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas;
- (e) the terms, provisions and conditions of any easement agreement entered into by Declarant or the Association with respect to the State Park Option Tract for use and maintenance, operation, repair and replacement of the State Park Option Tract Recreational Facilities; and
- (f) any and all other applicable provisions of this Declaration.

Section 3.03 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

Section 3.04 Use of Amenity Areas by Licensees. The Association shall have the right, from time to time, to allow individuals not owning a Lot or any other part of the Property (each, a "Licensee;" collectively, "Licensees") to use all or a certain portion of the Amenity Areas upon terms and conditions acceptable to the Association and set forth in a written agreement between the Association and each Licensee (each, a "License Agreement"). Each License Agreement, among other things, may include the following provisions:

- (a) Upon execution of a License Agreement, each Licensee may be required to pay to the Association an amount determined by the Association in its sole discretion ("License Fee") as consideration (in addition to the "User Fee" defined in Section 3.04(b)) for the Association's agreement to enter into the License Agreement;

- (b) In addition to the License Fee, each Licensee shall pay to the Association an amount to be collected no less often than annually ( "User Fee") in an amount determined by the Association from time to time as consideration for the ongoing use of the Amenity Areas (or such portion for which license has been granted);
- (c) The License Agreement may provide for termination at will by the Association or the Licensee, and may provide that, upon any such termination, any License Fee paid by such Licensee, and/or a pro-rated portion of the User Fee, if applicable, shall be (or shall not be) refunded to the Licensee, less any costs owed by such Licensee to the Association; and may establish rules and regulations and provide for termination for cause by the Association, and may provide for forfeiture of the License Fee and any prepaid User Fee in the event of any such termination.

ARTICLE IV.  
THE ASSOCIATION

Section 4.01 Membership. Every Owner of a Dwelling Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit, and shall be governed by the Bylaws. In addition, as long as Declarant owns any part of the Property, Declarant shall be a Member of the Association.

Section 4.02 Classes of Voting Members. The Association shall have two (2) classes of voting membership:

- (a) Class I. The Class I Members shall be all Members with the exception of Declarant. Class I Members shall be entitled to one (1) vote for each Dwelling Unit owned by such Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Dwelling Unit, all such Persons shall be Members and the voting rights appurtenant to the Dwelling Unit shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit.
- (b) Class II. The Class II Member shall be Declarant. The Class II Member shall be entitled to twenty (20) votes for each Dwelling Unit owned by Declarant.

Section 4.03 Period of Declarant Control. The Period of Declarant Control shall begin on the date the Association is incorporated and end at such time as Declarant does not own any portion of the Property, or at such earlier time as Declarant terminates such right by execution of a written instrument of termination. Anything to the contrary in this Declaration, the Bylaws, the Articles of Incorporation, or the Planned Community Act notwithstanding, if not sooner ended or terminated, the Period of Declarant Control shall end on December 31, 2040.

During the Period of Declarant Control, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as may be determined by the Board in its discretion, and except

as provided with respect to the commencement of judicial or administrative proceedings as provided in Section 12.06, and those acts that the Planned Community Act or other applicable laws provide may not be undertaken unilaterally by the Board, such as, to the extent required, ratification of the budget as provided in Section 5.03, borrowing of funds to pay operational costs of the Association as provided in Section 6.03 of the Bylaws and conveying fee simple title to all or any part of the Common Area as provided in Section 6.15 of the Bylaws.

Section 4.04 Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 4.05 Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed three (3) years and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the managing agent without payment of a termination fee.

Section 4.06 Maintenance. The Roadways shall be maintained by the Association until the Roadways are accepted for maintenance by the North Carolina Department of Transportation or other governmental entity. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance.

The Common Areas and the Maintenance Areas, together with all utilities, easements and amenities located therein and not otherwise maintained by public entities or utilities or any other party as provided herein, shall be maintained by the Association as more particularly described below:

- (a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, signage, irrigation, planters, lighting and any other Improvements located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.
- (b) Maintenance of the Parking Area(s) (if any) shall include repair, maintenance and reconstruction, when necessary, of the pavement and payment of the costs of lighting.
- (c) To the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may be, the Association shall maintain

or cause to be maintained the swales and medians and associated landscaping and related Improvements along and within the Roadways.

- (d) The Common Areas and Maintenance Areas, including the Amenity Area, shall be clean and free from debris and maintained in a safe and orderly condition, together with the landscaping thereon (if any), including maintenance, repair, replacement and removal of any landscaping, utilities or Improvements located thereon, in accordance with such standards as shall be specified by Declarant from time to time in its discretion so long as Declarant owns any portion of the Property.
- (e) Maintenance of any Improvement within the Amenity Area shall include, but not be limited to, any and all interior and exterior maintenance (including, where necessary, repair and/or reconstruction), landscaping and payment of all utility charges related to any such Improvement.
- (f) Each Owner shall be responsible for the maintenance of every Lot owned by such Owner, and every portion of any Lot and the Improvements within the boundaries thereof (including any Dwelling Unit or any dock, pier or boatslip located within the Pier Zone adjacent to any Waterfront Lot); and the Association shall not be responsible for the maintenance of the same.

Section 4.07 Reserve Fund. The Association shall establish and maintain the Reserve Fund. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments. All matters with respect to the Reserve Fund (including the manner of funding and amount thereof) shall be determined from time to time by the Board of Directors in its sole discretion, and such determinations of the Board of Directors shall be binding and conclusive on all Owners. No Owner shall have any right to bring any action against the Board of Directors or any member thereof or the Association or Declarant with respect to any determination of the Board of Directors related to the Reserve Fund, including the adequacy thereof. The Board of Directors may (but shall not be required to) employ consultants to recommend alternatives for establishing and maintaining the Reserve Fund .

Section 4.08 Parking Areas. Declarant may construct, and, if constructed, the Association shall maintain, repair and, if destroyed, replace, as a Common Expense, paved or gravel Parking Areas located on the Amenity Area and other Common Areas. The Parking Areas shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns and the Owners, their families, guests and invitees.

Section 4.09 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 portion of the Property or Improvements or for failure to repair or maintain the same. Declarant, the Association or any other Person making such repairs or maintenance shall not 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 portion of the Property or Improvements. 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 arising from or relating to the performance by the Board of its duties and obligations, except for any such 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 indemnified.

ARTICLE V.  
COVENANT FOR ASSESSMENTS

Section 5.01 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot or Tract, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed to covenant and agrees to pay Assessments to the Association, established and collected as hereinafter provided. Any such Assessment or charge, together with interest, costs, reasonable attorneys' fees, and fines imposed shall be a charge and a continuing lien upon the Lot or Tract, as the case may be, against which each such Assessment or charge is made. Each such Assessment or charge, together with interest, costs, reasonable attorneys' fees, and fines imposed shall also be the personal obligation of the Owner, at the time when the Assessment fell due, of the Lot or Tract, as the case may be, against which such Assessment or charge is made. The personal obligation for delinquent Assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them, provided such Assessments or charges, together with interest, costs, reasonable attorneys' fees, and fines imposed, shall, as set forth above, be a continuing lien upon the Lot or Tract, as the case may be, against which such Assessments or charges are made.

Section 5.02 Purpose of Annual Assessments. Annual Assessments shall be used as follows (the expenses of the following being sometimes referred to herein as "Common Expenses"):

- (a) to repair, maintain, reconstruct or replace (when necessary) and keep clean and free from debris the Common Areas (including the Amenity Area and the Stream Restoration Area) and the Maintenance Areas (including the Entrance Monument Easements) and any Improvements located on the Common Areas and Maintenance Areas including any necessary maintenance, removal and replacement of landscaping thereon, in accordance with such standards as shall be specified by Declarant from time to time in its discretion so long as Declarant owns any portion of the Property;
- (b) to maintain and repair the Roadways to the standards of the maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other governmental entity before it would accept such Roadways for maintenance;
- (c) to maintain, operate, repair and reconstruct, when necessary, the entryways to the Project, including the entrance monuments, signage, irrigation, planters, landscaping and lighting located thereon;

- (d) to maintain and repair the swales, medians and Street Lights which are not leased (other than such Street Lights, if any, as have been accepted for public maintenance), landscaping and related Improvements along and within the Roadways to the extent not maintained by the North Carolina Department of Transportation or other governmental entity, as the case may be;
- (e) to pay all costs associated with the lease and operation of leased Street Lights (other than such Street Lights, if any, as may be leased by a governmental entity), including monthly lease payments and utility costs;
- (f) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (g) to pay the premiums on all insurance carried by the Association pursuant to this Declaration or the Bylaws;
- (h) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;
- (i) to carry out all other purposes and duties of the Association, the Board of Directors and the ACC as stated in the Articles, the Bylaws and in this Declaration;
- (j) to maintain the Reserve Fund; and
- (k) to pay all fees, costs, compensation and other charges accruing under any management agreement and operation and management contract entered into by, or assumed by, the Association.

Section 5.03 Payment of Annual Assessments; Due Dates. Each Owner of a Lot or Tract shall pay to the Association Annual Assessments as hereinafter set forth.

- (a) Annual Assessments provided for herein shall commence as to all Lots or Tracts shown on a Plat of any Phase of the Property as of the date of the conveyance of the first Lot or Tract in such Phase by Declarant to an Owner (other than Declarant) of such Lot or Tract. The Annual Assessment for the first calendar year in which a Lot or Tract 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 the calendar year beginning January 1, 2008, shall be One Thousand Three Hundred Fifty Dollars (\$1,350.00) per Dwelling Unit. The Annual Assessment amount for each and every calendar year thereafter shall be in an amount as set by the Board of Directors, in accordance with the terms of this Article V. Annual Assessments shall be due and payable in advance in such installments as shall be determined by the Board of Directors from time to time and each installment is due and payable on the first day of each billing period and delinquent thirty (30) days thereafter. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot or Tract for any calendar year at least thirty (30) days prior to January 1 of such



calendar year, and the Association shall send written notice of the amount of the Annual Assessment to each Owner as soon as reasonably practicable thereafter. To the extent required by the Planned Community Act or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by the Planned Community Act or other applicable law, or if the Annual Assessment amount is more than an amount determined by increasing the amount of the Annual Assessment for the calendar year 2008 at an annually compounding rate of ten percent (10%), the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than twenty (20) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget will be ratified unless: (a) if such vote is taken during the Period of Declarant Control, at such meeting Members exercising ninety percent (90%) of the votes in the Association reject the budget; or (b) if such vote is taken after the Period of Declarant Control, at such meeting Members exercising a majority of the votes in the Association reject the budget. If the budget is rejected, the Annual Assessment shall be based upon the budget followed to establish the Annual Assessment for the immediately preceding calendar year until a new budget is ratified as provided herein.

- (b) The failure of the Association to send, or of a Member to receive, any notice provided for in Section 5.03(a) shall not relieve any Member of the obligation to pay Annual Assessments.
- (c) If the Board of Directors shall, during any calendar year, determine that the important and essential functions of the Association cannot be funded by the Annual Assessment, the Board may, by vote in accordance with the Bylaws, levy a Supplemental Annual Assessment, subject to the procedures set forth in Section 5.03(a).
- (d) With respect to any Lot or Tract conveyed by Declarant, the purchaser of such Lot or Tract 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 or Tract, prorated based upon the number of days remaining in such installment period. With respect to any Lot or Tract conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot or Tract 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) Declarant shall have the authority to reduce the Annual Assessment (i) on any Lot on which no Dwelling Unit has been completed (i.e., no Certificate of Occupancy has been issued by the governmental entity having jurisdiction over construction of such Dwelling Unit), or (ii) on any Lot owned by a Guild Builder until such time as the Guild Builder sells or otherwise transfers ownership of its Lot.

Section 5.04 Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year. Provided, however, (a) Declarant shall not be obligated to pay any Special Assessments on Lots or Tracts owned by Declarant except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Dwelling Units which are then subject to this Declaration.

Section 5.05 Special Individual Assessments. In addition to the Annual Assessments, Supplemental Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a 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 Areas and/or Maintenance Areas, including the Amenity Area and any Improvements located thereon, whether 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; and/or (ii) for the purpose of paying the costs of removal of the encroachments described in Section 10.05; and/or (iii) subject to the terms of the Planned Community Act, for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or Declarant pursuant to this Declaration or the Bylaws; and/or (iv) for the purposes set forth in Section 10.08. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5.05 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. 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.

Section 5.06 Collection Agent. At the option of the Board of Directors, any Person designated by the Board of Directors may act as collection agent for any and all Assessments imposed by the Association and/or the Board against the Owners.

Section 5.07 Assessments Against Lots Owned by Declarant. Except as otherwise specifically set forth in this Declaration, all Lots or Tracts owned by Declarant shall not be subject to Assessments. Furthermore, Declarant shall be entitled to credit against any Assessments on Lots owned by Declarant any and all amounts which Declarant has paid directly for Common Expenses, or has paid or contributed to the Association for the Association's payment of Common Expenses.

ARTICLE V-A  
TRANSFER FEE

Section 5A.01 Authority. The Board shall have the authority to establish and collect a Transfer Fee from the transferring Owner upon each transfer of title to a Lot in the Property, which Transfer Fee shall be payable at the closing of the transfer and shall be an Assessment secured by the Association's lien for Assessments under Section 5.01.

Section 5A.02 Fee Limit. Except as otherwise provided in this Section 5A.05 the Board shall have the sole discretion to determine the amount of the Transfer Fee; provided, however, the amount of the Transfer Fee shall not exceed one-half percent (0.5%) of the greater of (a) the Gross Selling Price of the Lot (including the Dwelling Unit and all other Improvements thereon), or (b) the assessed tax value of the Lot (including the Dwelling Unit and all other Improvements thereon). For the purpose of determining the amount of the Transfer Fee, the Gross Selling Price shall be the total cost to the purchaser of the Lot (including the Dwelling Unit and all other Improvements thereon).

Section 5A.03 Purpose. All Transfer Fees which the Association collects may be deposited with and used for any one or more of the same purposes for which Assessments are used, as the Board deems beneficial to the general good and welfare of the Project.

Section 5A.04 Exempt Transfers. Notwithstanding the above, no Transfer Fee shall be levied upon transfer of title to a Lot or Dwelling Unit:

- (a) by or to Declarant;
- (b) to a Guild Builder who is holding title solely for purposes of development and resale;
- (c) by a Guild Builder to the first Owner to occupy a Dwelling Unit upon or within a Lot;
- (d) by a co-owner of a Lot or Dwelling Unit to any Person who was also a co-owner of such Lot or Dwelling Unit immediately prior to such transfer;
- (e) to the Owner's estate, surviving spouse or child upon the death of the Owner;
- (f) to an entity wholly owned by the grantor; provided, however, upon any subsequent transfer of an ownership interest in such entity, the Transfer Fee shall become due; or
- (g) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

Section 5A.05 Transfer Fee Calculation on Exchanges or Other Non-Cash Transactions. If a transfer of a Lot subject to a Transfer Fee is a like-kind exchange or other non-cash transaction, then the Gross Selling Price shall be the greater of the value of the exchanged real estate or other

non-cash consideration as agreed upon by the parties to the transaction, or the assessed tax value of the Lot (including the Dwelling Unit and all other Improvements thereon).

ARTICLE VI.  
GENERAL ASSESSMENT PROVISIONS

Section 6.01 Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot or Tract have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot or Tract is binding upon the Association as of the date of its issuance.

Section 6.02 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment (or installment thereof) not paid by its due date as set forth herein shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment or the highest late charge then permitted by law, whichever is less. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the applicable portion of the Property), and interest, late payment charges, fines, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such Assessment and Assessment lien. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of his or her property or the Common Areas or otherwise.

Section 6.03 Subordination of the Lien to Mortgages. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage on a Lot or Tract or any mortgage or deed of trust to Crescent Resources, LLC or any affiliated entity. Sale or transfer of any Lot or Tract shall not affect the Assessment lien. The sale or transfer of any Lot or Tract pursuant to a mortgage foreclosure under any first Mortgage on a Lot or Tract or any mortgage or deed of trust to Crescent Resources, LLC or any affiliated entity, or any proceeding in lieu thereof, however, shall extinguish the lien (but not the personal obligation of the mortgagor or any prior Owner) of such Assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid Assessments to be an Annual, Special or Special Individual Assessment or a Special Septic System Assessment (as the case may be), as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners. No sale or transfer shall relieve the purchaser of such Lot or Tract from liability for any Assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any first Mortgage on a Lot or Tract or any mortgage or deed of trust to Crescent Resources, LLC or any affiliated entity as above provided.

ARTICLE VII.  
RESTRICTIONS

PORTIONS OF THE LAND CONTIGUOUS TO THE PROJECT ARE NOT OWNED BY DECLARANT AND ARE NOT SUBJECT TO THIS DECLARATION INCLUDING THE

RESTRICTIONS CONTAINED IN THIS ARTICLE VII AND THE RULES AND REGULATIONS PROMULGATED BY THE BOARD. THEREFORE, LOTS MAY BE LOCATED ADJACENT TO LAND AND IMPROVEMENTS WHICH ARE INCONSISTENT WITH THE TERMS OF AND NOT BOUND BY THIS DECLARATION AND OWNERS OF LOTS IN THE PROJECT WILL NOT HAVE ANY RIGHTS OR RECOURSE UNDER THIS DECLARATION WITH RESPECT TO THE OWNERS OF ANY SUCH ADJACENT LAND AND/OR IMPROVEMENTS.

Section 7.01 Residential Restrictions. Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales/marketing offices (and for related uses) for the Project. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove or except with the written approval of the Board. Provided, however, the Board may permit a business or business activity to be conducted on a Lot within a Dwelling Unit occupied primarily for single-family residential purposes (e.g. a portion of a Dwelling Unit may be used as a home office) so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of this Declaration, does not create a disturbance and does not unduly increase traffic flow or parking congestion on the Property or in the Project. The Board may issue rules regarding permitted business activities. Leasing of a Dwelling Unit on a Lot shall not be considered a business or business activity.

Except those to be utilized by Declarant as described hereinabove, no structure shall be erected, placed, altered, used or permitted to remain on any Lot other than one attached or detached single-family private Dwelling Unit and one private garage for not less than two (2) vehicles and only such other accessory structures as are approved in advance in writing by the ACC pursuant to the Guidelines. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least six (6) months, must be in writing, and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or Improvements.

Subject to the requirements set forth herein and in the Guidelines, fixed piers and floating boat dock facilities incidental to the residential use of Waterfront Lots are expressly permitted only within the Pier Zone (as defined below) of Waterfront Lots upon the condition that they are not rented, leased or otherwise used for remuneration. Furthermore, no boat (including a houseboat), whether existing on a Lot, docked at a Pier or docked at a fixed pier or floating boat dock appurtenant to any Waterfront Lot in the Project, may at any time be used as a residence.

Section 7.02 Dwelling Unit Size. The square footage requirements set forth below are for enclosed heated floor area, are measured from the ground level up (with ground level being the first level of any Dwelling Unit as viewed from the Roadway on which the Dwelling Unit fronts) and are exclusive of the areas in heated or unheated basements, vaulted ceiling areas and attics, unheated porches of any type, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios.

Any Dwelling Unit erected upon a Lot having an area of less than one (1) acre (43,560 square feet) shall contain not less than the following heated floor areas:

	<u>Minimum Total Heated Area</u>	<u>Minimum Ground Floor Heated Area</u>
1 Story	2,000	2,000
1½ story, split level, tri-level and others	2,200	1,200
2 story, 2½ story	2,200	1,200

Any Dwelling Unit erected upon a Lot having an area of one (1) acre (43,560 square feet) or more shall contain not less than the following heated floor areas:

	<u>Minimum Total Heated Area</u>	<u>Minimum Ground Floor Heated Area</u>
1 Story	2,200	2,200
1½ story, split level, tri-level and others	2,500	1,800
2 story, 2½ story	2,400	1,400

Notwithstanding the foregoing requirements, the ACC shall have the right (but not the obligation), because of restrictive topography, lot shape, dimensions or unusual site related conditions or other reasons, to allow variances from such minimum square footage requirements of up to ten percent (10%) of such minimum square footage requirements by granting a specific written variance.

No Dwelling Unit erected upon a Lot shall contain more than two and one-half (2½) stories above ground level (with ground level being the first level of any Dwelling Unit as viewed from the Roadway on which the Dwelling Unit fronts). While each Lot must comply with the requirement set forth in the immediately preceding sentence, the ACC shall have the right (but not the obligation), because of steep topography, unique Lot configuration or dimensions, unusual site related conditions or other similar reasons, to allow Dwelling Unit heights greater than two and one-half (2½) stories as viewed from rear and side elevations.

Section 7.03 HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit on a Lot. Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape Improvements, as more particularly provided in the Guidelines.

Section 7.04 Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines. Night lighting of tennis courts, sport courts and other recreational facilities on Lots is not permitted.

Section 7.05 Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration and except as expressly provided below, no fence or wall (including densely planted hedges, rows or similar landscape barriers) (i) shall be erected, placed, maintained or altered on any Lot nearer to any Roadway fronting such Lot than the front building corner of the Dwelling Unit constructed on such Lot (unless otherwise approved by the ACC) and (ii) shall not exceed six (6) feet in height, except fences enclosing approved tennis courts may be up to ten (10) feet in height if located at least twenty-five (25) feet from all Lot boundary lines. Provided, however, and notwithstanding the foregoing, in order to accentuate certain architectural styles within the Project, Declarant and/or the ACC, in their sole and absolute discretion, may allow the construction and use of fencing along or near the front, side and/or rear boundary lines of certain designated Lots within the Project. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the ACC has given its prior written approval of the color, size, design, materials and location for such fence or wall.

Section 7.06 Mail and Newspaper Boxes; House Numbers. Declarant shall provide to each Lot Owner, at Lot Owner's expense, and each Lot Owner shall install and maintain, at Lot Owner's expense, a standard mailbox/newspaper box for such Owner's use on such Owner's Lot. No other mailbox or newspaper box shall be erected or maintained on any Lot. The location of the mailbox/newspaper box on a Lot must be approved in writing by the ACC. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the ACC. Declarant shall not be responsible for the installation or maintenance of any mailbox or newspaper box.

Section 7.07 Animals. No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board in its sole discretion) such as, but without limitation, by noise, odor, damage, personal injury or destruction of property or refuse. Any excrement deposited by an animal on any portion of the Property shall be promptly removed and appropriately disposed of by the owner of such animal. The number of household pets kept or maintained outside the Dwelling Unit on a Lot shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under six (6) months in age. Dogs shall at all times whenever they are outside of a Dwelling Unit be on a leash or otherwise confined in a manner acceptable to the Board. Animal control and other appropriate authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals. In the event of any illegal behavior related to animals on the Property, owners shall notify the appropriate authority (i.e. police, animal control, other governmental authority) to remedy any such situation. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the ACC.

Section 7.08 Signs. No sign of any kind shall be displayed on any Lot except for sign(s) approved in advance by the ACC. Notwithstanding the immediately preceding sentence, Declarant shall be entitled to erect and maintain signs and billboards advertising the Property, the

Project or portions of either, or for any other purpose, on any portion of the Property owned by Declarant, and/or in the Common Areas, and/or in the Maintenance Areas.

Section 7.09 Temporary Structures; Structure Materials; Containers. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence. No portable on-site storage containers or similar containers shall be allowed to remain on any portion of the Property unless approved by the Board, and, if such approval is granted, subject to such regulations and restrictions as may be imposed by the Board in its sole discretion. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant, or from maintaining a sales office on any portion of the Property.

Section 7.10 Recreational and Other Equipment.

- (a) No recreational equipment (including swimming pools, sport courts, tents, 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 Unit or otherwise placed or kept on any Lot, except with the prior written approval of the ACC, which approval may be granted or denied in its sole and absolute discretion.
- (b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners.
- (c) No such recreational equipment shall be located within fifty (50) feet of the Lake.
- (d) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, in such number or for such a long period of time as to create a continuing, unsightly condition in the sole discretion of the ACC.
- (e) Garbage containers shall be kept out of sight of any Roadway except after 6:00 p.m. on the day immediately preceding scheduled pick-up days until 6:00 p.m. on scheduled pick-up days, during which periods of time they may be kept in the designated pick-up area.

Section 7.11 Parking; Storage.

- (a) No vehicles, trucks, vans, cars, trailers, boats (whether or not on a trailer), construction equipment, etc. may be parked overnight on any Roadway within the Property.
- (b) Commercial-use vehicles and trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than or



equal to three-fourths (3/4th) ton, any vehicle (other than a law enforcement vehicle) which bears a company name or logo, any vehicle with ladders on top or in a truck bed, and any "box" van or truck shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

- (c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such Lot.
- (d) No recreational vehicles or related equipment, including any moped, go-cart, snow mobile, three or four-wheeled all terrain vehicle, golf cart, boat, houseboat, trailer, motor home or "camper" vehicle may be operated on any Lot or any part of the Property (including the Trail System), nor shall any such vehicles be maintained, stored or kept on any portion of the Property, except in an enclosed garage or in an enclosure specifically approved for such maintenance or storage by the ACC; provided, however, Declarant and the Association, their respective employees, contractors, and agents shall have the right to operate such recreational vehicles in connection with the development, maintenance, and operation of the Property.
- (e) No wheeled vehicles of any kind, including bicycles, shall be allowed on the Trail System, unless approved by the Board, which approval may be granted or denied in its sole and absolute discretion.
- (f) No construction office trailer may be placed, erected or allowed to remain on any Lot during construction. Provided, however, nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the ACC.
- (g) All automobiles permitted hereunder shall have a current license plate affixed thereto and must be parked on a driveway approved by the ACC.

Section 7.12 Flag Poles. No free standing flag poles of any type shall be permitted on any Lot.

Section 7.13 Clothes Lines. No clothes lines of any description or type, and no outside drying of clothes shall be allowed on any Lot.

Section 7.14 Wetlands. Neither the Association nor any Owner may fill, grade, excavate, or perform any other land disturbing activities, or cut, remove, or harm any vegetation, or construct any structure, upon any portions of the Common Areas or Lots shown on the Plats as "wetlands."

Section 7.15 Flags; Banners; Signs. Subject to Section 47F-121 of the Planned Community Act, no sign (including political signs), poster, display, billboard or other advertising device, including "For Sale" and "For Rent", security service or construction signs, banner or flag (including flags of the United States of America and the State of North Carolina) shall be displayed on or about the exterior of any Dwelling Unit, or in the Common Areas without the prior written consent of the Board. Notwithstanding the foregoing, (i) Owners shall have the right to display seasonal flags and flags of the United States of America and the State of North Carolina on nationally recognized holidays, and (ii) Declarant shall have the right to maintain upon the Property signage, banners and flags during the Period of Declarant Control, provided those signs comply with applicable governmental regulations.

Section 7.16 Power Equipment. The use of motorized lawn mowers, lawn tractors, grass trimmers, garden tillers, chain saws and other motorized (including electric and gasoline-powered engines, lawn and garden maintenance equipment) is prohibited before 8:00 a.m. and after 8:00 p.m. Monday – Saturday of each week and before 11:00 a.m. and after 8:00 p.m. Sunday of each week.

Section 7.17 Hoses, Pipes and Cables. Except for temporary use of hoses and the like which are reasonably necessary in connection with normal lawn care, no hose, water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground, unless such installation is expressly approved by the ACC.

Section 7.18 Vegetable Gardens. Vegetable gardens are not permitted on any Lot unless placed in the rear portion of the Lot in such manner as not to constitute a nuisance or unsightly condition to the Owner of any adjoining Property, as determined by the ACC in its discretion.

Section 7.19 Window Coverings. Bedding materials, plastic sheets, towels or other similar non-standard window treatments shall not be hung or placed in or on any window of any Dwelling Unit located on any Lot, except on a short-term temporary basis approved in advance by the ACC.

Section 7.20 Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above Roadways shall be placed or permitted to remain on any corner Lot within the triangular areas shown on the Plat as "Sight Triangles." The same sight line limitations shall apply on any Lot within the triangular area formed by (i) the line that runs from the point of intersection of (a) the edge of a Roadway's pavement and (b) the edge of the pavement of the driveway on such Lot for a distance of ten (10) feet along such Roadway pavement away from such driveway pavement, (ii) the line that runs from said point of intersection for a distance of ten (10) feet along such driveway pavement away from such Roadway pavement, and (iii) the straight line that connects the ending points of the lines described in the foregoing clauses (i) and (ii). No tree shall be permitted to remain within such triangular areas unless the foliage line is maintained at an appropriate height to prevent obstruction of sight lines.

Section 7.21 Utilities. Except for overhead power lines in place on the date of this Declaration, all utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the ACC in writing, located elsewhere on the Lot provided they are adequately screened as required by the ACC in accordance with the provisions of this Declaration.

Section 7.22 Sediment Control. Sufficient sediment control measures, including installation and maintenance of silt fences, straw bale fences, sediment basins, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the ACC, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion, as more particularly described in the Guidelines.

Section 7.23 Building Envelope. No building or other Improvement on any Lot (including any stoops or porches, patios, decks, terraces, etc.) shall be erected or permitted to remain outside of the Building Envelope for that particular Lot. The Building Envelope for any Lot will be established by the ACC, and available from the ACC on an unrecorded map. The Dwelling Unit on such Lot must be located within the Dwelling Unit building pad area (which may have dimensions smaller than those of the Building Envelope) shown on said unrecorded map ("Dwelling Unit Building Pad Area"). Provided, however, and notwithstanding the foregoing, (i) docks, piers and boatslips appurtenant to a Waterfront Lot are exempt from the Building Envelope restriction, provided they are approved by the ACC in accordance with the applicable provisions of the Guidelines, (ii) exterior steps at the front and rear of a Dwelling Unit may project outside of the Dwelling Unit Building Pad Area up to a distance of five (5) feet (even if such projection also extends into the setback area established by the Building Envelope), and (iii) fireplace chimney structures projecting from the side of a Dwelling Unit may encroach no more than eighteen (18) inches outside of the Dwelling Unit Building Pad Area (even if such projection also extends into the setback area established by the Building Envelope). The ACC shall have the right in its sole discretion to make exceptions to any Building Envelope or Dwelling Unit Building Pad Area or to recognize any special topography, vegetation, Lot shape or dimension, or other site-related conditions. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all Improvements erected during the period such requirements are in effect shall conform thereto.

Section 7.24 Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules and established by the ACC.

Section 7.25 Combination or Subdivision of Lots. If an Owner owns two (2) or more adjacent Lots, and wants them to be considered as one Lot, then such Lots shall (except as provided herein) be considered as one Lot for the purposes of this Article VII upon the recordation in the County Registry, of an instrument by such Owner expressing such intent, such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII. A copy of such recorded instrument shall be promptly

delivered by such Owner to the ACC. The Building Envelopes, Dwelling Unit Building Pad Areas (as defined in Section 7.23), setback lines, and easements reserved in this Declaration affecting such Lots shall be adjusted accordingly by the ACC. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, Declarant reserves the right to designate said combined Lots as one (1) Lot or multiple Lots, in Declarant's sole and absolute discretion, for purposes of payment of Assessments (which right Declarant may, without obligation to do so, assign to the Association at such time as Declarant may choose). No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant for any reason.

**Section 7.26 Restricted Activities in Common Areas and Maintenance Areas.** Except for the activities of Declarant and its agents in connection with development of the Project and except for the activities of the Association and its agents in the performance of the Association's duties under this Declaration, no cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas or the Maintenance Areas. There shall be no obstruction of the Common Areas or the Maintenance Areas, nor shall anything be kept or stored in the Common Areas or the Maintenance Areas, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas or the Maintenance Areas, without the prior written consent of Declarant so long as Declarant owns any portion of the Property and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or the Maintenance Area 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 construction activities on the Property.

**Section 7.27 Unightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages.

**Section 7.28 Sewage Disposal; Septic Easements.** Every Lot shall either be served by a Septic System approved by Declarant for the disposal of sewage or connected to a private or public sewage disposal system, at the option of and as required by Declarant. With respect to the Parkwood at Falls Cove section of the Project, Declarant makes no representation regarding the future availability of public sewer service. All Septic Systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of, the ACC (including all requirements set forth in the Guidelines) and all governmental entities and regulatory agencies having jurisdiction. All Owners, by purchasing property subject to this Declaration, acknowledge that any governmental permit or approval allowing for the construction and operation of a Septic System or other private sewage disposal system may be limited in duration in accordance with the terms thereof, and neither Declarant, nor the Association, nor the ACC, nor the officers, directors, members, employees, agents or affiliates of any of them, shall have any liability arising directly or indirectly out of the

inability of an Owner to obtain any such permit or approval (including an extension or continuation) following the initial expiration thereof.

Non-exclusive easements for the purposes of providing septic service and for use as septic drainage fields ("Septic Easements") are hereby reserved by Declarant and granted, over, across and under the Septic Easement Areas to and for the benefit of the Association and the Septic Lot Owners, as more specifically provided herein. Each of the Septic Easements is an appurtenance to and run with the title to the Lot it services and for which it is reserved. Any deed, deed of trust, mortgage, transfer or other conveyance of any of said Lots shall also transfer or convey the Septic Easement appurtenant to such Lot, even if not expressly included therein. Each Septic Easement grants to the Association (but not any Septic Lot Owner) and reserves in favor of Declarant the right to construct, install, excavate, dig, build, maintain, operate, remove and reinstall a Septic System and related lines, equipment and apparatus in and upon the Septic Easement Area over which such Septic Easement is reserved, and to clear (and continue to clear as necessary) all trees, brush and other plants and to remove all rocks if necessary for the proper construction, installation and maintenance of said Septic System and related lines, equipment and apparatus. Provided, however, the Owner(s) of the Lot(s) which any Septic System is to service shall promptly pay to the Association (or Declarant, as the case may be) all costs incurred by the Association (or Declarant, as the case may be) in connection with such installation, operation, inspection, maintenance and/or removal of said Septic System, and all such costs shall constitute Special Septic System Assessment(s).

Each Lot Owner shall maintain, in accordance with all rules and regulations and requirements of the ACC (including all requirements set forth in the Guidelines) all portions of any Septic System or other sewage disposal system located on such Lot, and the Association shall maintain (and make Special Septic System Assessments against the Lot Owner whose Septic Lot is serviced by the Septic System to fund the costs of such maintenance) all portions of any Septic System located within a Septic Easement Area (i) in an orderly condition, clean and free from debris, together with the landscaping thereon (if any), in accordance with the highest standards for residential developments (as determined by Declarant from time to time in its discretion so long as Declarant owns any portion of the Property), including any upkeep, repair, removal and replacement of any landscaping, utilities, or Improvements located thereon, and (ii) in a good operating condition in compliance with any requirements imposed by Declarant, the Association, or any governmental authority. If any Septic System or other sewage disposal system located on a Lot is not maintained by the applicable Lot Owner as set forth herein, Declarant or the Association, in its sole discretion, may enter such Lot to perform such maintenance and may levy a Special Septic System Assessment upon the Lot Owner for the purpose of maintaining, repairing or replacing the Septic System or other sewage disposal system serving such Lot. In addition to the foregoing, the Association (or its designee) shall have the right to enter any Lot from time to time for purposes of inspecting and/or maintaining any Septic System or other sewage disposal system and may levy a Special Septic System Assessment to pay for any costs incurred in connection with such inspection and/or maintenance. Without limitation, the Association intends to conduct periodic Septic System inspections as more particularly described in Section 7.29 and levy Special Septic System Assessments to pay for the costs thereof. In this regard, as more particularly set forth in Section 5.01, each Owner of a Lot (other than Declarant) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (in addition to other

assessments provided for herein) *Special Septic System Assessments* as levied in the discretion of the Association, and each such Assessment or charge, together with interest, costs, reasonable attorneys' fees, and fines imposed shall be a charge and a continuing lien upon the Lot against which each such Assessment or charge is made and shall also be the personal obligation of the Owner of such Lot effective at the time when the Assessment fell due.

Declarant hereby reserves unto itself, its successors and assigns, and grants to the Association, a non-exclusive easement burdening each Lot to which a Septic Easement is appurtenant for the purpose of connecting any residence(s) upon such Lot(s) to any public or private sewer line providing service accessible to such Lot, including access across such Lot and the right to install any pipes and apparatus as may be necessary to connect any such residence(s) to such sewer line (the "Sewer Connection Easement"). By reserving the Sewer Connection Easement, Declarant has not obligated itself, its successors or assigns, or the Association, to connect any public or private sewer line to the above-described Lots and the exercise of such rights under the Sewer Connection Easement shall be at the sole discretion of Declarant, its successors or assigns, or the Association, as the case may be.

If Declarant has conveyed a Septic Easement Area to the Association and Declarant subsequently reasonably determines that a particular Septic Easement Area is no longer needed in connection with any Septic System, Declarant, by written notice delivered to the Association, shall have the right to require the Association to convey fee simple title to such Septic Easement Area to Declarant by delivering a special warranty deed to Declarant, subject only to matters of title acceptable to Declarant, no later than ten (10) days after such notice.

Section 7.29 Septic System Inspection and Septic Inspection and Repair Easement. The Association shall cause all Septic Systems located within the Project to be inspected no less than every six (6) months. Such inspections shall be conducted in order to confirm that each such Septic System is properly functioning and is generally in compliance with any applicable laws, ordinances or governmental regulations. As set forth in Section 7.28, the costs of such inspections shall be assessed against the Septic Lot Owners as a Special Septic System Assessment. If an inspection reveals that a Septic System is not functioning properly, or is otherwise not in compliance with any applicable law, ordinance or regulations, the inspector shall notify the Association and any other party or agency as required by law. The Association shall notify the Owner of the Lot to which the Septic System is appurtenant of the problem or noncompliance and such Owner shall be responsible for immediately repairing the Septic System at such Owner's sole cost and expense and providing the Association, within thirty (30) days, with proof of such repair. The Association shall be authorized to notify any applicable governmental or regulatory agencies or officials of the malfunctioning or noncompliance of any Septic System located within the Project.

The foregoing notwithstanding, neither Declarant, the Association, nor its directors, officers, agents or employees shall be responsible for damages or otherwise to anyone by reason of mistake of judgment, omission, negligence or nonfeasance arising out of the inspection services performed pursuant to this Declaration including any damages to any Lot or property by reason of the failure to inspect or the failure of such inspections to detect any malfunction, damage or noncompliance with law.

Declarant hereby reserves a non-exclusive perpetual easement over all property within the Project, including Lots, benefiting Declarant and the Association for the purposes of conducting the Septic System inspections and repairing and/or replacing any Septic System if an Owner fails to repair or replace any Septic System within thirty (30) days of notification by the Association ("Septic Inspection and Repair Easement").

Section 7.30 Encroachment Agreement with the North Carolina Department of Transportation. Certain or all of the pipes which are a part of the Septic System transporting sewage from the Septic Lots to the Septic Easement Areas will be or have been constructed within the rights-of-way of the Roadways which will be maintained by the Association as set forth in Section 4.06 until accepted for dedication and public maintenance by the North Carolina Department of Transportation or other governmental entity. Prior to such acceptance for public maintenance, the North Carolina Department of Transportation or other governmental entity will or may require all Lot Owners to execute an encroachment agreement (each an "Encroachment Agreement") to allow the Association, Declarant and/or a Septic Lot Owner to have the right to construct, install, excavate, dig, build, maintain, operate, remove and reinstall septic lines, pipes and related equipment and apparatus within and upon the road rights-of-way adjacent to the Lots. Upon the request of the Association or Declarant, each Lot Owner, by acceptance of a deed of a Lot in the Project, agrees to execute any such Encroachment Agreement required by the North Carolina Department of Transportation or other governmental entity. In the event a Lot Owner does not execute the requested Encroachment Agreement, the North Carolina Department of Transportation or other governmental entity will or may not accept the Roadways for dedication and will not maintain the Roadways as public roads and therefore, the Association will be required to continue to maintain the Roadways. The Association shall have the power and right to levy a Special Individual Assessment as provided in Section 5.05 against any Lot Owner(s) who has failed to execute an Encroachment Agreement, thereby resulting in the failure of the North Carolina Department of Transportation or other governmental entity to accept the Roadways for maintenance, in the amount of any required expenditures incurred by the Association in maintaining the Roadways. Also, each Owner of a Lot (other than Declarant) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to appoint the Association as such Owner's attorney-in-fact for the purpose of executing any Encroachment Agreement, such appointment constituting a power coupled with an interest and being irrevocable. The failure of the North Carolina Department of Transportation or other governmental entity to accept the Roadways for maintenance may also prevent school buses from using the Roadways.

Section 7.31 Nuisances. It is the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot or Tract shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot or Tract, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot or Tract any plants or animals or device or thing of any sort whose activity or existence in any way is noxious,

dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of structure or any unimproved Lot or Tract unless required by law. Without limiting the authority of Declarant and the Board of Directors to make, in their respective discretion, determinations as to whether the terms of this Section 7.31 have been violated and to take action to enforce the provisions of this Section 7.31, each Owner shall be primarily responsible for enforcement of such provisions by individual legal action or through involvement of public authorities.

**Section 7.32 Diligent Construction.** All construction, landscaping or other work which has been commenced on any Lot or Tract must be continued with reasonable diligence to completion and no partially completed structure or other Improvements shall be permitted to exist on any Lot or Tract, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the ACC. Any damage to the Roadways, curbs or sidewalks or any part of any Common Area, Maintenance Area or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements on any portion of the Property and such builder's subcontractors shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the ACC (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, curbs, gutters or sidewalks or any part of any Roadway, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements, in particular, but not by way of limitation, as a result of such Owner's builder or such builder's subcontractors' violation of the requirements set forth in the immediately preceding sentence.

**Section 7.33 Public Water System; No Private Individual Wells; Irrigation Restrictions.** All water supplies necessary to serve the Project (the "Water System"), and all water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be owned, operated, repaired and maintained by the Town of Troutman, its successors and assigns, duly licensed and operating under the authority granted by the North Carolina Utilities Commission. The Water System shall be the sole source of water supplies to the Project, and no well may be dug or constructed on any Lot for the purpose of providing domestic water supply. Provided, however, and notwithstanding the foregoing, in the event Declarant or the Association operates or uses any type of irrigation system to service the landscaping and/or other exterior areas on the Common Areas, any portion or all water necessary for the operation and use of such irrigation system may be obtained from the Lake (without being required to be obtained from the Lake) through lines and/or other equipment approved by Declarant and any regulatory body having jurisdiction or from wells dug or constructed on the Common Areas.



**Section 7.34 Docks and Piers.** The Owner of a Waterfront Lot may construct one (1) Waterfront Lot Pier (containing only one (1) boatslip) within the Pier Zone adjacent to said Waterfront Lot in accordance with the applicable provisions of the Guidelines, provided that such Lot is not located in an area where the narrowness of a cove precludes construction of a dock or pier as determined by Duke Energy Corporation and/or any governmental entity having jurisdiction at the time such Improvements are to be constructed. Any waterfront Improvement shall have a low profile and open design to minimize obstruction of neighbors' views. Enclosed or covered docks, piers, or boat houses will not be allowed. No dock shall contain any solid or other storage-like surface at any level beyond three (3) feet above the dock floor area. No covered, two-level or enclosed pier or dock will be permitted.

The placement, construction, or use of any pier, dock, boatslip structure or other Improvement within or upon the waters of the Lake is and shall be subject to each of the following:

- (a) the Guidelines and any easements, restrictions, rules and regulations for construction and use promulgated by the Board and/or the Association;
- (b) all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereon, including the Federal Energy Regulatory Commission; and
- (c) rules and regulations, privileges and easements affecting the Property and the waters and submerged land of the Lake established by Duke Energy Corporation, its successors and assigns. (Duke Energy Corporation controls access to, and the use and level of, the waters of the Lake. All Owners, the Association, Declarant and Guild Builders must receive a permit from Duke Energy Corporation [or a successor manager of the Lake, under authority from the Federal Energy Regulatory Commission] prior to any alterations therein.)

No pier, dock, boatslip structure or other similar Improvement shall be constructed by any Waterfront Lot Owner outside of the Pier Zone. Additionally, no boat (including a houseboat) docked at a fixed pier or a floating boat dock (appurtenant to any Waterfront Lot) shall be located outside the Pier Zone. Furthermore, each Waterfront Lot Owner shall be entitled to construct only one (1) boatslip within the applicable Pier Zone, and in no event shall any additional boatslips, mooring posts or similar Improvements be constructed within such Pier Zone. It is the intent of the immediately preceding sentence that no more than one (1) boat be docked or otherwise stored within any Pier Zone at any one time. ALL WATERFRONT LOT OWNERS, BY PURCHASING PROPERTY SUBJECT TO THIS DECLARATION, ACKNOWLEDGE THAT THEY SHALL BE RESPONSIBLE FOR OBTAINING (AND FOR CONDUCTING ALL REQUIRED ACTIVITIES, INCLUDING ANY DREDGING, NECESSARY IN CONNECTION WITH OBTAINING) ANY PERMIT, LICENSE OR LEASE ALLOWING FOR THE CONSTRUCTION AND USE OF ANY PIER, DOCK, BOATSLIP STRUCTURE OR OTHER SIMILAR IMPROVEMENT WITHIN OR UPON THE WATERS OF THE LAKE AND THAT SUCH PERMIT, LICENSE OR LEASE SHALL BE LIMITED IN DURATION, AND NEITHER DECLARANT, NOR THE ASSOCIATION, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AGENTS OR AFFILIATES OF

EITHER OF THEM, SHALL HAVE ANY LIABILITY ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN ANY WAY RELATED TO ANY SUCH PERMIT, LICENSE OR LEASE.

Section 7.35 Boat Ramps. No boat ramps of any kind shall be permitted on any Lot, and no boat shall be placed in (or removed from) the waters of the Lake from any Lot. All watercraft shall be launched at a public boat ramp outside the Project. Finally, all boats shall be refueled and maintained at a public boat ramp outside the Project.

Section 7.36 Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot, Tract or other portion of the Property and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot, Tract or other portion of the Property shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s), Tract(s) or other portion of the Property owned by such Owner (including applicable zoning and watershed laws, rules, regulations and ordinances). Furthermore, each Owner of a Waterfront Lot, Waterview Lot or Cove Lot shall comply with the conditions, limitations and restrictions set forth in the Lake Buffer Guidelines.

Section 7.37 Occupants Bound. All provisions of this Declaration, any Additional or 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 even though Occupants are not specifically mentioned.

Section 7.38 Rules of the Board. All Owners of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including reasonable attorneys' fees.

## ARTICLE VIII. ARCHITECTURAL AND LANDSCAPING CONTROL

Section 8.01 General. Notwithstanding anything to the contrary contained in this Declaration, no Improvements, including site preparation on any Lot or Tract, change in grade or slope of any Lot or Tract, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot or Tract, including in any Lake Buffer Area shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Section 8.06, until: (a) the ACC has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural and Landscape Guidelines; (b) the fees set forth in or contemplated in this Article VIII have been paid; and (c) the contracts identified in this Article VIII have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish, by

Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. Except as otherwise expressly provided herein, the provisions of this Article VIII shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or Tract or upon any of the Common Areas or Maintenance Areas.

The Board may delegate to the ACC any powers or authority reserved or granted to the Board under this Article VIII.

Section 8.02 Composition of ACC. So long as Declarant owns any Lot, Tract or other portion of the Property, the members of the ACC shall be appointed by Declarant in its sole discretion. At such time as Declarant no longer owns any Lot, Tract or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the ACC, the members of the ACC shall thereafter be appointed by the Board. The members of the ACC shall be appointed annually and will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the ACC to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the ACC need not be Owners of property in the Project. In the event of the death or resignation of any member of the ACC, the party or body then having the authority to appoint members to the ACC shall have full authority to designate and appoint a successor. Members of the ACC may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained herein to the contrary, the ACC 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 ACC as described in this Article VIII.

Section 8.03 Architectural and Landscape Guidelines; Lake Buffer Guidelines.

- (a) The ACC shall, from time to time, publish and promulgate the Architectural Guidelines. The Architectural Guidelines shall be explanatory and illustrative of the general intent of the development of the Property, both as to architecture and design, and are intended as a guide to assist the ACC in reviewing plans and specifications for Improvements (excluding only landscape Improvements, which are addressed in Section 8.03(b)). The Architectural Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of non-landscape Improvements) to the ACC and the fees to be imposed by the ACC, as more specifically described in Section 8.07; and the Architectural Guidelines shall address the Guild Builders, as more specifically described in Section 8.08. In any event, the Architectural Guidelines shall not be binding upon the ACC, may be revised and amended at any time by the ACC, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of non-landscape Improvements) submitted to the ACC for approval. Furthermore, the ACC may publish and promulgate different Architectural Guidelines for different Phases, Tracts, sections or portions of the Property.

- (b) The ACC shall, from time to time, publish and promulgate the Landscape Guidelines. The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the ACC in reviewing plans and specifications for landscape Improvements. The Landscape Guidelines shall also set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the ACC and the fees to be imposed by ACC, as more specifically described in Section 8.07. In addition, the Landscape Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees and including requirements applicable to the vegetative buffer areas depicted on any Plat. [With respect to any Waterfront Lot, Waterview Lot or Cove Lot the ACC shall, from time to time, publish and Lake Buffer Guidelines governing landscaping within the Lake Buffer Area and, as used in this Declaration, the phrase "Landscape Guidelines" shall be deemed to include the Lake Buffer Guidelines with respect to any Waterfront Lot, Waterview Lot or Cove Lot.] Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the ACC of any landscaping plan or other landscaping Improvement in connection with landscaping on a Lot, Tract or other portion of the Property shall be based upon the conformity of such plan or Improvement with the Landscape Guidelines. In any event, the Landscape Guidelines shall not be binding upon the ACC, may be revised and amended at any time by the ACC, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of landscaping plans, specifications and other materials submitted to the ACC for approval. Furthermore, the ACC may publish and promulgate different Landscape Guidelines for different Phases, Tracts, sections or portions of the Property.
- (c) The ACC is also hereby authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.
- (d) The Architectural Guidelines, the Landscape Guidelines, the Lake Buffer Guidelines, and the construction rules described in Section 8.03(c) shall herein collectively be referred to as the "Architectural and Landscape Guidelines" or the "Guidelines." The ACC 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 8.04 Enforcement.

- (a) The provisions of this Article VIII are intended to permit control of the architectural design and landscaping, to establish quality standards for construction and construction, and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration,

acknowledge that a violation of any such provisions could result in irreparable harm to other Owners of property in the Project and to Declarant a monetary measure of which harm would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce the provisions of this Article VIII by a proceeding at law or in equity against any Person violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the ACC, 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 is any violation of the terms of any approval by the ACC, of the Architectural and Landscape Guidelines, of this Declaration or any Additional Declaration, or of any amendment to any of the foregoing.

- (b) If any Improvements are commenced or constructed in violation of this Article, the Association may require the Owner of such Improvements to restore them to the condition existing prior to their construction (including their demolition and removal). The Association may, but need not, cause such restoration, demolition and removal to be performed and to levy the amount of the cost of doing so as a Special Individual Assessment against the Lot, Tract or portion of the Property upon which such Improvements were commenced or constructed. If it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Architectural and Landscape Guidelines, the Association may recover its court costs, attorneys' fees and expenses, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot, Tract or other portion of the Property upon which such Improvement was commenced or constructed.

Section 8.05 Failure of the ACC to Act. If the ACC fails to approve or disapprove or reject as being inadequate any Submittal (defined below) within thirty (30) business days after receipt thereof, and if the ACC shall again fail to approve, disapprove or reject as being inadequate such Submittal within ten (10) business days after additional written request to act on such Submittal is delivered to the ACC following the passage of such first thirty (30) business day period, it shall be conclusively presumed that the ACC has approved such Submittal. Notwithstanding the foregoing, the ACC shall not be deemed to have waived any of the requirements set forth in Section 8.07, Section 8.08 or Section 8.09. In addition, the ACC has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Additional Declaration. The term "Submittal" shall mean plans, specifications and other submittals that conform (and which relate to Improvements that will conform) with the requirements hereof and of the Architectural and Landscape Guidelines, and that is a full and complete submittal, in accordance with the Architectural and Landscape Guidelines, of all items that were to have been submitted to the ACC. If a Submittal is not sufficiently complete or is otherwise inadequate, the ACC may reject it as being inadequate or may approve or disapprove part of it, conditionally or unconditionally, and reject or approve the balance. The ACC is authorized to request the submission of samples of proposed construction materials.

**Section 8.06 Variances.** Upon submission of a written request for a variance, which request shall set forth, among other things, the extraordinary circumstances applicable to a Lot giving rise to the need for a variance, the ACC may, from time to time, in its sole discretion, permit an Owner to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, the ACC may grant a variance only due to the existence of extraordinary circumstances applicable to a Lot, which extraordinary circumstance (i) has not been caused by the Owner of such Lot and (ii) materially impairs the ability of an Owner to construct a Dwelling Unit on such Owner's Lot. Any variance granted 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 restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the ACC has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the ACC 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 other such requests and the grant of a variance to any Owner shall not constitute a waiver of the ACC's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration against any other Owner. If a variance is granted, the Owner receiving such variance shall comply with the more restrictive of the terms of the variance or applicable local, state or federal laws (including local zoning and development laws), and the granting of a variance shall not relieve any Owner from the obligation of complying with such laws. Notwithstanding anything to the contrary set forth herein, in no event shall a variance granted by the ACC be deemed a waiver or assurance of action on any future variance request.

**Section 8.07 Fees Required by the ACC.** The ACC, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the ACC pay one or more fees to the ACC or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the ACC and shall be set forth in the Architectural and Landscape Guidelines.

**Section 8.08 Guild Builders.**

- (a) The ACC may require, in its sole discretion, that each Person submitting plans and specifications to the ACC for the construction of Improvements (including, in addition to initial Improvements, Improvements which are the result of a "re-build" or a replacement or addition on a Lot) also submit to the ACC a copy of a fully signed contract (for the construction of such Improvements) between the Owner of the relevant Lot and a Guild Builder, as a condition to the commencement of construction of any such Improvements.
- (b) The ACC shall provide a list of Guild Builders in accordance with the provisions of the Architectural and Landscape Guidelines. To qualify as a Guild Builder, a builder must satisfy certain criteria and requirements established by the ACC and Declarant. However, the criteria and requirements established by the ACC and

Declarant for a builder to qualify as a Guild Builder are solely for the benefit and protection of the ACC and Declarant and are not intended to, and shall not be construed to, benefit any Owner or any other Person whatsoever.

- (c) The ACC and Declarant make no representation, express or implied, to any Owner or any other Person with regard to the Guild Builders, including: the existence and nature of insurance policies maintained by any Guild Builder; the financial status of any Guild Builder; the nature of any bond maintained by any Guild Builder; any Guild Builder's ability to perform its contractual obligations; any Guild Builder's compliance with building codes and other requirements, rules, laws and ordinances; the use of any substance or material, including any stucco or synthetic material by any Guild Builder; any Guild Builder's compliance with any licensing requirements, including the maintenance of any required builder's and/or contractor's license; and the failure of any Guild Builder to comply with any industry standard or any other reasonable standard with respect to its work or materials.
- (d) Neither the ACC nor Declarant, nor the officers, directors, members, employees, agents or affiliates of either of them, shall have any responsibility for any sum that any Person may deposit with a Guild Builder, including any earnest money deposit. The selection of a Guild Builder by an Owner shall be conclusive evidence that such Owner has independently satisfied all concerns the Owner may have about the Guild Builder's work product and qualifications. Owners shall not rely on the advice or representations of the ACC, Declarant or the officers, directors, members, employees, agents or affiliates of either of them in that regard.

Section 8.09 No Construction Without Payment of Fees and Use of a Guild Builder. Notwithstanding anything contained in this Article VIII to the contrary, plans and specifications for Improvements to be constructed on a Lot, Tract or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the ACC to be paid in connection with such Improvements, as provided in Section 8.07, shall have been paid to the ACC or Declarant as required. In addition, such plans and specifications shall not be deemed to have been properly submitted unless a copy of a fully signed contract between the Owner of the relevant Lot and a Guild Builder for construction of such Improvements (if required by the ACC), as provided in Section 8.08, shall have been submitted to the ACC.

Section 8.10 Sewer Pump System. Declarant or the ACC may determine, in its sole discretion, that a Lot requires a sewer pump system for the purpose of pumping sewage into a private or public sewage disposal system ("Sewer Pump System"). The Owner of any such Lot shall be responsible for incorporating the plans for the Sewer Pump System to service such Lot into the plans and specifications for Improvements on such Lot submitted to the ACC and for contracting for and scheduling the installation work for the Sewer Pump System by an installation company approved by the ACC. The Owner of any such Lot shall be responsible for the cost of initially installing and supplying electrical service to the Sewer Pump System and paying any "turn on" charges required by any governmental authority having jurisdiction. The Owner of any such Lot, upon and following the installation of the Sewer Pump System on said Owner's Lot, shall be

responsible for paying all costs of maintenance and repair (both emergency and non-emergency) of the Sewer Pump System. The Association has the authority (but has no obligation), should any Owner fail to perform such repairs and maintenance and pay such expenses, to perform and pay for them, in which case the Lot Owner shall reimburse the Association immediately upon request. If such reimbursement is not made to the Association immediately upon request, then the amount the Association has expended shall be enforceable by the Association against the Owner and the Lot as a Special Individual Assessment.

Section 8.11 Notices and Submittals. Notices and submittals to the ACC shall be in accordance with the notice provisions set forth from time to time in the Architectural and Landscape Guidelines.

Section 8.12 Separate Committee for Changes to Existing Improvements. If the Board appoints an Architectural Review Committee, then the ACC shall relinquish to the Architectural Review Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Review Committee shall be solely responsible for review and approval of the same. The composition of the Architectural Review Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Review Committee shall be set forth in the Architectural and Landscape Guidelines. Notwithstanding the foregoing, nothing herein shall be deemed to obligate the Board to appoint an Architectural Review Committee, and until an Architectural Review Committee is appointed, the ACC shall be responsible for reviewing and approving or disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this Article VIII and the Architectural and Landscape Guidelines.

Section 8.13 Limitation of Liability. No member of the ACC or the Architectural Review Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the ACC, nor the Architectural Review Committee (if applicable), 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 of, any plans and specifications. The approval of plans and specifications by the ACC or the Architectural Review Committee (if applicable) shall not be deemed or construed as a representation or warranty of the ACC or the Architectural Review Committee (as the case may be), 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, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby 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 ACC, the Architectural Review Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to



recover any such damages and hereby releases, demises, 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 any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 8.14 Miscellaneous. Members of the ACC and, if applicable, the Architectural Review Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the ACC and the Architectural Review Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the ACC and the Architectural Review Committee (if applicable), including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Section 8.04.

#### ARTICLE IX.

#### INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 9.01 Types of Insurance. The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

- (a) Fire. All Improvements, fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage amounts and determine the current replacement cost of Improvements, fixtures and 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. In addition to the provisions and endorsements set forth in Section 9.03 and Section 9.04, the fire and casualty insurance described herein shall contain the following provisions:

- 1) standard "Agreed Amount" and "Inflation Guard" endorsements;

- 2) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing

significant costs in the event of partial destruction of such building by an insured peril;

3) waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

4) a provision that the coverage will not be prejudiced by 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.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association or the Owners; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent the Association from collecting the proceeds.

- (b) Public Liability. The Board shall also be required to obtain and maintain, to the extent obtainable, public liability insurance and officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, in no event shall the amounts of such public liability insurance ever be less than \$2,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$2,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance 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. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Members, such public liability insurance shall be in amounts of not less than \$2,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts not less than \$2,000,000.
- (c) Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance

policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The obligation to obtain fidelity coverage as set forth in this paragraph shall be waived if the Board engages to manage the Association a management company which maintains such coverage.

- (d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable or as may be required by applicable law (including the Planned Community Act).

Section 9.02 Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and shall be a Common Expense.

Section 9.03 Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

- (a) recognition of any insurance trust agreement entered into by the Association;
- (b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and any insurance trustee; and
- (c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 9.04 General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A VIII" or better by the current issue of Best's Insurance Reports. 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, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 9.05 Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the Reserve Fund.

Section 9.06 Insufficient Proceeds. 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 against the Owners to cover the deficiency.

Section 9.07 Owner's Personal Property. Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor Declarant shall be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Parking Area or other Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Each Owner shall be solely responsible for all such personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability or other insurance for damage to or loss of such property.

Section 9.08 No Obligation to Insure Owners' Property. By virtue of taking title to a Lot or Tract within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or Tract or any Dwelling Unit or other property located thereon.

Section 9.09 Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason of failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot, Tract or Dwelling Unit and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner, and Occupant of a Lot, Tract or Dwelling Unit and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 9.10 Condemnation. Whenever all or part of the Common Area 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 Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, Tract, 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 Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of

value of the affected Lots, Tracts or other property, or Improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. 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 Area, Lots, Tracts or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, as determined by the Board in its sole discretion.

## ARTICLE X. EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, including the Septic Easements, Sewer Connection Easement and Septic Inspection and Repair Easement, hereby reserves unto itself, its successors and assigns, and grants to the Association and any other Persons hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including easements in favor of Declarant, the Association, the Owners, and all their family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 10.01 Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, lake maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 10.02 Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas 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 Areas for all proper and normal purposes including 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, any Supplemental Declaration, and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 10.03 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 or Tract, their family members, tenants, guests, invitees, successors and

assigns, and to each Occupant of a Lot or Tract, 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 10.04 Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. 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 Areas and Maintenance Areas 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 Areas and Maintenance Areas 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 redesignated 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 10.05 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 or Tracts, 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 easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees. The provisions of this Section 10.05 shall not be construed to allow any encroachment which could or does interfere with the acceptance of any Roadway or utility for public maintenance, all such encroachments being expressly prohibited and to be removed and the encroached upon area restored in a good and workmanlike manner at the expense of the Owner of the applicable Lot within such period of time as shall be specified by Declarant or the Association. Should any portion of the above-described removal and restoration work not be properly completed by the applicable Owner within the time period specified, Declarant and/or the Association may cause it to be completed (without obligation to do so), whereupon the Association shall make a Special Individual Assessment against such Owner to recover all costs incurred by Declarant and/or the Association in connection with completion of such removal and restoration work.

Section 10.06 Easements Regarding Trail System. 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, a perpetual, non-exclusive easement, right and privilege of passage and use, both pedestrian and non-motorized vehicular, over and across the Trail System, and the

right to use and enjoy any shelters, railing, boardwalks, or other facilities constructed or installed by Declarant or Association within the Trail System. The Trail System may be shown as "Hard Surface Trail Easement" and/or by similar designations on any Plat. Declarant further reserves, for the benefit of itself, its agents, employees, tenants, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, a perpetual non-exclusive easement to construct, install, operate, and maintain shelters, railing, boardwalks, and similar facilities and Improvements within the Trail System. The Association shall have the right to establish reasonable rules for the use of the Trail System, including limitations on the sorts of non-motorized vehicles permitted on the Trail System.

Section 10.07 Maintenance Areas. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

- (a) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for the Project, over, across and under those portions of the Property shown and designated as "Entry Easement" or by similar designation on the Plats (herein referred to as the "Entrance Monument Easements"). Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property so designated as entryways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other Improvements typically used for entryways.
- (b) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" or "Landscape, Signage and Utility Easement" on the Plats (herein referred to as "Landscape Easements").
- (c) Easements for the installation, maintenance, repair and removal of sidewalks, over, across and under those portions of the Property shown and designated as "Sidewalk Easements" on the Plat.
- (d) Easements for the installation, maintenance, repair and removal of hard surface or soft surface sidewalks, trails, walking or jogging paths, or similar pathways over, and shelters, railing, boardwalks, and similar facilities, across and under those portions of the Property being part of the Trail System.

The Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development (as determined by Declarant from time to time in its discretion so long as Declarant owns any portion of the Property).

Section 10.08 Easements for Common Driveways. Certain groups of Lots in the Project may be served by Common Driveways, as defined in the immediately succeeding paragraph of this Section 10.08, which will run over and across certain areas of the Property, as hereinafter described. The Lots which are part of a group which will be served by a Common Driveway and are therefore subject to the provisions of this Section 10.08 will be specified in the Supplemental Declarations and/or Additional Declarations for the Phases in which such Lots are located. Provided, however, the Owners of certain Lots shall have the right, but not the obligation, to have such Lots be served by a Common Driveway and therefore included within the designated group of Lots using such Common Driveway, which Lots will also be specified in the Supplemental Declarations and/or Additional Declarations for the Phases in which such Lots are located and which Lots shall herein be referred to as "Optional Lots." All Lots served by one Common Driveway, including those Optional Lots whose Owners have chosen to be served by such Common Driveway, shall herein be referred to as a "Group."

Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their successors and assigns, a perpetual non-exclusive easement over, across and under the area of the Property shown and designated as "Common Driveway and Utility Easement" (herein referred to as such) on the Plat of such Group and running to such particular Group. The above-described easement is hereby reserved and granted for the purposes of (a) paving, maintaining and repairing a Common Driveway to be erected on such easement area (the "Common Driveway"), and (b) laying, maintaining, repairing and replacing utility lines over, under and across such easement area, which non-exclusive easement shall include the right to go upon such easement area and any portion of the Property in the area of or adjacent to such easement area necessary to perform such work; provided, however, and notwithstanding the foregoing, no utility lines or equipment shall be placed or maintained within the Common Driveway area without the express prior written approval of the ACC, and absent such approval, utility lines servicing the Group shall access the Lots in the Group exclusively from publicly dedicated rights-of-way or through established easements. In addition, Declarant hereby grants to each Owner of a Lot in a Group, their successors and assigns, a perpetual, non-exclusive easement over and across any areas of the Property necessary for such Owner to tie his Lot into the Common Driveway and Utility Easement serving his Lot (the "Tie-In Easement"), which Tie-In Easement may also be used for the above-described purposes.

Declarant hereby reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their family members, guests, invitees, successors and assigns, and to each Occupant of a Lot in a particular Group, a perpetual, non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the above-described Common Driveway and Utility Easement serving such Group, and over and across any Tie-In Easement necessary, for the purpose of providing access, ingress and egress to and from the Lots in such Group.

Any Owner or Occupant of a Lot within a Group may and must use only the Tie-In Easement associated with such Lot and the Common Driveway and Utility Easement serving such Group as the means of access of such Lot to a public Roadway. Within the Common



Driveway and Utility Easements and the Tie-In Easements, no structure, planting or other material shall be placed or permitted to remain which could interfere with the use of the Common Driveway and Utility Easements and the Tie-In Easements for the above-stated purposes.

The Owner of each Lot within a Group shall pay for its attributable share of the construction of that Group's Common Driveway in accordance with the provisions of the Architectural and Landscape Guidelines.

Each Owner of a Common Drive Lot shall pay annually to the Association, within ten (10) days of the Board sending notice thereof to Owner, an amount ("Common Drive Reserve Assessment") to be held in escrow and used by the Board to pay for maintenance and repair of the Common Driveway. The Common Drive Reserve Assessment shall be set annually by the Board in its discretion. If at any time the amount in reserve is insufficient for the Board's then contemplated or actual expenses for repair or maintenance of the Common Drive, the Board may make a Special Individual Assessment as to the Owners of Common Drive Lots pursuant to the provisions of this Declaration to pay for such repair or maintenance and replenish the reserve.

The Owner of each Lot in a Group shall have the right to lay, maintain, repair and replace within the Common Driveway and Utility Easement, and within any Tie-In Easement as necessary, utility lines servicing its Lot, provided, that any such work shall be carried out in such a way so as not to interfere with the other Owners' reasonable use of the Common Driveway, and provided further that any Owner performing such work and causing disturbance to the pavement, concrete, landscaping or other features of the Common Driveway and Utility Easement, or to other property in the Project, shall repair the same to its condition prior to such work.

Section 10.09 Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including those certain easements shown and designated on the Plats as:

- (a) "Utility Easement";
- (b) "Public Storm Drainage Easement";
- (c) "Drainage & Utility Easement" (or "D&UE");
- (d) "Ingress/Egress Utility Easements"
- (e) "Permanent Drainage Easement";
- (f) "Private Storm Easement" (or "PSE");
- (g) "Private Sanitary Sewer Easement";
- (h) "Private Sanitary Sewer Right-of-Way.";
- (i) "Public Sanitary Sewer Easement";

- (j) "Public Sanitary Sewer Right-of-Way"; and
- (k) "Sanitary Sewer Lateral Easement" (or "SSLE").

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association, its successors and assigns, and include, without limitation, storm drainage easements of variable width, whether or not depicted on a Plat, over the entire area within all ditches along any Roadway.

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 10-foot strip of land adjacent to the front, side and rear boundary lines of all Lots within the Property and (ii) all Landscape Easements, 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. Within the easements established under this Section 10.09, no Improvement, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the ACC, over such easements.

Within certain drainage easements shown on the Plats and/or on other locations within the Property as initially installed by Declarant, there are underground storm drainage pipes, rip-rap, and similar storm drainage facilities. Each Owner shall be responsible for routine exterior maintenance of any such facilities located on his or her Lot, at such Owner's sole cost and expense, so that stormwater may continue to flow properly through such pipes and all drainage facilities, including keeping pipe outlets and swales clear of debris, leaves, and other material which may impede such flow of stormwater. If any Owner fails to perform such maintenance, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform such maintenance, and to assess the cost thereof as a Special Individual Assessment. If any obstruction within any such storm drainage facilities, whether on a Lot or on Common Area, is caused by the act or omission of any Owner or an Owner's contractor (e.g., siltation resulting from construction activities), the Owner whose acts or omissions or whose contractor's acts or omissions caused such obstruction shall remedy such obstruction at such Owner's sole cost and expense, and if such Owner fails to do so, the Association shall have the right, but not the obligation, to remedy such obstruction and to assess the cost thereof as a Special Individual Assessment. If any obstruction within any such storm drainage facilities occurs on a Lot or on Common Area, and the Association reasonably determines that the source thereof cannot be determined with a reasonable degree of accuracy, the Association shall have the right, but not the obligation, to remedy such obstruction and to pay the cost thereof from the Annual Assessments or Reserve Fund collected from all Lot Owners. Each Lot Owner acknowledges that (a) within the drainage easements there will be, from time to time, standing water, and (b) as more Dwelling Units are completed in the Project, run-off water flow will increase over their respective Lots.

Section 10.10 Irrigation Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, non-exclusive perpetual easements over, across and under those portions of the Property shown and designated as "Irrigation Easement" on the Plats for the installation, maintenance, repair and removal of irrigation systems to service the landscaping to be installed and maintained in the Landscape Easement areas (herein referred to as the "Irrigation Easements"). Within the Irrigation Easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, repair and maintenance of irrigation systems. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the ACC, over such easements.

Section 10.11 Declarant's Right to Assign Easements; Maintenance of Easement Area. 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 to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot or Tract.

Section 10.12 Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 10.13 Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's interest therein.

Section 10.14 No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

ARTICLE XI.  
LOT RE-SALES

Section 11.01 Applicability. Except for sales and conveyances by Declarant, no Lot (whether improved or unimproved) may be sold by any Owner except in compliance with the provisions of this Article XI.

Section 11.02 Right of First Refusal

- (a) Before any Lot (or any ownership interest therein) may be sold to any Person other than Declarant or its successors for less than the contract purchase price paid to Declarant by the first Owner of such Lot other than Declarant (the "Original Purchase Price"), the Owner or Owners of such Lot shall first offer in writing to sell the Lot to Declarant (including successors in title and assigns as provided in Section 1.20) at such price less than the Original Purchase Price for which the Owner proposes to sell the Lot to a Person other than Declarant. Before acceptance by an Owner of a bona fide offer to purchase a Lot for less than the Original Purchase Price, such Owner shall send to Declarant a copy of such bona fide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this Section 11.02. If Declarant or its successor does not accept or reject in writing said offer of sale within thirty (30) days from the date of receipt of the same, then the Owner of such Lot shall have the right to sell the Lot to the third party making such bona fide offer pursuant to such bona fide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for purchase of a Lot for less than the Original Purchase Price. Any Owner who buys a Lot from another Owner shall be governed by the provisions of this Article and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any Lot. Provided, however, the right of first refusal reserved by Declarant pursuant to this Section 11.02 shall be valid and enforceable with respect to any Lot only for a period of twenty (20) years from the date of the first conveyance of such Lot from Declarant to an Owner other than Declarant, and upon the expiration of said twenty (20) year period, the Owner or Owners of such Lot shall have the right to sell the Lot to any Person at any price without the obligation to offer the Lot to Declarant. Further provided that this Section 11.02 shall not be applicable with respect to any foreclosure sale of a Mortgage on a Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase a Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose.

Should an Owner fail to comply with the provisions of this Section 11.02 and sell a Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Section 11.02, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Section 11.02.

- (b) The personal representative, heirs, successors and assigns of any Owner who dies while owning any Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article.
- (c) In the event Declarant exercises its right of first refusal pursuant to Section 11.02(a), the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in Section 11.02(a), in cash or cash equivalent. The Owner shall deliver to Declarant a special warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.
- (d) The right of first refusal reserved by Declarant in this Article XI shall run with the title to each Lot in the Project and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a third party. The provisions of this Article XI shall constitute record notice to all purchasers of Lots in the Project of the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in the Project subject to the provisions of this Article XI.

Section 11.03 Re-Sale Certificate and Agreement. Before any Lot or any ownership interest therein (whether such Lot is improved or unimproved) may be sold by any Person other than Declarant to any Person other than Declarant, the seller of such Lot must comply with the following procedures and requirements:

- (a) Promptly following the execution of any agreement for sale of a Lot, but in no event later than ten (10) business days prior to the closing of the sale and conveyance of such Lot, the Owner thereof shall submit the copy of such agreement to Declarant (if such agreement is executed prior to the end of the Period of Declarant Control) or to Association (if such agreement is signed after the end of the Period of Declarant Control). Such agreement must state the consideration for the transfer or conveyance of the Lot (and, if such consideration is not cash, the cash equivalent or monetary value for such non-cash consideration); and such agreement must also contain all provisions required under the terms of this Declaration and all provisions required under the purchase and sale agreement pursuant to which such selling Owner purchased the Lot; and must contain any and all provisions required by any Re-Sale Certificate and Agreement or other agreement between such Owner and Declarant or the Association.
- (b) Promptly following the execution of any agreement for sale of the Lot, but in no event later than ten (10) business days prior to the closing of the sale and conveyance of such Lot, the Owner seller of such Lot and the purchaser of such Lot must sign and deliver to the Association and Declarant a Re-Sale Certificate and Agreement containing the following agreements, acknowledgments, disclosures, and waivers, and such other agreements, acknowledgments, disclosures and waivers as Declarant or Association shall deem reasonable or necessary in order to fully inform the purchaser as to the requirements of this Declaration, the requirements of any agreement entered into by and between Declarant or Association and such selling Owner with respect to the subdivision, the Lot, or the Association, and the requirements of any prior Re-Sale Certificate and Agreement:
- 1) Acknowledgement of the right of first refusal and resale requirements and procedures set forth in this Article XI;
  - 2) Acknowledgement of the requirement for ACC review and approval before the commencement of any construction on the Property as provided in Article VIII;
  - 3) Acknowledgement of marketing fees to be received by any listing broker in connection with the construction and/or sale of a Dwelling Unit and other Improvements on the Lot;
  - 4) Agreement to payment of the Transfer Fee payable upon the transfer by such Owner to the purchaser, and acknowledgement of the obligation to pay Transfer Fees on subsequent conveyances, as set forth in Article V-A, including agreement to the amount of the Transfer Fee payable upon the sale and conveyance contemplated by the agreement between such selling Owner and the purchaser;
  - 5) Disclosures and waivers concerning the Lake;

- 6) Disclosures of the current amount of Annual Assessments, and the date through which Annual Assessments have been paid by the selling Owner;
  - 7) The amount of any pending or current Supplemental Annual Assessments, Special Assessments, Special Individual Assessments or Special Septic System Assessments; and
  - 8) Disclosures and waivers concerning Guild Builders.
- (c) Both the selling Owner and the purchaser shall be subject to the levy of fines pursuant to the terms of this Declaration for failure to obtain and execute a Re-Sale Certificate and Agreement in connection with any transfer, until such Re-Sale Certificate and Agreement is executed and the Transfer Fee (if any) due is paid.

ARTICLE XII.  
GENERAL PROVISIONS

Section 12.01 Duty of Maintenance. Except for those portions, if any, of a Lot or Tract which the Association may elect to maintain or repair hereunder, the Owner of any Lot or Tract shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) or Tract(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Supplemental Declaration or Additional Declaration, in accordance with the provisions of the Architectural and Landscape Guidelines, and in a well-maintained, safe, clean and attractive condition at all times.

- (a) Such maintenance, as to unimproved and improved Lots or Tracts, shall include, but shall not be limited to, the following:
  - 1) Prompt removal of all litter, trash, refuse and waste;
  - 2) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
  - 3) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
  - 4) Complying with all governmental health and police requirements.
- (b) In addition, such maintenance, as to improved Lots or Tracts, shall include, but shall not be limited to, the following:
  - 1) Lawn mowing on a regular basis;
  - 2) Tree and shrub pruning;

- 3) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- 4) Keeping exterior lighting and mechanical facilities in working order;
- 5) Keeping lawn and garden areas alive;
- 6) Removing and replacing any dead plant material;
- 7) Maintaining natural areas and landscaping in accordance with the Architectural and Landscape Guidelines;
- 8) Keeping parking areas and driveways in good repair;
- 9) Repainting Improvements;
- 10) Repairing damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot or Tract on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the ACC and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot or Tract to its condition existing prior to the construction of such Improvements; and
- 11) Keeping well-maintained, in accordance with the terms hereof, any Common Area and/or Maintenance Area located within the boundaries of its Lot, to the extent such Common Area and/or Maintenance Area is not maintained by the Association as provided in this Declaration.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot or Tract shall commence only upon a Plat showing such Lot or Tract being recorded in the County Registry and upon the conveyance of such Lot or Tract by Declarant. If an Owner of any Lot or Tract has failed in any of the duties or responsibilities of such Owner as set forth herein, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which 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) perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in herein. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and



perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot or Tract on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner.

**Section 12.02 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 Registry. At the end of such thirty (30) year period, the easements, 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 a respective period, by eighty percent (80%) vote of the Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. 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 described in Section 12.03.

**Section 12.03 Amendment.** Except as otherwise expressly provided herein and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Members is not obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at such a meeting and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Members is required pursuant to this Section 12.03 shall become effective when an instrument executed by the Members voting for such amendment or modification is filed of record in the County Registry; provided, however, such an amendment or modification, in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the

amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 12.03.

Notwithstanding the terms of the immediately preceding paragraph of this Section 12.03, for a period of ten (10) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including amendments or modifications to any procedural, administrative or substantive provision of this Declaration. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which are (i) correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified herein and (ii) necessary to cause this Declaration or any Additional Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other governmental agency. In no event shall any provision of this Declaration which creates a right in favor of Declarant, including Section 7.29, be amended without Declarant's prior written consent, which consent may be withheld in Declarant's sole discretion. Any amendment to this Declaration by Declarant need only be executed by Declarant, and shall be effective when so executed and recorded in the County Registry.

Section 12.04 Special Declarant Rights. Notwithstanding anything else in this Declaration, Declarant reserves the right and power, and each Owner by the acceptance of a deed to a Lot does grant to Declarant a power of attorney (which power of attorney is coupled with an interest and runs with the title to a Lot and is irrevocable except by Declarant) without the approval or signature of any Owner, to exercise any Special Declarant Rights. No amendment to this Declaration altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

Section 12.05 Release of Property. For a period of ten (10) years after the recordation of this Declaration, Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association, any Member or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the County Registry. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

Section 12.06 Enforcement; Litigation. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other

or future violation of any thereof. Except as otherwise expressly provided in this Declaration, no judicial or administrative proceeding (including any judicial or administrative proceeding against Declarant) shall be commenced or prosecuted by the Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with the Bylaws. The immediately preceding sentence shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project. This Section 12.06 shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 12.07 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 12.08 Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner or Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or Member appearing on the records of Declarant or the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is 400 South Tryon Street, Suite 1300, Charlotte, North Carolina 28285.

Section 12.09 Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 12.10 No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or other property located within the Project or the Common Area.

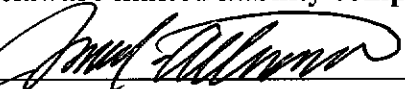
Section 12.11 Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to

adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration.

Section 12.12 Construction. The headings of Sections in this Declaration are provided for convenience only and will not affect its construction or interpretation. All words used in this Declaration will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

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

**FALLS COVE DEVELOPMENT, LLC,  
a Delaware limited liability company**

By: 

Name: James L. Atkinson

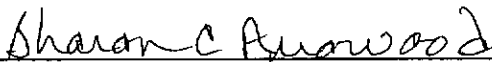
Title: Vice President

IREDELL County, North Carolina

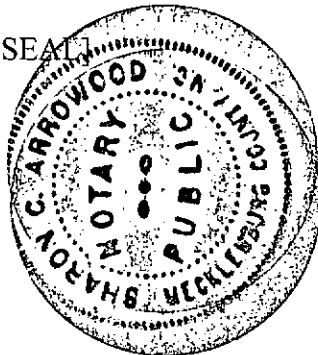
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

James L. Atkinson  
Name of principal(s)

Date: June 29, 2007

  
Official Signature of Notary Public  
Sharon C. Arrowood, Notary Public  
Notary printed or typed name

[OFFICIAL SEAL]



My commission expires: October 12, 2008

Exhibit "A"

DESCRIPTION OF PROPERTY

BEING all of the property depicted on the plats entitled "FINAL PLAT OF FALLS COVE-PARKWOOD PHASE 6 MAP 1 SHEET 1 OF 3," "FINAL PLAT OF FALLS COVE-PARKWOOD PHASE 6 MAP 1 SHEET 2 OF 3," and "FINAL PLAT OF FALLS COVE-PARKWOOD PHASE 6 MAP 1 SHEET 3 OF 3" recorded in Plat Book 52 at Pages 43 - 45 in the Office of the Register of Deeds for Iredell County, North Carolina; all of the property depicted on the plats entitled "FINAL PLAT OF FALLS COVE-STREAMWOOD PHASE 1 MAP 1 SHEET 1 OF 3," "FINAL PLAT OF FALLS COVE-STREAMWOOD PHASE 1 MAP 1 SHEET 2 OF 3," and "FINAL PLAT OF FALLS COVE-STREAMWOOD PHASE 1 MAP 1 SHEET 3 OF 3" recorded in Plat Book 52 at Pages 46 - 48 in the Office of the Register of Deeds for Iredell County, North Carolina; and all of the property depicted on the plats entitled "FINAL PLAT OF FALLS COVE-STREAMWOOD PHASE 1 MAP 2 SHEET 1 OF 2" and "FINAL PLAT OF FALLS COVE-STREAMWOOD PHASE 1 MAP 2 SHEET 2 OF 2" recorded in Plat Book 52 at Pages 49 - 50 in the Office of the Register of Deeds for Iredell County, North Carolina.

Exhibit "B"

**ARTICLES OF INCORPORATION**

**OF**

**FALLS COVE PROPERTY OWNERS ASSOCIATION, INC.**

A Nonprofit Corporation

The undersigned incorporator hereby forms a nonprofit corporation (the "Corporation") under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina entitled the "North Carolina Nonprofit Corporation Act" (the "Act"), and to that end hereby sets forth:

1. The name of the Corporation is "Falls Cove Property Owners Association, Inc."

2. The street address and county of the initial registered office of the Corporation are Wachovia Building, 400 South Tryon Street, Suite 1300, Charlotte, Mecklenburg County, North Carolina 28285, and the name of the initial registered agent of the Corporation at such address is H. Thomas Webb, III. The mailing address of the initial registered office of the Corporation is the same as the street address.

3. The street address, mailing address and county of the principal office of the Corporation are Wachovia Building, 400 South Tryon Street, Suite 1300, Charlotte, Mecklenburg County, North Carolina 28285.

4. The name and address of the incorporator are John W. Beddow; James, McElroy & Diehl, P.A., 600 South College Street, Charlotte, NC 28202.

5. The Corporation shall have members, divided into such classes, and with such designations, qualifications, rights and obligations, as shall be set forth in the Bylaws.

6. The purposes for which the Corporation is organized are:

(a) To carry on one or more exempt functions of a homeowners association under the Internal Revenue Code of 1986, as amended (the "Code"), including those activities related to the acquisition, construction, management, maintenance, and care of "association property" (as defined in Section 528(c)(4) of the Code), all pursuant to such rules and policies as shall be set forth in its Bylaws; and

(b) To do such other acts and things, and engage in any lawful act or activity, for which corporations may be organized under, and as are authorized and permitted by, the Act and to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Corporation is organized;

provided, however, that in all events and circumstances, no part of any net earnings of the Corporation shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments) to the benefit of any member of the Corporation or to the benefit of any private shareholder or individual (as defined in accordance with Treasury Regulations Section 1.528-7 promulgated under the Code), the Corporation being organized to provide, among other things, for the acquisition, construction, management, maintenance, and care of association property.

7. In the event of a dissolution and/or liquidation of the Corporation, all of the residual assets of the Corporation shall be distributed to such organizations that are exempt under Section 501(c)(3) or Section 528(c)(4) of the Code or corresponding sections of any prior or future Internal Revenue Code at the time of dissolution as shall, in the judgment of the directors, be most likely to fulfill the purposes of the Corporation.

8. To the fullest extent permitted by applicable law, no director of the Corporation shall have any personal liability arising out of any action whether by or in the right of the Corporation or otherwise for monetary damages for breach of any duty as a director. This Article shall not impair any right to indemnity from the Corporation that any director may now or hereafter have. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any limitation hereunder on the personal liability of a director with respect to acts or omissions occurring prior to such repeal or modification.

9. The number of directors of the Corporation shall be fixed by the Bylaws. The number of directors constituting the initial Board of Directors shall be five (5) and the names and addresses of the persons who are to serve as directors until their successors are duly elected and qualified are:

Name/Address

Arthur W. Fields  
Wachovia Building  
400 South Tryon Street, Suite 1300  
Charlotte, North Carolina 28285

A. Michael Burnett  
Wachovia Building  
400 South Tryon Street, Suite 1300  
Charlotte, North Carolina 28285

H. Thomas Webb, III  
Wachovia Building  
400 South Tryon Street, Suite 1300  
Charlotte, North Carolina 28285

R. Wayne McGee  
Wachovia Building  
400 South Tryon Street, Suite 1300  
Charlotte, North Carolina 28285

James L. Atkinson  
Wachovia Building  
400 South Tryon Street, Suite 1300  
Charlotte, North Carolina 28285

IN WITNESS WHEREOF, the incorporator has executed these Articles of  
Incorporation, this the 23rd day of May, 2007.

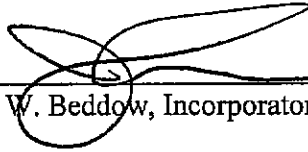
  
\_\_\_\_\_  
John W. Beddow, Incorporator



Exhibit "C"

**BYLAWS  
OF  
FALLS COVE PROPERTY OWNERS ASSOCIATION, INC.**

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## BYLAWS

### ARTICLE I

#### NAME AND LOCATION

Section 1.01. Name. The name of the corporation is Falls Cove Property Owners Association, Inc. (the "Association").

Section 1.02. Location. The initial principal office of the Association shall be located in Mecklenburg County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

### ARTICLE II

#### DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment to these Bylaws (unless the context shall otherwise require or unless otherwise specified) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Falls Cove entered into by Falls Cove Development, LLC ("Declarant"), and duly recorded in the Office of the Register of Deeds for Iredell County, North Carolina (as amended and/or supplemented from time to time, the "Declaration").

### ARTICLE III

#### MEETINGS OF MEMBERS

Section 3.01. Annual Meetings. The first annual meeting of the Members shall be held on the third (3rd) Tuesday in February, March or April of 2008, and each subsequent regular annual meeting of the Members shall be held on the third (3rd) Tuesday in February, March or April each year thereafter, at a time designated by the Board, provided, however, the Board shall have the right, upon not less than ten (10) nor more than sixty (60) days' prior notice to the Members, to change the month, date and time of any annual meeting. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.02. Special Meetings. Special meetings of the Members may be called at any time by (a) the President, (b) the Board or (c) by the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed to be considered at a proposed special meeting upon the delivery to the Association's Secretary of one or more signed and dated written demands describing the purpose or purposes for which it is to be held. Any such special meeting called by the Members in the manner described in (c) above shall be held within thirty (30) days after the delivery of such written demand by the holders of at least ten percent (10%) of the votes entitled to be cast at such meeting.

Section 3.03. Place of Meetings. All meetings of the Members shall be held at such place, within Iredell County, North Carolina, as shall be determined by the Board.

Section 3.04. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Association's Secretary or other person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, by first class, registered or certified mail, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote at such meeting, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Any Member may, by delivering written notice to the Secretary of the Association of such Member's email address, elect to receive notice of meetings by electronic mail in lieu of the method provided in the preceding sentence; similarly, any such Member may elect to cease receiving notice by email by delivering written notice of such election to the Secretary of the Association. Each notice of meeting shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.05. Membership in the Association. Each and every Owner of a Dwelling Unit shall automatically become and be a Member. In addition, for so long as Declarant owns any part of the Property, Declarant shall be a Member.

Section 3.06. Classes of Voting Right. The Association shall have two (2) classes voting membership:

(a) Class I. Class I Members shall be all Members with the exception of Declarant. Class I Members shall be entitled to one (1) vote for each Dwelling Unit owned by such Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Dwelling Unit, all such Persons shall be Members and their voting rights shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit. At any meeting of the Members, a representation by any one such Owner that the Owners of the Dwelling Unit have agreed to a vote shall be conclusive unless another such Owner contests such representation at such meeting prior to the casting of such vote.

(b) Class II. The Class II Member shall be Declarant. The Class II Member shall be entitled to twenty (20) votes for each Dwelling Unit owned by Declarant.

Section 3.07. Cessation of Class II Membership. Notwithstanding anything contained herein to the contrary, the Class II Membership shall cease and be converted to a Class I Membership on the earlier to occur of (a) the date on which Declarant no longer owns any part of the Property; (b) the date Declarant shall elect, in its sole discretion, that its Class II Membership cease and be converted to Class I Membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2040. The earliest to occur of (a), (b) or (c) shall be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Member.

Section 3.08. Quorum and Voting. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes entitled to be cast by all classes of the Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum is not present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.09. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Association's Secretary. Every proxy shall be revocable, and shall automatically cease upon conveyance of a Member's Lot.

Section 3.10. Action by Members. Except as may be otherwise specifically set forth in the Declaration, the Articles or these Bylaws, the vote of a simple majority of all votes entitled to be cast by those Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Members. Notwithstanding the above, the affirmative vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by all Members shall be required in order for the Association to (a) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Project or any part thereof; or (b) assert a claim against or sue Declarant.

Section 3.11. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice of the time and place of such meeting, except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 4.01. Number and Appointment. The business and affairs of the Association shall be managed by a Board of at least five (5) directors (each a "Director"). The directors need not be Members. Prior to the Turnover Date, Declarant shall appoint all Directors to the Board. From and after the Turnover Date, the Members shall elect all Directors to the Board, as provided by these Bylaws thereafter. Prior to the Turnover Date Declarant may relinquish its right to appoint all Directors to the Board, or may instead relinquish its right to

appoint one or more, but less than all, of the Directors. In the event of any such partial relinquishment, the Members of the Association shall elect the Directors not appointed by Declarant. At any time after any such partial relinquishment, provided that Declarant still owns any Lot, Tract or other portion of the Property, Declarant may reassert its right to appoint Directors previously elected by the Association, and may remove any such previously elected Director or Directors and appoint their replacements to serve their unexpired terms.

Section 4.02. Initial Directors. The initial Directors shall be those persons named in the Articles. Such initial Directors shall serve from the date upon which the Declaration is recorded in the County Registry, until such time as their successors are duly appointed or elected and qualified.

Section 4.03. Nomination. Subject to Section 4.01, the procedure set forth in this Section 4.03 shall apply with regard to the nomination of Directors. Nominations for the first election of Directors on the Board shall be made from the floor at a meeting of the Members. After such first election of Directors, nominations for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member or a member of the Board, and two (2) or more Members. The Nominating Committee shall be appointed by the Board prior to the annual meeting following the first election of Directors and each annual meeting of the Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Prior to the relinquishment by Declarant of its right to appoint members of the Board, Declarant may appoint a Nominating Committee at its discretion to nominate Members for election to the Board for those positions on the Board, if any, to be filled by election of Members.

Section 4.04. Election. Except as provided in Section 4.01, Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting is not permitted.

Section 4.05. Term of Office. Each Director shall hold office for the term for which he was appointed or elected, or until his death, resignation, retirement, removal, disqualification or until his successor is appointed or elected and qualified. Subject to Section 4.01, at the first election of Directors, the Members shall elect one (1) member of the Board for a term of three (3) years, who shall be the person receiving the largest number of votes, two (2) members of the Board for a term of two (2) years, who shall be the people receiving the second and third largest number of votes, and two (2) members of the Board for a term of one (1) year, who shall be the people receiving the fourth and fifth largest number of votes. At all annual elections thereafter but subject to Section 4.01, Director(s) shall be elected by the Members to succeed the Director(s) whose term(s) then expire(s), and thereafter each Director's term shall be three (3) years. Nothing herein contained shall be construed to prevent the election of a Director

to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 4.06. Removal. Subject to Section 4.01, any Director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of the death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors or, if applicable, not appointed by Declarant.

Section 4.07. Compensation. No Director shall receive compensation for any service he or she may render to the Association; however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## ARTICLE V

### MEETINGS OF DIRECTORS

Section 5.01. Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit on such days and at such place and hour as may be fixed from time to time by resolution of the Board. If any meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 5.02. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days notice to each Director.

Section 5.03. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.04. Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to such action is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.05. Chairman. A Chairman of the Board shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 5.06. Participation by Conference Telephone. Any one or more Directors may participate in a meeting of the Board by means of a conference telephone or similar communications device that allows all Directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.



## ARTICLE VI

### POWERS OF THE BOARD

The Board, for the benefit of the Members, shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

Section 6.01. Rules and Regulations. To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and the conduct of Owners and other Persons occupying or otherwise located on the Property; and to establish procedures for the violation of such rules and regulations; and to amend such rules, regulations and procedures from time to time;

Section 6.02. Agreements. To enter into the following agreements (including acceptance of assignment and assumption of agreements originally entered into by Declarant):

(a) Agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Areas and Maintenance Areas or portions thereof;

(b) Agreements with insurance companies with respect to insurance coverage relating to the Common Areas and Maintenance Areas and/or the Association;

(c) Agreements with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Association;

(d) Agreements to maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(e) Agreements with any third party or any Member (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms of the Declaration and these Bylaws, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;

(f) Agreements with any third party, including any other property owners association, for the sharing of costs of maintaining Maintenance Areas.

Section 6.03. Borrowing Funds. Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Members see fit; provided; however, until such time as Declarant no longer owns any portion of the Property, the Board may not mortgage any portion of the Common Area without the prior written approval of Declarant;

Section 6.04. Legal Action. To the extent permitted in the Declaration and these Bylaws, to sue or defend in any court of law in behalf of the Association;

Section 6.05. Assessments. To levy Assessments in accordance with the provisions of the Declaration;

Section 6.06. Insurance Matters. To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

Section 6.07. General Exercise of Powers. To exercise for the Association all powers, duties and authority vested in or delegated by the Declaration, these Bylaws, or the Articles to the Association and not reserved to the Members or Declarant by other provisions of the Declaration, these Bylaws or the Articles;

Section 6.08. Vacancy on Board. To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;

Section 6.09. Property Management. To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

Section 6.10. Guild Builders. To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Project, and to require that all Owners building Improvements on Lots use only a Guild Builder;

Section 6.11. Professional Services. To retain the services of legal, accounting and other professional firms, including to retain or employ the services of professional architects or other Persons to serve on or advise the ACC and/or the Architectural Review Committee;

Section 6.12. Bonding. To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;

Section 6.13. Enforcement. To the extent permitted in the Declaration and these Bylaws, to enforce the provisions of the Declaration and any rules made thereunder or hereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of the Declaration;

Section 6.14. Easements. To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and

drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

Section 6.15. Conveyance of Common Area. To convey fee simple title to all or any part of the Common Area when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Area without the prior written approval of Declarant;

Section 6.16. Other. To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations under the Declaration or these Bylaws or for the operational protection of the Association; and

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Members.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 7.01. Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board may create by resolution from time to time.

Section 7.02. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 7.03. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his or her death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.04. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may determine from time to time.

Section 7.05. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.06. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7.07. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 7.04.

Section 7.08. Compensation. No officer shall receive any compensation from the Association for acting as such, but may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 7.09. Duties. The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

(a) President: The President shall be the chief executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall perform the following duties (i) preside at all meetings of the Board; (ii) see that orders and resolutions of the Board are carried out; (iii) sign all leases, mortgages, deeds, and other written instruments; and (iv) co-sign all checks for an amount in excess of \$10,000.00 and promissory notes;

(b) Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board;

(c) Secretary: The Secretary shall perform the following duties: (i) record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; (ii) keep the corporate seal, if any, of the Association and affix it on all papers requiring said seal; (iii) serve notice of meetings of the Board and of the Members; (iv) keep appropriate current records showing the members of the Association together with their addresses; and (v) perform such other duties as required by the Board; and

(d) Treasurer: The Treasurer shall perform the following duties: (i) receive and deposit in appropriate bank accounts all monies of the Association; (ii) disburse such funds as directed by resolution of the Board; (iii) sign all checks and promissory notes of the Association; (iv) keep proper books of account; and (v) prepare an annual report to be presented to the Members at the Members' annual meeting, and deliver a copy of such report to the Members.

## ARTICLE VIII

### COMMITTEES

Subject to Section 4.01 the Board shall appoint a Nominating Committee as provided in Section 4.03. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

## **ARTICLE IX**

### **BOOKS AND RECORDS**

The books, records and papers of the Association shall be subject to inspection by any Member or Mortgagee, at the principal office of the Association. In addition, the Declaration, the Articles and the Bylaws shall be available for inspection by any Member or Mortgagee at the principal office of the Association, where copies may be purchased at reasonable cost. The Board may create reasonable rules and regulations concerning the method by which notice of a request to inspect and/or copy shall be given, the days and hours during which documents may be inspected and/or copied, and the fees associated with copies.

## **ARTICLE X**

### **ASSESSMENTS**

As described more particularly in the Declaration, each Member is obligated to pay Assessments established by the Association. Any Assessments which are not paid when due shall be delinquent. If an Assessment is delinquent, as more particularly described in the Declaration, the Assessment shall bear interest from the due date until the date such Assessment and interest thereon is paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against the portions of the Property and Improvements thereon owned by the defaulting Owner as of the Assessment due date. Additionally, the late charges, costs of collection and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such Assessment, all as more particularly described in the Declaration. No Owner may exempt himself or herself from liability for Assessments or waive or otherwise escape liability from the Assessments by non-use of the Common Areas or abandonment of his or her property.

## **ARTICLE XI**

### **CORPORATE SEAL**

The Association may have a seal circular in form having within its circumference the name of the Corporation, the state of its incorporation, the year of its incorporation, and the word "SEAL."

## **ARTICLE XII**

### **AMENDMENTS**

Section 12.01. Amendment by Members. Subject to the limitations hereinafter contained, the Articles and these Bylaws may be amended or modified at any time by a vote of no less than fifty-one percent (51%) of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if fifty-one percent (51%) of all votes entitled to be cast by the Members is not obtained at such a meeting, then the Articles and these Bylaws may be

amended by obtaining the vote of fifty-one percent (51%) of all votes present at such a meeting and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a total of fifty-one percent (51%) of all votes entitled to be cast by Members. Further provided, that (i) any amendment or modification of the second sentence of Section 3.10 shall require the affirmative vote of no less than sixty-seven (67%) of all votes entitled to be cast by Members, and (ii) any amendment or modification to the Articles and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion.

Section 12.02. Amendment by Declarant. Declarant, without obtaining the approval of any other Member, may make amendments or modifications to the Articles and these Bylaws which: (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified in the Articles or these Bylaws; (b) apply only to the portions of the Property then owned by Declarant; (c) are necessary to bring these Bylaws into compliance with any applicable statute, rule, regulation, ordinance or judicial determination; or (d) are necessary to enable any title insurance company to issue title coverage on the Property, or any institutional or governmental lender to make or insure loans on the Property.

12.03. Effectiveness. Any amendment or modification effected pursuant to this Article XII shall become effective with respect to these Bylaws when an instrument is filed of record in the County Registry; provided, however, such an amendment or modification, in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Article XII. Any amendment or modification of the Articles effected pursuant to this Article XII shall become effective when an amendment or modification is filed of record in the Office of the North Carolina Secretary of State of North Carolina.

### ARTICLE XIII

#### MISCELLANEOUS

Section 13.01. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 13.02. Controlling Authority. In the case of any conflict between the Articles and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws or the Articles, the Declaration shall control.

## ARTICLE XIV

### LIABILITY LIMITS; INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

Section 14.01. Limitation on Liability. Neither Declarant, nor any Member, nor the Board, nor the Association, 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 Declarant, the Association nor any other Person making repairs or 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.

Section 14.02. Indemnification. 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 arising from or relating to the performance by the Board of its duties and obligations, except for any such 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 indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein is not exclusive of any other rights to which those indemnified may be entitled under any statute, these Bylaws, agreement, vote of Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 14.03. Insurance. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or

her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

Section 14.04. Limitations on Indemnification. The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

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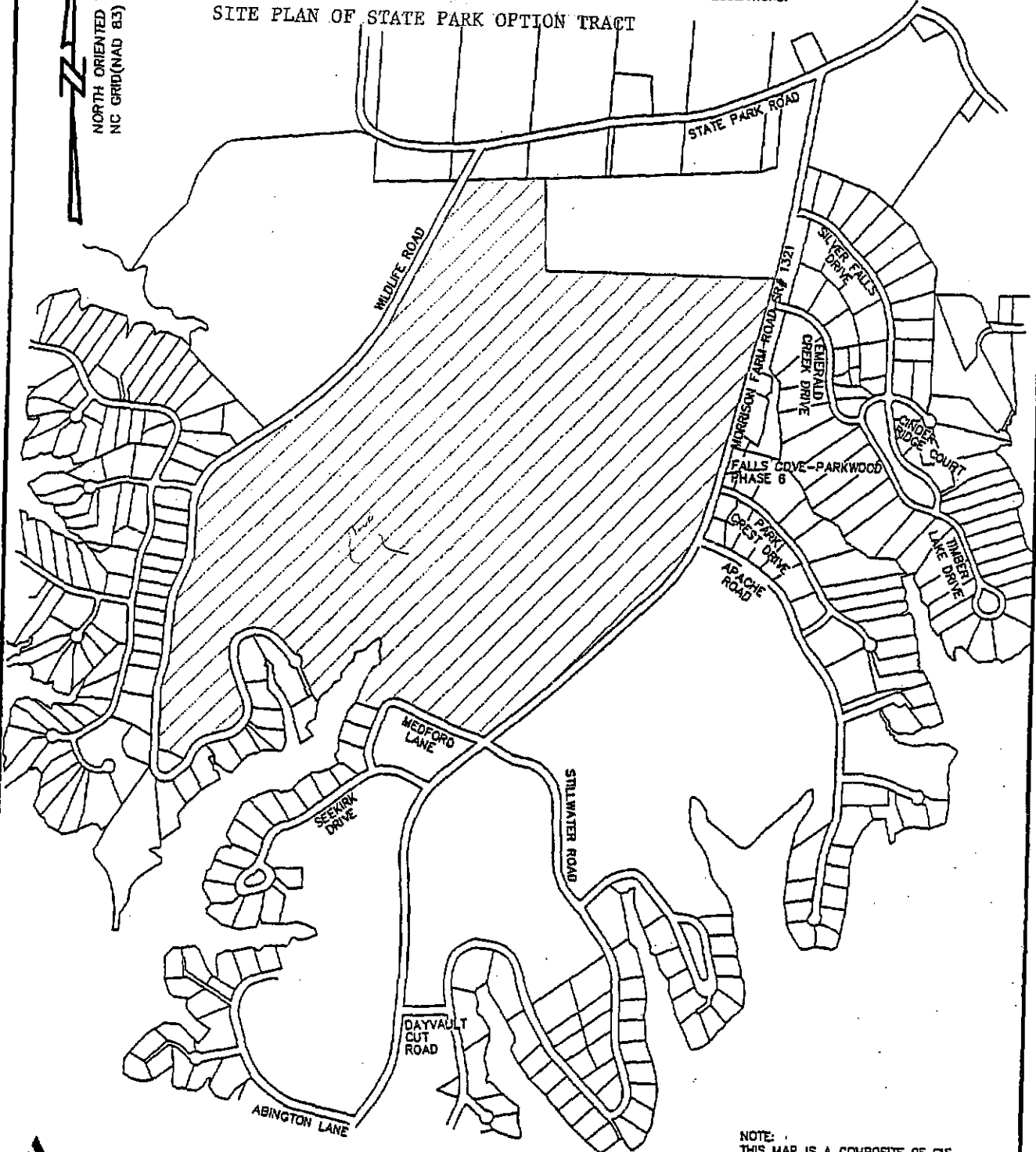


Exhibit "D"

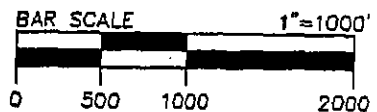
SITE PLAN OF STATE PARK OPTION TRACT

THIS PLAT IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

NORTH ORIENTED TO NC GRID(NAD 83)



NOTE: THIS MAP IS A COMPOSITE OF GIS INFORMATION. NO SURVEY PERFORMED.



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