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STATE OF NORTH CAROLINA

AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE GABLES AT KEPLEY FARM

ROWAN COUNTY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE GABLES AT KEPLEY FARM (as hereafter amended and supplemented, the "Declaration") is made and entered into as of the last date of execution hereof by Spencer Lane Construction, LLC, a North Carolina limited liability company ("Declarant" or "Developer").

RECITALS

1. Declarant is the developer of The Gables at Kepley Farm, a residential subdivision located in Rowan County, North Carolina ("The Gables" or the "Community"). Declarant originally created The Gables at Kepley Farm Property Owners Association by the execution and filing of the recorded plats for The Gables subdivision in the Rowan County Registry along with restrictive covenants recorded at Deed Book 1044, Page 586 as further amended at Deed Book 1308, Page 175; Deed Book 1416, Page 808; Deed Book 1047, Page 854; and Deed Book 1184, Page 279; (all together, the "Restrictions").

2. This Declaration restates and replaces the Current Restrictions and all of the Other Restrictions in their entirety and the same shall be of no further force nor effect except to the extent specifically set forth herein; provided, however, this Declaration does not nullify or replace any provision of any supplemental declaration or other recorded instrument which had the purpose or effect of adding additional real property to The Gables and to the encumbrance of the foregoing recorded restrictions, and all real property which was brought under the encumbrance of any of the foregoing restrictions from time to time shall remain subject to this Declaration.

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

3. The real property covered by this Declaration (the "Property") is all of the real property making up The Gables as shown on the recorded plats of The Gables subdivision, and is further described in Section 1.1 hereof.

4. The Gables is governed by The Gables at Kepley Farm Property Owners Association, a duly-created and existing North Carolina non-profit corporation.

### DECLARATION

NOW THEREFORE, the Declarant declares that the Property and any and all additions thereto is and shall be subject to, held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of this Declaration, which shall replace all prior covenants and restrictions and shall bind all owners and occupants of any part of the Property and which shall be appurtenant to and run with the Property forever.

### ARTICLE ONE PROPERTY SUBJECT TO THIS DECLARATION

1.1. Property. The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration (the "Property") is located in Rowan County, North Carolina, is known as The Gables subdivision as shown on all recorded plats thereof, and consists of the real property described on Exhibit A attached hereto.

1.2. Additions to Property by Declarant. The Declarant, its successors and assigns, during the Declarant Control Period, shall have the right but not the obligation, with the express consent of the Board, to bring within the scheme and operation of this Declaration all or any portions of any real property that adjoins or is in close proximity to the Property, as added to under the terms hereof from time to time. The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Register of Deeds of Rowan County one or more Supplementary Declarations of Covenants, Conditions and Restrictions ("Supplemental Declaration") with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of this Declaration to such additional property or properties. Any Supplemental Declaration(s) may specify such additional specific use restrictions and other covenants, conditions and restrictions to be applicable to the added property and may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect and adapt to any difference in character of the added properties.

1.3. Additions to Property by Association. The Association, by vote of the Board, shall have the right but not the obligation, with or without the consent of the Declarant, to bring within the scheme and operation of this Declaration all or any portions of any real property that adjoins or is in close proximity to the Property, as added under the terms hereof from time to time. The additions authorized under this subsection shall be carried out in like manner as indicated in Article 1.2 above.

1.4. Relation to North Carolina Planned Community Act. The North Carolina Planned Community Act, N.C.G.S. 47F-101 et seq., as the same may be amended from time to time ("Act"), shall apply to the Property, and the Association shall have, but not be limited to, all the powers,

rights and privileges which may be exercised by a Planned Community (as defined in the Act) pursuant to the Act, even if such powers, rights or privileges are not specifically set forth herein or in the Association's Articles of Incorporation or Bylaws.

ARTICLE TWO  
DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meanings, in addition to those other certain capitalized terms defined elsewhere in this Declaration:

- 2.1 "Act" shall have the meaning set forth in Section 1.3 hereof.
- 2.2 Intentionally omitted.
- 2.3 "Assessment(s)" shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Lots or Homes in the Property and shall include annual, special, Special Individual Assessments as described in Article Ten of this Declaration.
- 2.4 "Association" shall mean and refer to The Gables at Kepley Farm Property Owners Association, a North Carolina non-profit corporation.
- 2.5 "Board" shall mean and refer to the Board of Directors of the Association.
- 2.6 "Bylaws" shall mean and refer to the bylaws of the Association.
- 2.7 "Common Expenses" shall mean and refer to:
  - a. Expenses of leasing or owning, administration, operation, utilities, maintenance, repair or replacement of the Common Properties, including payment of insurance and taxes.
  - b. Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.
  - c. Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in the Property, in accordance with the Bylaws or this Declaration.
  - d. Any valid charge against the Association or against the Common Properties as a whole or any part thereof.
  - e. Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its Articles of Incorporation.
  - f. Any expenses reasonably incurred with regard to any shared maintenance obligations the Association may undertake related to the upkeep and maintenance of any entrances, stormwater management facilities, or other off-site amenities or improvements not located within

the Property but which are a part of other parts of The Gables and which benefit the Property covered by this Declaration.

2.8 "Common Property(ies)", "Common Element(s)" or "Common Area(s)" shall mean and refer to those areas of land described or referred to as "Amenity Area", "Amenity Areas", "Common Open Space", "COS", "Common Property", "Common Area", "Open Space" or words of like import shown on any Recorded Plat of all or any part of the Property, as well as any private roads owned by the Association, any areas or elements leased to the Association, and any similar areas or improvements which the Association maintains for the benefit of the Members. The Declarant reserves the right to add or remove Lots or Common Properties, to combine or subdivide Lots or Common Properties, to change Lots to Common Properties, or to change Common Properties to Lots at any time without notice in its sole discretion.

2.9 "Community" shall mean The Gables at Kepley Farm subdivision as described in the first paragraph of the Recitals hereof.

2.10 "Declarant" shall mean and refer to Spencer Lane Construction, LLC or any of its successors and assigns, and any person or entity which is specifically assigned, whether in whole or in part, the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Rowan County Registry. Declarant is the entity that has the right, power and authority to exercise the powers of the Declarant to ensure the development and maintenance of the Property as herein set forth. The Declarant may assign certain of its rights to third parties who may act as the declarant, or in addition to the Declarant, for certain portions of the Property.

2.11 "Declarant Control Period" shall have the meaning set forth in Article Seven hereof.

2.12 "Design Standards" mean the architectural standards set forth in this Declaration and any architectural guidelines that may be adopted by the Board.

2.13 "Home" shall mean and refer to any improvement or portion thereof situated on an Improved Lot intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within the Property and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single family homes. Where appropriate by context, the term shall include both the improvements and the real property on which the improvements are situated. The term "Lot" shall include Homes when applicable by context.

2.14 "Facilities" shall mean the clubhouse, and any other recreational facilities which may be added in the future.

2.15 "Improved Lot" shall mean and refer to any Lot on which the improvements constructed thereon are sufficiently complete to be occupied as a Home.

2.16 "Limited Common Expense" shall mean and refer to the expense of administration, operation, maintenance, repair or replacement of Limited Common Properties or Limited Common Areas or any valid charge against the Limited Common Properties as a whole. Such expenses shall be assessed against those Lots or Homes having the exclusive or special rights in the use or enjoyment of the Limited Common Properties.

2.17 "Limited Common Area(s)", "Limited Common Element(s)" or "Limited Common Property(ies)" shall mean and refer to those areas of land and improvements described or referred to in any declaration applicable to the Property or Recorded Plat of the Property as intended for the use only of the Owners of particular Lots or Homes to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Homes or Lots so designated or shown in such declaration or Recorded Plat.

2.18 "Living Area" shall mean and refer to those heated and/or air-conditioned areas within a Home, which shall not include garages, porches, patios.

2.19 "Lot" shall mean and refer to any numbered parcel of land within the Property which is intended for use as a site for a Home as shown upon any Recorded Plat of any part of the Property and labeled thereon as a "Lot" and shall not include Common Properties or Limited Common Properties, and shall not include any property in the Property not yet subdivided for sale as an individual lot. The Declarant reserves the right to add or remove Lots or Common Properties, to combine or subdivide Lots or Common Properties, to change Lots to Common Properties, and to change Common Properties to Lots, at any time without notice in its sole discretion. The term "Lot" as used herein shall include Improved Lots and shall also include Homes.

2.20 "Member" shall mean a member of the Association. All Owners shall be Members.

2.21 Intentionally omitted.

2.22 Intentionally omitted.

2.23 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

2.24 "Plans" shall have the meaning assigned to it in Article Five of this Declaration.

2.25 "Property" shall mean and refer to all the real property defined in Section 1.1 hereof as well as any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of Article One of this Declaration.

2.26 "Recorded Instrument" shall mean and refer to any document relating to the Property, or any portion thereof, recorded in the Rowan County Registry and executed by the Declarant (during the Declarant Control Period, and by the Association otherwise) to show its consent thereto. In any case in which the designation or description of the same property described in two different Recorded Instruments is different (for example, property is designated as a Lot in one instrument and a street in another, or legal boundaries of areas are described differently in different Recorded Instruments), the designation and description on the later-recorded of the Recorded Instruments shall control.

2.27 “Recorded Plat” shall mean and refer to any map of the Property, or any portion thereof, recorded in the Rowan County Registry and executed by the Declarant. In any case in which the designation and/or boundary lines of the same property shown on two different Recorded Plats are different (for example, property is designated as a street on one plat and as a Lot on the other, or boundary lines are shown differently on two different Recorded Plats), the designation and boundary lines on the later-recorded of the Recorded Plats shall control. Declarant has the right without the joinder or consent of any other party to revise and re-record Recorded Plats where necessary to correct errors or omissions, to adjust Lot lines, and the like.

2.28 “Special Individual Assessments” shall have the meaning assigned to it in Article Ten of this Declaration.

2.29 “Supplemental Declaration” shall have the meaning assigned to it in Section 1.2 of this Declaration.

### ARTICLE THREE

#### HOUSING FOR OLDER PERSONS ACT

3.1 Age Restriction. The Community has heretofore been operated and marketed, and is intended to be operated and marketed, for occupancy by persons 55 years of age or older in accordance with the Fair Housing Acts, which exempt “housing for older persons” from the prohibitions against discrimination based on familial status. Except as provided below, each Lot, if occupied, must be occupied by at least one person 55 years of age or older. Except as provided below, no person under 19 years of age shall occupy or reside in a Lot. The Board, in its sole and absolute discretion, shall have the right and power to determine when a person “occupies or resides” in a Lot.

3.2 The Fair Housing Acts. “The Fair Housing Acts” as used herein means the Housing for Older Persons Act of 1995 (42 U.S.C. § 3607(b)), amending the Fair Housing Amendments Act of 1988, and the Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.) and the regulations promulgated from time to time by the Department of Housing and Urban Development pursuant thereto (24 C.F.R. 100.300, et seq.), together with such guidelines or directives promulgated by the Department of Housing and Urban Development from time to time.

3.3 Compliance. In accordance with The Fair Housing Acts, at least 80% of the occupied Lots must be occupied by at least one person who is 55 years of age or older. The Board, upon application, shall have the right and option, but not obligation, at the Board’s reasonable discretion, to permit a Lot to be occupied by persons all of whom are under the age of 55, unless the granting of permission would result in fewer than 80% of the occupied Lots being occupied by one person 55 years of age or older, or considering other factors deemed appropriate by the Board, may jeopardize (whether at the time of the request or in the future) the Community’s status as “housing for older persons” under The Fair Housing Acts. The Board shall exercise its discretion based upon criteria that the Board shall determine as appropriate, including information then known to the Board concerning potential or pending changes in occupancy of other Lots within the Community, the ages of the persons requesting such permission, the proximity to age 55 of those occupants of other Lots within the Community then under such age, and any other information known to and deemed relevant by the Board in its sole discretion. Any request submitted to the Board pursuant to this provision shall be a written request setting forth the names

and ages of all proposed residents of the Lot and such other information as the Board reasonably may require.

3.4 Hardship. The Board, upon application by a person, because of undue hardship on such person or other residents of the Lot or extraordinary circumstances, in its reasonable discretion (unless the granting of permission would jeopardize the Community's status as "housing for older persons" under The Fair Housing Acts), shall have the right and option, but not the obligation, to permit a Lot to be occupied by a person under eighteen years of age. Any person requesting permission to have a Lot occupied pursuant to this provision shall submit a written request to the Board setting forth the reason for the request and such other information as the Board reasonably may require. A person under eighteen years of age may visit a Lot as a guest of the owner or occupant of the Lot for a period of not more than ninety days in any twelve-month period.

3.5 Verification. Each owner or occupant, as and when requested to do so by the Board, shall furnish the Board with the names and ages of all occupants of the Lot and such affidavits and other documents as the Board may request to verify the age of such occupants. In the event there is a change in the occupancy of a Lot, the Owner shall immediately notify the Board in writing of such change and comply with all rules and regulations adopted by the Board for verification of occupancy.

3.6 Policies and Procedures. The Board shall publish and adhere to policies and procedures to demonstrate the intent that the Community is intended and operated for occupancy by persons fifty-five years of age or older. Furthermore, the Board shall comply with any rules issued by the Secretary of Housing and Urban Development for verification of occupancy. The policies and procedures shall provide for verification of residents by reliable surveys and affidavits or other means as permitted by The Fair Housing Acts.

3.7 Intent. The requirements contained in this Article are intended to comply with the exemption requirements under The Fair Housing Acts and any regulations now or hereafter issued therefor. Notwithstanding anything contained herein to the contrary, it is acknowledged and agreed that although it is the intent of the Developer that the Community be operated for occupancy by persons fifty-five years of age or older in compliance with The Fair Housing Acts which exempt "housing for older persons" from the prohibitions against discrimination based on familial status, no representation or warranty is made that the Community complies or will comply with The Fair Housing Acts, and if for any reason the Community is deemed not in compliance with The Fair Housing Acts and therefore not exempt from the prohibitions against discrimination based on familial status, neither the Developers (or their affiliates, successors or assigns) nor the Association shall have any liability in connection therewith. Anything herein contained to the contrary notwithstanding, the Developers, for so long as the Developers retain any Developer Rights, and thereafter, the Board, may amend the provisions of this Article or such other portions of the Declaration to the extent that it deems it necessary or appropriate, without the approval of the Members, in order to comply with the exemption requirements under The Fair Housing Acts or any regulations now or hereafter issued therefor, as they may be amended from time to time, with respect to "housing for older persons."

3.8 Injunction. The Association shall have all of its rights set forth elsewhere in the Declaration to enforce this Article, or at law or in equity, including, without limiting its rights or remedies, an injunction requiring the removal of unauthorized persons hereunder.

#### ARTICLE FOUR DURATION; NOTICES; ENFORCEMENT

4.1 Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by, Declarant, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns in perpetuity. No amendment to any recorded declaration may adversely affect the Declarant's rights unless executed by the Declarant.

4.2 Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration (a "Notice"), shall be deemed to have been properly sent when delivered by email if sent to an email address regularly used by the recipient and receipt is confirmed or acknowledged, by hand delivery with the delivery person providing an affidavit of delivery, or when mailed, postage prepaid, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event that a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Rowan County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot to be examined. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of that Lot. It is the Owner's responsibility to ensure that the Association has correct contact information for him or her at all times if other than the address of the Owner's Lot in The Gables, and the Association shall not be liable for any damage, loss of rights or otherwise incurred by an Owner who has failed to provide correct contact information to the Association.

4.3 Enforcement.

a. Enforcement Rights. The Association, Declarant, and/or any Owner may (but shall not necessarily be required to) enforce these covenants and restrictions. Enforcement of these covenants and restrictions may be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and/or against the land to enforce any lien created by these covenants and restrictions. Any failure by the Declarant, the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter. The Association shall have the right to promulgate reasonable policies, procedures and rules and regulations from time to time which are in harmony with these covenants and restrictions.

b. Specific Procedure For the Imposition of Fines or Suspension of Planned Community Privileges or Services. This subsection (b) sets forth "a specific procedure for the imposition of fines or suspension of planned community privileges or services" pursuant to Section 3-107.1 of the Act. The Association may impose fines or suspend privileges or services in the



event of an Owner's failure to comply with the requirements of this Declaration or any Design Standards, or rules and regulations promulgated in accordance with this Declaration. In such circumstances, the Owner shall have been sent a Notice notifying him of the specifics of the violation and providing a period of no less than ten (10) days for the violation to be corrected. If the Owner fails to address the violation during such period, the Board may vote to impose a fine or suspend privileges or both. Any such remedy imposed shall also be deemed to suspend the Owner's right to vote on any matters before the Membership and as a Board or committee member (if the Owner sits on the Board or any committee) until the violation has been fully corrected and all fines paid. The Association shall notify the Owner of the same in writing. The Owner shall have the right to appeal the decision to the Board by notifying the Association in writing no later than thirty (30) days after the Owner received the notification, but the fine shall accrue during such period unless waived or suspended by the Board pending the outcome of the appeal. If it is decided that a fine should be imposed, a fine not to exceed the maximum amount provided by law may be imposed for the violation and without further hearing, for each day after a grace period of five (5) days after the notification, that the violation continues. Such fines shall be Assessments secured by liens as more particularly described in Article Ten hereof. The recurrence of an additional violation of the same section of this Declaration within 1 calendar year will be subject to an immediate fine without notice from the Association. If it is decided that a suspension of privileges or services should be imposed, the suspension shall continue until the violation or delinquency is cured except for good cause shown to the Board. Services which may be suspended include but are not limited to the right to use any amenities of the Association and the right to any utility services which may be provided by the Association. The Board shall adopt a written collections and covenant violation policy or policies setting forth in more detail the procedures that its officers, agents and attorneys shall use in assessing and collecting assessments, fines and other charges from Owners, not inconsistent herewith.

## ARTICLE FIVE DESIGN REVIEW

5.1 Purposes. The Gables has been carefully designed, from overall site planning to each individual home, to ensure a high-quality, aesthetically pleasing neighborhood. In order to provide for the preservation of the same as well as to maintain the property values in the Property with respect to any improvements to be constructed or altered on any Lot, the Declarant hereby establishes these architectural covenants and restrictions and may establish an Architectural Review Committee ("ARC") in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lots in relation to surrounding structures, natural features and topography. To the extent that an ARC is not established or is unable to meet, then and in which case the term "ARC" shall mean the Board of Directors of the Association.

### 5.2 Design Review.

a. Unless expressly authorized in writing by the Board, no structure or improvement whatsoever of any kind or nature, including but not limited to any excavation, foundation, Home, wall, driveway, patio, privacy partition, enclosure, mailbox, irrigation system or expansion of any existing irrigation system, animal enclosure or dog house, arbor, lawn ornament, sculpture, monument, flagpole, sign, landscaping, or any other fixture, attachment or modification of any Lot or structure of any kind may be constructed or maintained, nor shall any exterior alteration,

including exterior colors, to any of the foregoing, or any other structure or improvement be started, nor shall any clearing or site work be commenced or maintained upon any Lot in the Property, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefor, and clearing details including proposed tree removal, in such detail as may be further prescribed by the Association (all of which are hereinafter referred to collectively as the "Plans"), and any application fee set by the Association, shall have been submitted to, and approved in writing by, the ARC.

b. The Association has promulgated the design standards as set forth in this Declaration, and the Board may amend the same from time to time. All decisions by the ARC shall be made in substantial accordance with this Declaration and the ARC Guidelines.

c. Only approved builders are permitted to construct Homes in The Gables. The Declarant or the Board may enjoin construction by any party who is not an approved builder and/or employ the enforcement mechanisms set forth herein, including the assessment of fines and the suspension of the right to use amenities, against any non-approved builder.

### 5.3 Architectural Review Committee.

a. Prior to or in lieu of the appointment of the ARC by the Board, the Board shall act as the ARC. Should the Board choose to appoint the ARC, it shall be composed of any number of persons designated by the Board. The ARC shall take action as a committee and no one member of the ARC shall have any authority to act on the ARC's behalf without express authorization by the committee as a whole, except that there shall be a Chairperson of the ARC who shall execute approvals and other documents once authorized by the committee as a whole. In the event of death, resignation, or removal by the Board of any member of the ARC, the Board shall have full authority to designate a successor. Unless otherwise approved by the Board, the members of the ARC shall not be entitled to any compensation for services performed pursuant to this covenant; however, any design professional retained by the Board or the ARC may be reasonably compensated. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the ARC, and such a list shall be available to any Owner upon request. The Board may appoint subcommittees of its members and delegate duties of the ARC among such subcommittees.

b. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant shall retain the right to veto any approval which in its discretion does not comport with its development plans for the Property. The Declarant, its successors and assigns, shall be exempt from any requirement of ARC approval. Declarant shall have the right in its sole discretion to approve all house plans for new homes to be constructed in the Community, and provided that the Declarant has granted its approval for any proposed new home, no formal ARC approval process shall be required. ARC approval is not required for any improvements constructed by the Declarant.

### 5.4 Design Review Procedure.

a. At least sixty (60) days prior to the commencement of any construction or improvement, two (2) sets of Plans shall be submitted to the ARC. Within forty-five (45) days

after receipt of the Plans and all other required information, the ARC shall notify the Owner of the Lot in writing as to whether the Plans have been approved or if further information is needed before a decision can be made. If no response is given by the ARC within such period, the Plans shall be deemed not approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a denial pending receipt of such additional information as the ARC may request, and the ARC shall have an additional thirty (30) days to review the additional information once all requested further information is provided. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot, and the conditions imposed shall become fully a part of the approved Plans. No improvements shall be made except in strict conformity with the approved Plans. The ARC shall have the right to monitor construction of improvements and investigate compliance with the approved Plans, and hereby reserves the right to enter upon any Lot in order to do so. The ARC, the Board and the Association shall have the right to enjoin any construction or maintenance made in violation of this Article, and the costs and expenses, including attorneys' fees, of any such lawsuit shall be deemed Special Individual Assessments enforceable against the responsible Owner as set forth below. See Section 6.21 below for required completion periods for approved constructions.

b. Owners are responsible for the contractors they hire to perform work on their property. Any contractor damaging improvements or infrastructure of the Property, and the Owner(s) who engaged the services of such contractor, shall be jointly and severally liable for such damage. Any failure of a contractor to adhere to the requirements of these covenants and restrictions shall be attributable to the applicable Owner.

c. Any Owner submitting Plans to the ARC and disagreeing with the finding of the ARC may appeal the decision to the Board by giving written notice of appeal to the Board within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chair or any other representative of the ARC the opportunity to present to the Board specific reasons why the Plans were denied, in the presence of the Owner or his/her agent, and the Owner or his/her agent may present information challenging the findings of the ARC. The decision of the ARC may be overridden by simple majority vote of the Board, a quorum being established. The foregoing provision shall not be applicable to decisions by the Declarant.

d. The Board may adopt a schedule of reasonable fees for processing requests for approval, and may require a construction deposit be paid to the Association to be held in escrow until construction is completed in strict accordance with the approved Plans and/or to be applied toward any damages to streets, curbs, and the like or other obligations of the Owner or builder to the Association. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the ARC. The payment of such fees, as well as other expenses of the ARC required to be paid, shall be deemed to be a Special Individual Assessment, enforceable against the Owner of the Lot as provided herein. The ARC expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the ARC in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot and shall be in addition to any fees due for processing any requests for approval.

e. The ARC shall be obligated to specify the particular grounds upon which denial of any application is founded. If the ARC approves the Plans, one set of Plans, denoted as approved (or approved with specified conditions), shall be retained by the ARC.

f. Approval by the ARC or the Board of any Plans shall not relieve the applicant from any obligation to obtain all required governmental approvals or permits, and shall not relieve the applicant of the obligation and responsibility to comply with all applicable legal requirements with respect to such Plans and improvements.

g. Approval of any particular Plans does not waive the right of the ARC or the Board to disapprove the same or substantially similar Plans subsequently submitted, nor does such approval relieve an applicant of the requirement to resubmit such Plans for approval in connection with any portion of the Property or any Lot other than that for which Plans were approved. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither Declarant, the ARC, the members thereof, nor the Association assumes liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the ARC nor the members thereof nor the Association nor Declarant shall be liable in damages or otherwise to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal for approval or disapproval or failure to approve or disapprove any plans or specifications. Every person who submits plans or specifications, and every Owner agrees that he/she will not bring any action or suit against Declarant, the Association, the ARC, the Board of Directors, or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases and waives 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.

#### 5.5. ARC Approval of Plans and Other Prohibitions.

a. The construction of improvements on Lots shall be governed by Article Five hereof. Construction must be completed in strict accordance with the Plans approved by the Board. In addition, Homes shall comply with all applicable building, plumbing, electrical and other codes.

b. No vent or other pipes or appendages may extend from the front of any Home.

c. Downspouts and gutters must be constructed and maintained so as not to promote the erosion of the soil of any Lot.

d. Exterior lighting shall be restrained and subtle and must be directed so as not to shine directly on another Lot or interfere with the quality of the night environment. Security lights are discouraged and may be installed only upon approval of the ARC. Declarant or the Board may specify style, model and manufacturer of exterior lighting to be used throughout the property.

e. No manufactured, modular, mobile, or trailer homes shall be allowed or approved by the ARC as the residence on any Lot, and no manufactured, modular, mobile, or trailer home shall be allowed to remain on any Lot. "Mobile homes" shall include modular homes, even when such homes do not rest on a chassis, suspension and/or wheels on the Lot.

5.6 Application of the Article. This Article shall apply to any additions to the Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration; however, Supplemental Declarations may add or modify architectural restrictions and approval requirements in addition to those set forth in this Article.

## ARTICLE SIX

### RESTRICTIONS ON USE AND RIGHTS OF THE OWNERS; LEASING RESTRICTIONS

#### 6.1 Permissible Uses.

a. No Lot in the Property shall be used except for residential purposes (although no guarantee is provided that all Lots may in fact be suitable for residential use), with the exception of a) approved live-work units, b) any sales center, office, building, construction trailer or model home constructed or used by the Declarant, its agent or any Builder who has received the prior written permission of Declarant, c) the Facilities and any Lot denoted as Common Area or the like, d) any utility substation, power line easement, utility easement, pump station lot, ground water well lot, retention or detention pond, or similar lot used for providing communications, utilities, storm water retention or drainage or similar services to any Lot, and e) any Lot specifically denoted for any non-residential use on any Recorded Plat. No improvement or building of any type (except the foregoing) shall be erected, altered, placed, or permitted to remain on any Lot other than a Home and its accessory structures(s), which shall comply with any applicable zoning regulations and the design requirements of this Declaration.

b. This Section shall not prohibit any home office or similar traditional home occupation (in the sole discretion of the Board), nor does this Section prohibit non-residential structures such as utility service or head-end buildings, pump stations and the like which serve the Community provided that the same have been approved or installed by the Declarant. The Declarant also reserves the right to add or remove Lots or Common Properties, to combine Lots or Common Properties, to change Lots to Common Properties, or to change Common Properties to Lots, at any time without notice in its sole discretion.

#### 6.2 Leasing.

a. In order to preserve property values and the ability of mortgages within The Gables to be federally insured, the number of homes within the Community which may be leased at any one time shall not exceed 5 homes within the Community. Upon reaching capacity, a waiting list shall be maintained by the Board or its managing agent and no more homes may be leased unless an existing lease ends or an exception as provided herein applies.

b. A lease or rental generally exists whenever someone who is not the homeowner resides in the home and the homeowner does not. Leases include both oral and written agreements. The payment or lack of payment of rent shall not be determinative as to whether a home is considered to be rented but may be one factor considered by the Board when determining whether a rental exists. Any home which is leased to the children, siblings, grandchildren, parents or grandparents of the Owner of the home shall not be considered leased for purposes of these leasing restrictions.

c. Homes currently leased at the time this Declaration is recorded shall be grandfathered and allowed to remain leased, provided 1) the Owner has complied with subsection (e) below regarding providing lease information to the Board, and 2) the grandfathered status shall end upon the earliest of the date upon which any of the following occurs: (i) ownership of the home changes in any manner, including due to the death of the current Owner as of the date of this Declaration; (ii) the Owner or any family member(s) of the Owner re-occupies the home; or (iii) the home is not leased or not occupied for a period of four (4) months or more. The right to lease is not transferrable. In the event of a sale of a leased home, if the same tenant remains in place after the sale, no further approval shall be required unless and until that tenant vacates the home; but if a new tenant is intended to occupy the home after the sale, approval as set forth herein is first required. If and when a home is sold or otherwise changes ownership, the right to lease ends unless the current tenant remains in place under the new owner.

d. Any Owner who desires to rent his or her home shall first notify the Board in writing to determine whether the number of permitted rentals is at capacity. Owners are expressly prohibited from renting the home unless they have first occupied the home as their primary residence for a period of at least 24 consecutive months. The failure of an Owner to receive prior written approval constitutes a violation of this Declaration and the Board may apply fines or take other measures as set forth in this section or elsewhere in the Declaration in such case. The Board shall advise the Owner within 30 days of the request as to whether there is room within the cap set forth in subsection (a) above for the Owner to lease his or her home. If there is, the Owner shall have 90 days to execute a lease with a tenant and provide a copy to the Association, or else their opportunity to lease is lost and shall be provided to the next Owner on the waiting list. Failure of the Board to respond within 30 days shall constitute a denial of the lease request. Any approval or disapproval of a lease shall be made solely as to the Owner's compliance with this Declaration, without regard to the identity of the tenant, the provisions of the lease or whether the same are legal, fair or otherwise appropriate for any purpose whatsoever. The Declaration and all rules and regulations of the Association shall be given by the Owner to the tenant and the tenant shall abide by the same in the same manner as a Owner.

e. All Owners shall supply the Association with the following required information on or before the date that the lease is to start. To the extent that any home is already leased at the time of the recording of this Amendment, the Owner shall have 30 days thereafter to supply the Association with the information required herein:

- i. A true and complete copy of the lease (social security numbers and monetary information may be redacted);
- ii. The Owner's current contact information including mailing address, physical address not within The Gables, email address, and phone numbers;
- iii. Any property manager's contact information (if the Owner is employing a property manager to assist with the leasing and management of the home);
- iv. All of the tenant/occupants' name(s);
- v. Email address and phone number(s) for the principal tenants; and
- vi. The make, model and color of each of the occupants' vehicles.

g. At least one occupant of any rented Home must be at least 55 years of age or older and all occupants must be 19 years of age or older. The number of occupants in a rented home shall not exceed four (4). Homes may be rented only in their entirety and no single rooms may be rented except in the case of a single roommate or caretaker of an Owner who also lives in the home. No bed and breakfast facility may be operated in any home. No lease term shall be less than one (1) year. No subleasing or assignment of lease rights by the Owner or tenant is permitted. No transient tenants may be accommodated in a home. **Short-term rentals such as the type promoted by Airbnb, VRBO and similar services are expressly prohibited, as is the listing or advertising of homes in The Gables for such short-term rentals.**

h. The Board may make exceptions to the leasing cap due to bona fide family medical or employment hardship, and may only do so upon a written Board determination setting forth the specific facts supporting the reasons for the exception and placing a reasonable limitation on the duration of the exception, not to exceed two (2) years. After no more than two (2) years, such exception and the lease of any such home shall terminate.

i. The Board may from time to time without necessity of amending the Declaration adopt reasonable rules and regulations not inconsistent herewith so as to carry out these leasing restrictions in further detail. Such rules and regulations shall be effective when adopted or at such other date set forth therein.

j. Enforcement.

i. The Association shall have all of its rights set forth elsewhere in the Declaration or in the Act to enforce these leasing restrictions, including at law or in equity, including but not limited to the right to fine the Owner, suspend community rights and privileges of the Owner and tenants, and/or file an action for specific performance.

ii. The Association shall have the unilateral right to terminate any lease upon default by the tenant in observing any of the provisions of the Declaration, bylaws or rules and regulations of the Association, including failure of the Owner to pay assessments. Fines may be assessed at a rate of up to \$100.00 per day, after notice and hearing, for any violation of these restrictions.

iii. Each Owner hereby acknowledges and agrees that any and all leases entered into by such Owner in connection with his or her home shall be deemed to incorporate by this reference a collateral assignment of rents and leases in favor of the Association, which collateral assignment of rents and leases shall provide that in the event such Owner leasing his or her home is past due in the payment of his or her assessments, all rentals shall be paid to the Association until all of the Owner's obligations are current. In addition, the Association may direct the tenants of any home which is leased in violation of these restrictions to pay all rental payments directly to the Association and not to the Owner as and when due.

iv. The Association may evict any tenant(s) occupying a home in violation hereof via an action in any court of competent jurisdiction.

v. Each Owner hereby agrees that all of the foregoing are appropriate remedies for

any violation hereof, failure to pay assessments, or other violation of the Declaration by the Owner or any tenant. The Owner and the tenant are jointly and severally responsible for all fines, attorneys' fees and other costs incurred by the Association in enforcing the terms of this Section.

### 6.3 Utilities and Other Easements.

a. All utility lines of every type, including but not limited to water, irrigation, electricity, gas, telephone, sewage, communications infrastructure, and television cables, running from the main trunk line or service location to any Home must be underground. The Declarant reserves unto itself the right to permit the installation of one or more cellular communications towers or other similar structures relating to the provision of utilities to The Gables or the general public and if so, such structures shall be exempt from the architectural standards set forth herein.

b. The Declarant reserves unto itself, its successors and assigns, perpetual alienable and releasable easements and rights on, over, through and under the ground for storm water drainage and direction and to erect, maintain and use water, irrigation, electric, gas, telephone, sewage, communications infrastructure, and television cables, and any other utilities lines and conduits for the purpose of bringing utility or communications or other services, at this time known or unknown, to the Property and the Lots on, in, under and over the streets or roads, rights of ways, Common Areas, and over any Lot shown on any Recorded Plat of the Property within twenty feet of each street front property line, within five feet of each street side property line, within zero feet along the interior side property lines of each Lot, and within zero feet along the rear property line of each Lot and over such other areas as are so identified on any recorded plats of the Property, provided that no such easement shall be construed to encroach into any Home on a Lot with lesser setbacks. In addition, the Association may cut or fill, in the above-described easements, as well as anywhere else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is reasonably desirable or is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance (but without disturbing any Home). In addition, along streets fronting property lines, in the ten (10) foot easement hereby reserved, Declarant also reserves the right to install, maintain and repair landscaping; the Owner is responsible for maintaining any and all improvements such as plantings, sidewalks, driveways, drainage pipes, ditches or swales, and the like within all such easement areas.

6.4 Construction, Settling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for non-substantial encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. If adjoining Homes are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Area resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

### 6.5 Intentionally omitted.

6.6. Garbage and Storage Receptacles. All garbage and recyclables cans, receptacles, tools and equipment for use on a Lot, shall be kept inside the garage except within 24 hours of pickup. No fuel tanks or similar storage receptacles or related storage facilities, may be exposed to view. No garbage, refuse, or cuttings shall be placed upon the curb unless in a suitable container.



6.7. Debris and Yard Displays. No leaves, trash, garbage or other similar debris shall be burned and/or buried on the Property. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any Lot or any other portion of the Property, except as is temporary and incidental to the bona fide improvement of any portion of the Property. Job site debris shall be removed from any job site at least weekly. Yards, lawns and landscaping shall be maintained in a proper manner at all times as not to become an eyesore to neighboring Lots. Except as set forth below in Section 6.16, no decorative flag poles, statues, sculptures, fountains, ornaments, figurines, artificial plants or flowers, or any other decorative structures or items are permitted in the front or side yards of any Lot or to be visible from streets unless approved by the ARC.

6.8. Antennas. Any television antennas, satellite dish, radio receiver or sender antenna or other similar device attached to or installed on the exterior portion of any Home, or placed on any Lot shall be appropriately screened from view in accordance with Federal Communication Commission guidelines and Association rules and regulations (as determined by the ARC), and must be approved by the ARC in accordance with Article Five. Notwithstanding the foregoing, pursuant to FCC regulations published at 47 C.F.R. §1.4000, the following provisions shall apply to any television signal reception antennas on any Lot:

a. No HAM radio, citizen's band ("CB") or other antenna shall be permitted except as set forth herein. No television antenna, except for traditional broadcast aerials (also known as "TVBS" antennas), shall be permitted which is larger than one (1) meter in diameter.

b. The Association may regulate the location or appearance of antennas with regard to location and appearance, including screening and color, provided that such regulations do not unreasonably impair the installation, maintenance or use of such antennas, as defined by said FCC regulations and binding interpretations thereof. In any event, location shall be limited to backyards of Homes provided such location does not unreasonably impair the installation, maintenance or use of such antennas.

c. No antenna or any structure or mast supporting any antenna may extend above the roof line of the Home to which it is appurtenant.

d. Colors of television antennas must be presented to the ARC for approval prior to installation.

e. The Association shall have an easement over the Lot of any Owner who proposes to erect any antenna, or who does erect the same, in order to identify the best location on the Lot that allows for reasonable reception and which complies with the aesthetic standards of the Association. The Association shall not be bound by the location proposed by the homeowner if another location on the Owner's Lot would allow reasonable reception and better match the standards of the Association.

f. The foregoing restrictions on the Association's ability to regulate antennas shall not apply to any antenna proposed to be placed upon any Common Property of the Association, nor to any antenna which is not a television signal reception device, as to which the Association shall have full authority to regulate in its sole discretion.

6.9. Intentionally omitted.

6.10. Unsightly Conditions.

a. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions to exist on his/her Lot which would tend to decrease the beauty of the Property, specifically or as a whole, or which would constitute any eyesore to any neighbor in the Association's sole discretion.

b. During the construction of any improvement to a Lot in the Property, the Lot, roads, sidewalks, landscaping and Common Areas or Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk, landscape, hardscape or to any part of any Common Areas, Limited Common Areas or utility system caused by a Builder and/or Owner shall be repaired by such Builder and/or Owner. All Builders and Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

c. In the event a Builder or an Owner or his/her agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain its Lot, and adjoining areas, as specified herein, or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such work, plus an administrative fee of \$150.00 or 15% of the costs incurred, whichever is greater, shall be paid by the Owner to the Association and shall become a continuing lien on the Lot, as appropriate, until paid.

6.11. No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of any Lot, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of the Property. Except as otherwise permitted herein, nothing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of other Owners or occupants, may be maintained on a Lot. The Board may adopt reasonable rules and regulations addressing how this provision will be interpreted and enforced. The Board may deem a Lot upon which occurs repeated activity which is bothersome to neighbors or unsightly such as loud music, parking on the street or yards, late-night parties, unkempt yards, and the like as a nuisance Home and may assess fines or other measures until the nuisance activities are abated even if no single activity alone would arise to the level of nuisance in and of itself. Fires on any Lot or on any portion of the Common Properties or the Limited Common Properties are prohibited, except for reasonable properly-tended and safely-contained fire pits or permitted controlled burns.

6.12. Animals and Pets. Pets are allowed at The Gables but are limited to no more than two. At no time shall any household pets be allowed to run free and at all times when outside of the Owner's Home, such household pets shall be on a leash. The Board may adopt reasonable rules and regulations not inconsistent herewith regulating the number, size and type of pets which will

be allowed to be kept in the Homes, and enacting restrictions or prohibitions against pets exhibiting prior instances of aggressiveness toward humans or other pets. The primary resource for stray or aggressive animals is to local animal control officials and neither the Declarant nor the Association offers any assurance that any area or person is safe or free of aggressive animals. Owners shall exercise their pets only in areas designated by the Board and shall immediately clean up all droppings generated by their pets. No pet runs, dog houses, or pet fencing (other than "invisible"-type fencing) shall be permitted unless approved by the ARC, and no pets may be chained in a yard. Electronic "invisible"-type fencing does not negate the Owner's responsibility to maintain control and containment of pets. On mowing days, homeowners who install a pet underground electric fence system must keep the pet inside their home and keep dog excrement removed from their lawn. Pets must be under supervision at all times. Electronic underground fence systems must be kept within the Lot Owners boundaries and must be approved before installation.

6.13. Discharge of Firearms. Hunting and the discharge of firearms and bows and arrows within the Property is prohibited.

6.14. Motorized Vehicles. All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, parking lots and driveways within the Property. Golf carts which are otherwise legal to drive on public roads may be driven on the roads of The Gables provided they are operated safely; the Association may enact rules and regulations as to the operation of golf carts on the Property and may impose fines upon Owners who own golf carts which are in violation of the same.

6.15. Prohibited Parking and Commercial Vehicles. The Board may adopt reasonable rules and regulations not inconsistent herewith specifying in more detail the parking and vehicle restrictions provided for in this Section and reasonable exceptions thereto. Overnight street parking is prohibited within The Gables, except within 48 hours of federal holidays, during which time overnight on-street parking may be accommodated on account of the potential influx of visitors in the Community. Garages and driveways are to be used for vehicle parking. The parking of boats, boat trailers, commercial vehicles, unlicensed vehicles, inoperable vehicles, campers or recreational vehicles other than inside a garage is prohibited. "Commercial vehicles" include but are not limited to any vehicle bearing, or specifically designed to bear, ladders or any sort of construction equipment or materials; bearing exterior tools, equipment, pumps, tanks, vices, cranes, motors or similar occupational, trade or commercial attachments or apparatus; tractor-trailer trucks including those without trailers; dump trucks and commercial delivery trucks or vans; trailers of any length or bearing lettering or commercial attachments or equipment as described above; and vehicles specifically adapted for business, commercial or trade use. The Board is empowered to make a reasonable determination with reference to these standards for any questionable vehicle. Vehicles with removable signs or attachments must remove said item immediately after the time the vehicle is parked.

6.16. Signage. No signs, except standard, typical "For Sale" signs, of a size typically used in to indicate the availability of a single Lot or Home for sale, shall be displayed in public view on any Lot, appurtenance, vehicle, accessory building or structure unless approved by the ARC, which may also from time to time specify required design criteria and color schemes for approved signage

including "For Sale" signs. "For Rent" signs are prohibited. Political signs opposing or supporting any candidate, party or issue on the ballot in an upcoming election are expressly prohibited.

6.16A. Flags and Banners. Upon ARC approval, no more than one flagpole, with a maximum height of ten feet, is permitted per Lot provided that it is professionally made and installed and used only to fly the current flags of North Carolina and/or of the United States of America. No more than one small (not to exceed 18 square inches) ground-mounted yard/garden flag, and no more than one holiday or decorative flag next to the front door or front porch, not to exceed 3 feet by 5 feet, are permitted without the necessity of ARC approval. All flags and banners must be properly maintained. Any flag or banner in violation of this Section may be ordered to be removed by the Board.

6.17. Mail and Delivery Boxes. Declarant or the Board shall determine the standards and issue guidelines for the location, material, color and design for mail boxes, if any, and the manner in which they shall be identified. All mail and delivery boxes shall comply with such standards. The Association may designate a required vendor to supply all mailboxes and posts and if so all Owners shall use the required vendor and the required mailbox and post.

6.18. Drainage Culverts: Sedimentation and Erosion Control. Owners are solely responsible for the maintenance and repair of drainage systems on their Lots. No Owner or Builder or their licensees, invitees, subcontractors or agents shall disturb or impede any driveway culvert, drainage swale or other stormwater drainage structure or device in the Property, except that a Builder may disturb or impede the same if required by its construction, if thereafter such Builder provides reasonably comparable alternate means of drainage at its sole cost and expense. All Builders and Owners in the Property hereby agree that once they have purchased or begun operations on a particular Lot, they shall be the financially responsible party with regard to stormwater, sedimentation and erosion control measures for that Lot in accordance with all local, state and federal requirements, and shall at all times, at their cost and expense, maintain proper stormwater, sedimentation and erosion control measures around and through each such Lot, including but not limited to proper silt fencing, such that no material amount of surface water, sedimentation or mud is discharged into any neighboring lot, street or common area. Failure to properly maintain and install such measures, or allowing sedimentation or erosion on any Lot which is in violation of local, state or federal requirements, shall constitute a violation of this Declaration and the Board shall have enforcement rights as set forth elsewhere herein. All Builders hereby agree to indemnify Declarant and the Association from and against any breach of this provision by such Builder which results in or contributes to any adverse action by any local, state or federal sedimentation or erosion control enforcement agency against Declarant or the Association.

6.19. Privacy Partitions. No fence, wall, hedge, or shrub planting shall be permitted on any Lot except with the written approval of the ARC. No tree shall be permitted to remain within 25 feet of the intersection of streets or the intersection of a street and driveway unless the foliage line is maintained in such a manner as to prevent obstruction of sight lines between two and six feet.

6.20. Driveways and Sidewalks. All driveways shall be of concrete approved by the Declarant as to any new home construction. All piping and culverts must be constructed and maintained to meet state and county standards. No parking is permitted on front yards. Pavement

must be four inches thick excluding sub-base material. Other paving material, painted or tinted paving material, paver brick designs or gravel driveways are not permitted. Concrete sidewalks shall be installed at the time of construction of any residential dwelling, and shall be completed prior to occupancy of such dwelling.

6.21. Timely Completion. Once construction of any Home, structure, improvement, or addition thereto has begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Homes under construction in the Property be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within ninety (90) days of starting construction and that all phases of work be complete and a Certificate of Occupancy received, where applicable, within one year of ARC approval. In the event that completion should be delayed beyond one year from ARC approval, then in that event, the ARC may extend the completion period or, so long as the Owner is notified within thirty (30) days of the one-year period's expiration, may rescind the existing approval and require that the Owner reapply and seek new approval. As with other Sections hereof, the Association may adopt a schedule of fines and enforce the same in connection with any Owner's failure to act in accordance with this Section. Notwithstanding the foregoing, however, construction shall be considered to have begun on a Lot if any foundation or footing has been built.

6.22 Solar/Passive Energy Systems. All exterior and/or exposed solar energy, passive energy collection, heating and/or water heater system components, windmills, generators, and similar alternative energy systems, shall be subject to ARC review to determine the appropriateness of the design for installation on any Lot or Dwelling within the Community. Such systems, including but not limited to solar panels, are expressly prohibited on the front of any Dwelling, accessory building, or Lot (including front-facing roofs), as well as on the side of any Dwelling Unit, or Lot (including side-facing roofs) which faces a street or Common Area ("Public Area"). ARC review as to other areas of a Dwelling Unit or Lot where such systems are not expressly prohibited shall take into account the impact of the visual appearance of such system components from other Lots and/or public areas and/or private properties within the Property. Such systems and components shall be designed and installed in a manner that is visually unobtrusive when viewed from any Public Area and from neighboring Lots.

All permitted Solar/Passive Energy Systems must comply with the following criteria:

- a. For roof-mounted Solar/Passive Energy Systems, rear roof mounting shall be used and preferred unless doing so would substantially prevent the homeowner from realizing any benefit from the system. The system:
  - i. Must not be mounted on a building façade that faces a Public Area;
  - ii. Must not be mounted on a roof surface that slopes downward toward a Public Area;
  - iii. Must be mounted flush with the roofline where feasible; and
  - iv. Must not cast a glare upon neighboring properties.
  - v. For homes that have no rear roof, rear ground mounting may be considered if approved by the ARC.
  - vi. If neither rear roof nor rear ground mounting is possible, refer to subsection (b) below.

- b. Where rear-roof-mounted Solar/Passive Energy Systems are not feasible, the following guidelines must be met. The system:
- i. May be placed on a side roof if the side roof does not directly face or slope down toward a Public Area;
  - ii. Shall not be placed on a front-facing roof;
  - iii. Shall not be placed in the front yard;
  - iv. Shall not be placed in a back yard or side yard that adjoins a Public Area, if the system and its components would be substantially visible from the Public Area;
  - v. If ground mounted, must be screened on all sides by an ARC approved screen (e.g. foliage);
  - vi. May not take up an area that is greater than twenty five percent (25%) of the area of the given side or back yard;
  - vii. Must not cast a glare upon neighboring properties;
  - viii. Must not cast or reflect heat on neighboring properties;
  - ix. Must be erected after or contemporaneously with the ARC-approved screening; and
  - x. Must not be placed on freestanding poles (*i.e.* all Solar/Passive Energy Systems must be attached to the ground on all four corners).
- c. Solar Shingles are prohibited.
- d. The casing, wiring, support members, and other parts of the Solar/Passive Energy System shall be painted to match the surface(s) upon which they are mounted.
- e. The Solar/Passive Energy System shall at all times be maintained in an aesthetically pleasing condition and properly painted.
- f. The Solar/Passive Energy System shall be professionally installed and maintained along with all required governmental permits and approvals.

## ARTICLE SEVEN ADDITIONAL RIGHTS RESERVED TO DECLARANT

7.1. Withdrawal of Property. Declarant reserves the right to amend this Declaration, during the Declarant Control Period, for the purpose of removing any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is or includes Common Area which has been conveyed to the Association, the Association must first consent to such withdrawal.

7.2. Right to Develop. Declarant and its employees, agents, contractors and designees shall have a right of access and use and an easement over and upon all of the Common Areas for the purpose of making, constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Damage done to the Common Areas shall be repaired, with the Common Area being restored to a finished condition, to the extent such repair and

restoration is reasonably practicable. Declarant shall have the right, among other rights and without limitation, without the consent or approval of the Owners, to add or remove Common Areas, and, subject to Section 7.1 above, to withdraw real property from the Property. Declarant, its successors and assigns, shall not be bound by sales and marketing materials or other communications or representations which are not embodied in the recorded declarations applicable to a particular Lot, Home or Common Area. The declarations and Recorded Plats control over all other communications or understandings, and no person should purchase a Lot or Home within The Gables without reading and understanding all the recorded instruments, plats and rules and regulations applicable to his/her Lot, and Home.

7.3. Amendments. Declarant may freely amend this Declaration during the Declarant Control Period without the consent of any other person or entity.

7.4 Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons or entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has thereunder. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Rowan County Registry. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety.

7.5. Declarant Control Period.

a. Reservation of Development Rights. Pursuant to Section 47F-1-103(28) of the Act, Declarant hereby reserves unto itself until i) the date that it no longer owns any Lot in the Property or ii) 25 years from the recording date of this Declaration, whichever comes first (the "Declarant Control Period") the right, without further notice and without the joinder or consent of any Owner, (i) to add real estate to the Property, (ii) to create Lots, Common Elements or Limited Common Elements and to allocate and reallocate real property among these various types by Recorded Plats and amendments to the same from time to time, (iii) to realign or change the boundaries of any Lots or Common Elements, (iv) to withdraw real estate from the Property or from the Common Elements, and (v) to amend this Declaration or Supplemental Declaration, including their exhibits, in order to ensure development of the Property in accordance with Declarant's development plans for the Property, or for the exercise of any other development right or Special Declarant Right set forth herein or in any other declaration or other recorded document or provided by law (collectively, "Development Rights").

b. Reservation of Special Declarant Rights. Pursuant to Section 47F-1-103(28) of the Act, Declarant hereby reserves unto itself during the Declarant Control Period the right, without further notice and without the joinder or consent of any Owner, (i) to exercise Special Declarant Rights as reserved elsewhere in this Declaration, (ii) to complete improvements indicated on plats and plans recorded before, with or pursuant to this Declaration, (iii) to exercise any Development Right, (iv) to maintain sales offices, management offices, signs advertising the Property, and models, and (v) to use easements through the Common Elements for making improvements within the Property or within real estate which may be added to the Property (collectively, "Special Declarant Rights").

c. Amendments; Additional Property. This Article may not be amended, modified or removed without the express written consent of the Declarant. If the Declarant Control Period has terminated and subsequently additional properties owned by the Declarant thereafter become subject to this Declaration, the Declarant Control Period shall immediately be reinstated as of the date such additional properties become subject to this Declaration and shall not terminate until Declarant no longer owns any Lots within the entirety of the real property then comprising the Property. After the Declarant Control Period, the Board may approve the annexation of additional property into the Association and to become subject to this Declaration provided the same is first approved by a vote of the membership.

7.6. Access Easement Reserved. Declarant reserves unto itself for the benefit of itself and its successors and/or assigns, and the Association, a non-exclusive and alienable easement and right of ingress, egress and regress over and across all roads and Common Areas within the Property for a) access to and from other real property of Declarant or its successors and/or assigns, and b) for the extension or connection of any utility, drainage or similar lines or services to serve one or more Lot or other portion of the Property. Unless designated as a "Permanent Easement" (or similar wording) by Recorded Plat, such easement shall continue until that time when all new construction has ceased within The Gables. Any damage caused by Declarant, its agents, successors and/or assigns, or any builder, to the city streets within the Property when exercising its rights created by this Section shall be repaired at the expense of Declarant, or the applicable builder, its or their successors or assigns. In addition, an easement and right of ingress, egress and regress over and across all city streets within the Property is hereby granted to any applicable government agency, for the purpose of fulfilling its duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail, and any other service related to keeping the peace and preserving the general welfare.

#### ARTICLE EIGHT MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION; RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

8.1. Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot on the Property is subject by this and any other declarations made in connection herewith to all rights, responsibilities and assessments of the Association and shall be a Member of the Association; provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

8.2. Declarant's Voting During Declarant Control Period. During the Declarant Control Period, the Declarant shall be entitled to one vote per lot owned.

8.3. Voting; Proxies.

a. In the event only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.



b. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner, naming some other Owner or the spouse of another Owner as proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates one (1) month after its date, unless it specifies a different term.

c. No votes allocated to a Lot owned by the Association may be cast.

#### 8.4. Rights and Responsibilities of the Association.

a. Subject to the rights of Owners and Declarant as set forth in this Declaration, the Association has exclusive management and control of the Common Properties and all improvements thereon and all furnishings, equipment and other personal property relating thereto as well as the Limited Common Properties as provided in this Declaration. The Association assumes the following duties with respect to such Common Properties upon transfer from the Declarant, including, but not limited to, the following:

- i. maintenance of the Common Properties;
- ii. management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Properties or located upon the Common Properties so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- iii. all landscaping of the Common Properties;
- iv. maintenance of adequate public liability insurance insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of eighty percent (80%) after application of any deductibles, for the benefit of the Association with respect to the Common Properties, all of the foregoing insurance policies being maintained and insurance proceeds being used in compliance with the provisions of Section 47F-3-113 of the Act;
- v. payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Properties;
- vi. maintenance of facilities located on the Common Properties or Facilities for the benefit of Owners which may be owned by or leased from the Declarant, if any, and maintenance of any other areas in the Property if reasonably necessary to maintain the aesthetic standards of the Community or for other good cause benefitting the Community as a whole;
- vii. payment of assessments for public and private capital improvements made to or for the benefit of the Common Properties;

- viii. maintenance of all decorative planted medians, signage of the Community, knee walls, stone or brickwork on wall caps, pavers, columns and lights, and other hardscape improvements which may be a part of any road dedicated to public use, it being the intent of this provision that the applicable municipality maintain roads dedicated to and accepted by the municipality, but that the Association may maintain any additional, primarily decorative features, as may be included or added by the Declarant or the Association in order to beautify such areas; and
- ix. The Association may in its discretion provide other services as and to the extent the Association deems appropriate.

b. Intentionally omitted.

c. The Association may obtain and pay for the services of any person or firm to manage its affairs to the extent the Board deems advisable, as well as such other person or firm as the Board determines is necessary or desirable, whether such person or firm is furnished or employed directly by the Association or by any person or firm with whom it contracts. Without limitation, the Board may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the Common Properties or the enforcement of this Declaration, the Association's Articles of Incorporation, Bylaws, and rules or regulations. The Association may acquire, hold, exchange and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in this Declaration, the Association's Articles of Incorporation or the Bylaws. The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing activities within the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness. The Association may, acting through its Board, contract with other residential associations or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of the Association and its Members.

d. The Association may perform any duty required of an Owner hereunder or under the Bylaws and assess the costs thereof against the Owner's Lot as a Special Individual Assessment in accordance with the provisions of Article Ten hereof. The Association shall first provide thirty (30) days' written notice to the Owner of its intention to perform such duties and charge the Owner for the cost thereof, plus an administrative fee of 15% of the cost to the Association of performing such duties, and it shall so perform the duties and charge the Owner for the cost thereof and administrative fee only if the duties are not fully performed at the end of the thirty (30) day period.

8.5. Limitation on Litigation of the Association. No judicial or administrative proceeding shall be commenced or prosecuted by the Association other than routine proceedings to collect assessments against delinquent Owners or to enforce violations of this Declaration or the ARC Guidelines unless approved by the Declarant in writing during the Declarant Control Period.

ARTICLE NINE  
COMMON PROPERTIES AND LIMITED COMMON PROPERTIES

9.1. Members' Easements of Enjoyment. Subject to the provisions of this Article and to the rights of Declarant, and the right of the Declarant to reallocate Lots, Common Areas and Limited Common Areas in its sole discretion from time to time on Recorded Plats, every Member shall have a right and easement of enjoyment in and to all of the Common Properties and the Facilities and such easement shall be appurtenant to and shall pass with the title to every Lot in the Property; provided, however, that Limited Common Properties are for the use and benefit of only the Owners where the Limited Common Property is located.

9.2. Intentionally omitted.

9.3. Title to Common Properties. The Declarant may retain the legal title to any Common Properties shown on any Recorded Plat of the Property, until such times as it has completed improvements, if any, thereon or until the Association agrees to accept and maintain such Common Properties. The Common Properties cannot be mortgaged or conveyed to any entity besides the Association or the Declarant in certain cases, without a vote in favor of eighty percent (80%) of the votes in the Association, however, the Board may grant easements over the Common Properties in its reasonable discretion provided that any easements do not substantially prevent the use of the applicable Common Property for its originally-intended use. This subsection shall not preclude the Board from conveying at such purchase price as the Board deems appropriate any small strips or portions of any Common Area to a neighboring Owner in order to resolve any gap, gore, overlap or other boundary line conflict provided such conveyance does not in the good faith judgment of the Board adversely affect the overall use and enjoyment of the applicable Common Area.

9.4. Extent of Members' Easements. The rights and easements of enjoyment created herein shall be subject, however, to the following:

- a. the right of the Declarant, in its sole discretion, to grade, pave or otherwise improve any street shown on any Recorded Plat;
- b. the right of the Association to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Properties, including the right to limit the number of guests, to regulate hours of operations and behavior, and to curtail any use or uses it deems necessary for either the protection of the Facilities or the peace and tranquility of adjoining residents;
- c. the right of the Association to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any violation of this Declaration, the Bylaws, the ARC Standards, or any rules and regulations adopted by the Board;
- d. the right of the Association to lease or use any of the Common Properties for Member functions, lessons, or special events and to allow the lessee to charge admission or other fees for functions, lessons, or special events;

e. the right of the Association or its assignee to charge reasonable admission and other fees for use of any of the Facilities;

f. Intentionally omitted.

g. the right of Declarant or the Association to fence off or otherwise restrict access to particular Common Properties, such as stormwater detention or retention basins, irrigation water holding ponds, unimproved property, and the like, if deemed reasonably necessary for safety or liability purposes.

9.5. Limited Common Properties and Expenses.

a. Certain portions of the Property, including Common Areas, may be designated as Limited Common Areas. By way of illustration and not limitation, Limited Common Area may include entry features, landscaped areas, parks, private roads not necessary to provide other Lots with access to public streets, and other portions of the Common Areas. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an expense allocated among the Owners to which the Limited Common Area is assigned, and payable by them as Individual Assessments in addition to regular Assessments.

b. Intentionally omitted.

9.6. Intentionally omitted.

9.7. Owners' Personal Property. The Association or the Declarant shall not be liable in any manner for the safekeeping, condition or loss of any vehicle or other personal property belonging to or used by an Owner or his/her family, guests or invitees, located anywhere within The Gables.

ARTICLE TEN  
COVENANT FOR PAYMENT OF ASSESSMENTS

10.1. Creation of the Lien and Personal Obligation for Assessments. Except for Declarant, whose obligations to pay Assessments are set forth below, each Member who is the Owner of any Lot, by acceptance of a deed therefor, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay as limited below, to the Association:

- a. Annual assessments or charges as set forth herein.
- b. Special Assessments per Section 10.4 below.
- c. Special Individual Assessments per Section 10.5 below.

d. The above Assessments of an Owner and any fines, fees, costs, attorneys' fees or other charges, together with such interest thereon and costs of collection thereof as herein provided (altogether referred to as "Assessments" herein), shall be a charge on the land and shall be a

continuing lien upon the Lot(s) against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

10.2. Purpose of Assessments. The Assessments levied by the Association shall be used to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of the Property and other Members, and in particular, but without limitation, for:

a. Improvement, maintenance, and replacement of any of the Common Properties including, without limitation, the Facilities, and maintenance of any other areas in the Property if reasonably necessary to maintain the aesthetic standards of the Community, for the benefits of the Members, or for other good cause benefitting the Community as a whole;

b. Payment of the Common Expenses;

c. Implementation and enforcement of proper maintenance of exteriors of Homes and related improvements on Lots in the Property, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Article 11 of this Declaration;

d. In the discretion of the Association, improvement, maintenance, replacement, repair, landscaping, insuring or otherwise keeping up of any Limited Common Areas, or entrance, median, landscaping and other areas which may be owned by the Declarant but which are for the benefit of the Members or of The Gables generally;

e. Establishment of reasonable reserves;

f. Acquisition of services and facilities devoted to the foregoing purposes including but not limited to, Association management fees, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes, the procurement and maintenance of insurance, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes;

g. Such other purposes provided for in this Declaration or permitted by the Act or other applicable law as may be determined by the Board to be in the best interests of the Association and its Members.

10.3. Determination of Regular Annual Assessments. Regular annual Assessments shall be as determined by the Board in accordance with the procedures set forth in the Act.

a. The maximum annual assessment (HOA Dues) for Lots may be increased for each calendar year, without a vote of the membership, provided that the percentage of any such increase does not exceed five percent (5%) of the previous year.

- b. The maximum annual Assessments for Lots may be increased without limitation if such increase is approved by two-thirds (2/3) of the Members, in person or by proxy, at a meeting duly called for this purpose, or at the Association's annual meeting.
- c. The Board of Directors may fix the annual assessments at amounts not in excess of the maximum.

10.4. Special Assessments. In addition to regular Assessments, the Association may levy a "Special Assessment" applicable to all Lots, for the purpose of defraying unforeseen expenses, in any reasonable amount if approved by the Board and authorized by a two-thirds (2/3) vote of the Members, in person or by proxy, a quorum having been established and written notice of which vote shall have been sent to all Members in accordance with the provisions of the Bylaws for special meetings or votes by written or electronic ballot.

10.5. Special Individual Assessments. In addition to the regular annual Assessments and the Special Assessments described above, the Association may levy, from time to time, on a particular Lot rather than on all Lots or Homes in the Property, Special Individual Assessments, immediately due and payable, consisting of any fines assessed for an Owner's violations of the terms and conditions of any Declaration, the Bylaws or the rules and regulations of the Association, together with costs, fees and expenses (including actual attorneys' fees) incurred by the Association; any costs (including actual attorneys' fees) incurred in correcting or repairing anything on a Lot which is not in compliance with this Declaration, the ARC Guidelines, or any rules and regulations; any costs (including actual attorneys', engineers' or other professionals' fees) incurred in any legal dispute with any Owner; or the pro rata share apportioned to such Lot of any expenses incurred by the Association in maintaining Limited Common Properties all of the foregoing of which shall comprise "Special Individual Assessments." Any expenses incurred by the Association with attorneys, consultants, engineers, accountants, contractors or other third parties, and/or any management company serving the Association, caused by or related to any dispute or disagreement with any Member or related to any violation by any Member shall be assessed against that Member's Lot as a Special Individual Assessment without the necessity of any hearing or other notice.

10.6. Payment of Annual Assessment; Due Dates. The regular annual Assessments provided for herein shall be paid (as determined by the Board) in monthly, quarterly, semiannual, or annual installments. The Board shall fix the amount of the annual Assessment at least thirty days in advance of each regular annual Assessment period. Notice of the regular annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association, upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether any specific Assessment has been paid. The Association or its agents may charge a reasonable fee for the issuance of such certificate. Such properly executed certificate of the Association as to the status of the Assessment is binding upon the Association as of the date of its issuance. The first Assessments levied against any additions to the Property not now subject to Assessment, at a time other than the beginning of any Assessment period, shall be an amount which bears the same relationship to the regular annual Assessment as the remaining number of months in that year bear to twelve. The due date of any Special Assessment or any other Assessments permitted hereby shall be fixed in the resolution or resolutions of the Board authorizing such Assessment.

10.7. Duties of the Board of Directors.

a. The Board shall fix the amount of the Assessment or Assessments against each Member, for each Assessment period, at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Members and Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member. Unless otherwise provided by the Board, the annual Assessment Period shall be deemed the calendar year commencing January 1<sup>st</sup> and ending December 31<sup>st</sup> of any year. The Board shall have the right to change the annual Assessment period to a fiscal year other than a calendar year by vote of the Board. The annual budget and Assessment may be amended prior to the adoption of the next year's budget in the same manner as set forth in this subsection.

b. Within thirty (30) days after adoption of any proposed budget of the Association, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) days after mailing of the summary and notice; the meeting may occur at the same time as the annual membership meeting of the Association. There shall be no requirement that a quorum be established for the budget ratification vote. The budget shall be deemed ratified at the meeting unless at that meeting a majority of the votes in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

10.8. Effect of Non-Payment of an Owner's Assessment.

a. If the Assessments of an Owner are not paid within thirty (30) days following the date due, then such Assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot from and after the time of the filing of a claim of lien with the Clerk of Superior Court of Rowan County, which lien shall bind such Lot in the hands of the then-Owner, his/her heirs, devisees, personal representatives, successors and assigns. The personal obligation of the Owner to pay such Assessment shall remain his/her personal obligation for the statutory period; and, in addition, shall pass to his/her successors in title if a lien has been filed. In addition to all remedies contained herein for non-payment, any services provided by the Association to the Lot or Owner may be discontinued as of day 31 following the due date until all Assessments are current or as otherwise directed by the Board.

b. If the Assessment(s) is not paid within thirty (30) days after the due date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to file a claim of lien and foreclose such lien against any such Lot in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and there shall be added to the amount of such Assessment, the costs of such action and actual attorneys' fees and other cost incurred by the Association. The Board may appoint a trustee to conduct the foreclosure sale,

petition the Clerk of Court to appoint a commissioner to conduct the same, or otherwise conduct the foreclosure sale in any manner provided by law. In the event a judgment is obtained against any Owner for such Assessments, such judgment shall include interest on the Assessment as above provided and the actual attorneys' fees incurred, together with the costs of the action. A \$20.00 late fee, or the maximum amount allowed by the Act, whichever is greater, shall also be due and payable for each month or portion thereof in which any Owner is delinquent in any amount owed to the Association, which late fees shall be in addition to the other charges described herein. The Board shall adopt a written collections policy setting forth in more detail the procedures that its officers, agents and attorneys shall use in collecting Assessments, fines and other charges from owners.

c. If Assessments are payable other than yearly, the Board may nonetheless accelerate and make due and payable as a lump sum per year the Assessments due from any Member whose account with the Association is not current, or who has a history of past-due payments, it being understood that the privilege of paying in installments shall be available only to creditworthy Members.

10.9. Subordination of the Lien on an Owner's Property to Mortgages or Deeds of Trust. The lien on an Owner's property of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot. The subordination shall not relieve any Lot from liability for any Assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded. The sale or transfer of a Lot shall not affect any lien for Assessments. However, the sale or transfer of a Lot that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. The extinguished Assessments shall be collectable as a Common Expense from all Owners. No such sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due, or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or first deed of trust.

10.10. Declarant's Obligations for Assessments. The Declarant shall have no obligation to pay Assessments on unsold Lots owned by it subject to this Declaration.

10.11. Attorneys' Fees. In any action brought by the Association to enforce any provisions of the Articles of Incorporation, this Declaration, the Bylaws, the ARC Guidelines, or the duly-adopted rules and regulations of the Association, the court shall award actual attorneys' fees to the Association if the Association is the prevailing party in the matter or if the Owner does not contest the matter.

10.12. Intentionally omitted.

## ARTICLE ELEVEN EXTERIOR MAINTENANCE AND INSURANCE

11.1. Exterior Maintenance. After thirty (30) days written notice from the Association to an Owner specifying any maintenance required to a Lot pursuant to this Declaration, the



Association shall have in its sole discretion the right (but not the obligation) to provide such maintenance. Such maintenance includes (but is not limited to) painting, repairing, replacing and care of roofs, gutters, downspouts, removal of improvements or signs erected in violation of this Declaration, and exterior improvements on any Home. Such maintenance may include the mowing of grass and weeds, the trimming of shrubs, or the removal of trash and litter.

11.2. Assessment of Cost on Exterior Maintenance. The cost of any such maintenance, plus an administrative fee of twenty-five percent (25%) of such costs shall be assessed against the Lot upon which such maintenance is done and shall be a Special Individual Assessment, and shall be a lien against any such Lot upon filing a claim of lien with the Clerk of Court, and a personal obligation of the Owner.

11.3. Maintenance of Homes. Each Owner of a Home within the Property, by acceptance of a deed therefor, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to covenant:

a. To build or restore such Home in the event of damage thereof and to apply the full amount, to the extent necessary, of any insurance proceeds to the restoration or repair of such Home or to demolish the damaged Home and leave the Lot in a clean and orderly condition; and

b. To keep the Home in good and aesthetically pleasing repair as required by this Declaration, the Bylaws, the Design Standards, and any rules and regulations promulgated thereunder.

## ARTICLE TWELVE AMENDMENT TO DECLARATION

12.1. Owner/Member Initiated. Proposed amendments to the Declaration shall be subject to the amendment procedures set forth in the Act. At any meeting or vote to adopt an amendment, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) of the votes of the Association in good standing and entitled to vote in order for such amendment to become effective. If so approved, such amendment of this Declaration shall be properly documented and certified by two (2) officers of the Association as having been duly adopted and approved by the requisite percentage of Owners and recorded in the Office of the Register of Deeds of Rowan County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency with the Bylaws or with prior recorded restrictions or declarations, to the extent such inconsistency exists, the newly-recorded document shall control.

12.2. By Declarant. Notwithstanding any of the foregoing, Declarant hereby reserves unto itself, its successors and assigns, during the Declarant's Rights Period, the right to amend this Declaration.

**ARTICLE THIRTEEN  
SEVERABILITY; EXECUTION; VARIANCES**

13.1. If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants herein shall be deemed to be severable each from each other. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

13.2. Any parties other than the Declarant and the Association executing this Declaration other than the Declarant do so only to subject the portions of the Property owned by the them to the provisions of this Declaration and do not join in any of the substantive provisions hereof or have any right or duty of enforcement of the same except as otherwise provided herein.

13.3 Lender subordinations to this Declaration, if any, will be recorded separately and will have the same effect as if directly attached hereto.

13.4 Notwithstanding anything to the contrary contained herein, the Declarant and the Board shall be authorized to grant individual variances from any of the provisions of this Declaration, and any rule, regulation, or use restriction promulgated pursuant thereto, if it determines that doing so in a particular case would not be inconsistent with the overall scheme of development for the Community, would not be materially harmful to the Association or to any neighboring Owner, and that the purpose and intention of this Declaration would still be met without strict compliance with the applicable provision.

**SIGNATURES ARE ON THE FOLLOWING PAGE.**

IN WITNESS WHEREOF, the Declarants have caused this Declaration to be duly executed by authority duly granted.

SPENCER LANE CONSTRUCTION, LLC,  
a North Carolina limited liability company

By: *Spencer C. Lane, Jr.*  
Spencer C. Lane, Jr., President

STATE OF NORTH CAROLINA  
Rowan COUNTY

I, a Notary Public of Rowan County, North Carolina, certify that Spencer C. Lane Jr. personally came before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this 21 day of October, 2024.

*Tracy D. Boggs*  
Notary Public

My commission expires:

2-2-2028

[NOTARIAL SEAL]

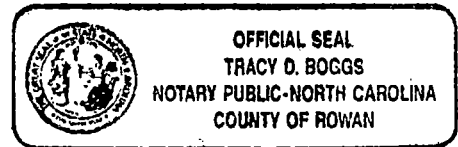


EXHIBIT A

Description of Real Property Subject to this Declaration.